John Adams Library.

IN THE CUSTODY OF THE
BOSTON PUBLIC LIBRARY.

SHELF NO
ADAMS
52. 3
V. V
A New and Complete Law-Dictionary,

O R,

GENERAL ABRIDGMENT of the LAW:

ON

A more Extensive Plan than any Law-Dictionary hitherto published:

CONTAINING

Not only the Explanation of the Terms, but also the Law itself, both with Regard to Theory and Practice.

Very Useful to Barristers, Justices of the Peace, Attornies, Solicitors, &c.

By T. CUNNINGHAM, Esq.

In TWO VOLUMES.

VOL. II.

LONDON:
Printed by the Law-Printers to the King's most Excellent Majesty;
For S. CROWDER at the Looking-Glafs, and J. COOTE at the King's-Arms, in Paternoster-Row;
And sold by Mr. SMITH at Dublin, Mr. JACKSON at Oxford, Mess. FLETCHER and HODSON at Cambridge, Mr. ETHERINGTON at York, and all other Booksellers in Great Britain and Ireland.

M. DCC. LXV.
New and Complete Law-Dictionary.

FAC

F. 

Whoever maliciously shall strike any person with a weapon in the church or church-yard, or draw any weapon there with intent to strike, shall have one of his ears cut off; and if he have no ears, shall be marked on the cheek with a hot iron with the letter F. that he may be known for a fighter, or marker of fight; 5 & 6 Ed. 3. cap. 4.

Fabric-lands. Are lands given to the rebuilding, repair, or maintenance of cathedrals, or other churches, and mentioned in the act of Oblivion, 12 Car. 2. cap. 8. In ancient time every one almost gave by his will, more or less, to the fabric of the cathedral or parish church where he lived. And these were called fabric-lands, because given ad fabricam ecclesiae reparandum. In Dei nomine Amen. De Veneris ante feptun nativitatis Sancti Johannis Baptistae, Annae Domini 1423. Ego Richardus Smith de Bromyardmodo fefamentum meum in kunc modum, Imprimis lego animam meam Dei & beatae Mariae, & omnibus fanditis, corpque meum fepulchrum in Carnetrio beata Eulogiae de Bradway. Item lego fabricae eccle- fiae cathedrales Hereford xii d. Item lego fabricae capelle beatae Mariae de Bromyard xid. Item lego Fratibus de Wodulpho xx d. refiduum vere honorum. Si. Thse fabric-lands the Saxon's called timberlands. Cowell. edit. 1737.


Fatto. As no one person, whose trade is extensive, can tranfet all his own affairs; so it is necessary for him to depute another in his place, on whose ability and honesty he can rely; and such person so deputed is called a fator, who is in nature of a fervant, whose acts shall bind his master or principal, so far as he acts pursuant to the authority given him. Molloy 421.

If the commiffion be general, as to dipefes, do, and deal therein as if it were your own, hereby the fator is excused if a lofs happens; but if the commiffion be to fall and dipefes, hereby the factor is not enabled to fall upon tick, nor can he fell for any unreasonable time, as ten or twenty years, though there be the words as if it were your own, but must fell according to the usual time, for which credit is given for the commodities he dipefes of. Molloy 422. 1 Bully. 103.

In account the defendant pleads before auditors, that the goods for which he is to account were bona perturba, and notwithstanding his care in keeping them were worfe, and that they remained in his hands for want of buyers, and were in danger of growing worfe, and that therefore he fell them upon credit to a man beyond sea; this is no good plea, for a factor cannot fell, even bona perturba, upon credit, without a particular commiffion fo to do. 2 Med. 100.

In favour of trade and merchandize, an action of account lies at Common law against a factor as against a bailiff, in which he shall have all reasonable allowances. 9 Co. 90 b. 172 a. 11 Co. 90 a. 2 Rel. Abr. 161.

Also, if a man by obligation acknowledges that he has received money ad profitem et computandum, the obligee may either sue for the bond, or have an action of account at his election. 1 Rel. Abr. 118. Dyly 20. Crs. Eliz. 644.

If goods are configned to a fator, and upon arrival he makes a false entry at the Custom-house, or lands them without paying the customs, whereby they become forfeited, and are feized, whatever the principal hereby suffers, the fator must inevitably make good, altho' his commiffion were general; but if the factor makes his entry according to the invoice, or his letter of advice, and it falls out the same are mistaken, though the goods are lost, yet is the factor excused. Molloy 423. Crs. 76. 265. Lan. 65.

If a factor beyond sea be brought to account in equity, he shall be allowed the customs payable beyond sea, because he runs the venture; and if the goods had been lost by non-payment of such customs, he muft have answer'd the value of them. 1 Chan. 42. 25.

But if a home factor be brought to an account, he shall not be allowed the customs, unles he swear he hath paid them; because it were a matter of great scandal, that any thing should pass the allowance of a court of justice, that is gotten by defrauding the government. 1 Chan. 30.

The principal shall answer for his factor in all cases where he is privy to the act or wrong, and so in contracts, if a factor buy goods on the account of the principal, especially where he has been used fo to do, the contract of the factor will oblige the principal to a performance of the bargain. Molloy 423.

But if A. being poffeffed of certain artificial and counterfeit jewels of the value of 168 l. and knowing them to be such delivers them to B. his fervant, commanding him to transport the said jewels to barbary, and them to fell to the King of Barbary, or such other person as would buy them, it gives B. no charge to conceal their being counterfeit, and thereupon B. goes into Bar- bary, and knowing these jewels to be counterfeit, forwards them to C. for good and true jewels, and affirming to C. that they are worth 810 l. defires C. to fell them to the said King; whereupon C. does fell them to the said King for 810 l. which money C. pays B. who thereupon immediately returns to England, and pays the 810 l. to A. his master; and after the jewels being discovered to be counterfeit, C. is imprifon'd by the said King, till he repays
replies the £10 l. out of his own effects; of all which matter C. gives notice to A. and demands satisfaction, &c., yet no action lies against A. for his, and A. says he had the said A. in tenement and certain value, and B. was not by A. particularly directed to C. and all that was done good C. was the voluntary act of the servant, for which the matter is not bound to answer. 

Brizg. 125, 126. Cr. 

It hath been ruled in equity, that the owner employs a factor, and agrees to the disposition of merchandise, and the factor receives the money, and dies indebted, to debts of a higher nature, and it appears by evidence, that this money was vested in other goods, and remains unpaid, these goods shall be taken as part of the merchant's estate, but not the factor's; but if the factor have the money, it shall be looked upon as the factor's estate, and must first answer the debts of superior creditors, &c., for as money has no ear-mark, equity can't follow that in behalf of him who employed the factor.

1 Saik. 160.

But if A. employs B. as his factor to sell cloth, and B. sells the cloth on credit, and before the money is paid, B. dies indebted to specially more of his aunts will pay; this money shall be paid to A. and not to the administrator of B. as part of his aunts, but thereof must be deducted what was due to B. for commission; for a factor is in nature only of a truce for his principal. 2 Vern. 638.

The plaintiff being a factor in Blackwell-Hall, advanced to his principal, relying, on the credit of clothes refting in his hands to reimburse himself; the clothier died, his administrator sued at law for the cloth, and the factor prayed that he might be allowed on account of the monies he had advanced, but was dismissed; for if there are debts of a higher nature, it would be a deficiency in the administrator to pay or discount the plaintiff's debts. 2 Vern. 117.

Where a factor at the Canterbury deserves money for factorage, he cannot bring an action for his factorage, unless the principal refuse to come to an account; and it appears that the factor has money in his hands, he may detain, and cannot bring an action for his factorage; but if he were directed to sell all the produce of his adventure in wines, then he may bring an action for his factorage and pains, because he cannot detain, and hath no other remedy. Per Holt. Cant. 349. Hertford v. Pettew.

Where a factor or agent of the affixes company had dealings in his account to his successor, according to the rules of the establishment, which were afterwards burnt by a late agent of the company, the Lord Chancellor ordered the plaintiff to swear that he left them with the successor, which should conclude the company. Mich. 31 Car. 2. 2 Chanc. Coj. 11, 14. Missi v. African Company and Edin.

A factor took a bond in his own name, and died, and the obligor having failed, a bill was brought against his for an account; the Lord Chancellor put the font to prove that his father the testator gave particular notice to the plaintiff that he told on truth, and to whom. Trin. 33 Car. 2. 2 Chanc. Coj. 56, 58. Duffield v. Whitley. 

Every factor is made with all the faculties concerning bankruptcy, 5 Gen. 2. c. 50. sect. 39. fee. 9.

Factor not to buy cattle on his own account, 31 Gen. 2. c. 40. sect. 11.

It was held by Lee Ch. J. that though a factor has power to sell, and thereby bind his principal, yet he cannot affect the property of the goods or pledgeing them as a security for his own debt, though there is the formality of a bill of parcels and a receipt. Stron. 1178.

Where goods are sold by a factor at his own rique, the vendee is not answerable to the owner. Stron. 1182.

See Shader and Tenant.

Factorage, Is the wages or allowance paid and made to a factor by the merchant. The gain of factorage is certain, however the actual profits proceeds to the merchant; but the commissions and allowances vary according to the customs and distance of the country, in the several places where factors are resident: In the West-Indies, the common

million runs at about 5 per cent. but in France and Spain, &c., not above 2 per cent. and in Holland but one and a half per cent. for a merchant. 

Finus. A man's own act or deed. Pratrices were Williamus Polier per concordiam quinmet eurbe pacifico ab omnium diutum adcovinum — ut pactum per feolum jam. Mon. Angl. tom 2. p. 248.

Fautile, (Fatis.) As it is restrained from the original a saving or retention, to a particular understanding in law, is used for the privilege, or a conveyance unto a man by favour, indulgence and dispensation, to do that which by the Common law he cannot do; as to eat flesh upon days prohibited, to marry without banns first alched, to hold two or more ecclesiastical livings; the son to forde the father in a benefice, and such like. And for the same purpose to be allowed to the son of the archbishop of Canterbury, called The court of the faculties, and the chief officer thereof The master of the faculties, Magister ad facultates, whose power to grant as aforeaid was given by 25 H. 8. cap. 21. Cowell. edit. 1725.

The court of faculties is a court, altho' it holdeth no plea of controversy. It belongeth to the archbishop, and his officer is called Magister ad facultates. And his power is to grant dispensations, as to marry, to eat flesh on days prohibited, (and so may every diocesan;) the son to succeed his father in his benefice; one to have two or more benefices consecutively. It is called facultates in the statute of 28 H. 8. where they are allowed by a dispensation.

So that facultates (in this sense) dispensations & indulges, are forms. This authority was raised and given to the archbishop of Canary by the statute of 25 H. 8. 21. 4 Jef. c. 337. Godib. Report. 106. feot. 8.

Stat. 25 H. 8. 21. enacts, 'That the archbishop of Canterbury, and his suffragans, shall have power and authority to ordain, make and constitute a clerk, which shall write and register every licence, dispensation, faculty, writing or other instrument to be granted by the said archbishop, and shall find parchement, wax, and tinct laces convenient for the fame, and shall take for his pains such sums of money as shall be hereafter in this preferent act to him limited in that behalf for the same. And that likewise the King, his heirs and successors, shall by his letters patent under his Great seal ordain, depute, and constitute one sufficient clerk, being learned in the court of Chancery, which always shall be attendant upon the Lord Chancellor, or the Keeper of the Great seal for the time being, as shall make, write and enrol the confirmations of all such licences, dispensations, instruments or other writings, as be thither brought under the archbishop's seal, and be there confirmed and enrolled; and shall also intitle in his book, and enrol of record, such other writings as shall be brought under the archbishop's seal, not to be confirmed, taking for his pains and reasonable sum of money as hereafter by this act shall be limited for the same; and that as well the said clerk appointed by the said archbishop, as the said clerk to be appointed by the King, his heirs or successors, shall subscribe to their names to every such licence, dispensation, faculty or other writing that shall come to their hands to be written, enrolled and enrolled, sealed, signed, enrolled, and enrolled under authority of this act, in form as is before rehearsed.'

An exception was taken, that a faculty granted by the archbishop of Canterbury was not subfcribed by the archbishop's clerk of the faculties, but by his under-clerk, whereas his expressly required by the statute, 25 H. 8. that it should be subscribed by the clerk himself, which is very true; but the act is but directory, and 'tis not said that it shall be subscribed by the chief clerk himself; so that this being signed by his under clerk, and it being customary in this office for the under clerk to sign faculties, this exception is of no force. Lord Ely. 36 Gk. Jef. 457. King's Case 36.

Another exception was taken in the case above, that it was not subfcribed and enrolled by the King's clerk of the faculties in Chancery, as it ought, because he is impowered by the statute to tender an oath to the person who hath obtained it; which statute was made to refrain the extravagant grants of the pope in those days, and therefore

should
should be fully and strictly performed by the clerks themselves, and not by their deputy clerks; and this must be intended by the legislators; for otherwise this act would have no weight, especially since there is a privity in the faculty itself, that it shall not be good till subscribed and registered by the clerk of the faculties in Chancery, which is in the nature of a condition precedent, and not to be signed or subscribed by his order. It was held, that where a man doth any thing by the express order of another, and, as it was done in this case, 'tis as good as if done by himself; as where one expressly orders another to sign a deed, which the person thus ordered did afterwards sign, this is good as one determinate act; but where the deputy doth any thing by virtue of a general deputation, it must be where a deputy may be made by law. The judgment was affirmed. 8 Mod. 364, 365. King v. Bishop of Chester.

The King by his prerogative, without the archbishop, may grant to a bishop to hold a church in commendam, notwithstanding the statute of 25 H. 8. c. 21. 

*See Particulars.*

**Fædling-men.** A. V. N. *Exemplification.*

...fædling-men, nas vau acquietis portant vel falceans, &c. Charta Celulphi Regis Mexiorum in anno 821. In Monast. Anglican. tom. 1. p. 100. Da Præfæn vender this word

Hominis commendatius velillis, ex sic. *fædling, commendatus,* ubi man, homo; And bys, *Hobebis idem vellet ac dextre.* But *fædling-men* and *habebes homine* mean rather pledges, sureties, or bondmen, which by *Saxon* custum were fast bound to answer for one another's peaceable behaviour.

*Cowell, edit. 1727.*

**Faggot.** A bond were in times of popery on the sieve of the upper garment of those who had recanted and abjured what the then powers called hereafter. For those poor terrified wretches were not only condemned to the penalties of excommunication, but as a faggot to such an appointed place of solomency, but for such a time that was they to have the sign of a faggot embroidery on one, and sometimes on each sieve. And the leaving off this bagge or faggot was often alluded as the sign of apotaxy.

*Cowell, edit. 1727.*

**Fall.** A. *Malice* or deadly feud. *Leg. H. 1. c. 89.*

...in the *bax,* *fach,* *inimitia.*

**Failure of record.** Is when an action is brought against a man; who alleges in his plea matter of record in bar of the action, and aver to prove it by the record; but the plaintiff faith, *nulli record, viz.* denies there is any such record. Upon which, the defendant hath day given him by the court to bring it in; and if he fails to do it, then he is said to fail of his record, and the plaintiff shall have judgment to recover. *Terms de la ley.*

In a *formen* in defendant, a fine with proclamation levied anno 30 H. 8. was pleaded; and upon an issue of *null record,* the tenant brought it in at the day, but in the proclamations made in Trinity term, the year of the King was left out; but because those which were made in Exeter term before, and in Michaelmas term after were right, and the year of the King was exprassed in them, therefore the other were held to be right, for it must be in the same year.

*Dyer 234.*

Upon *null record,* the defendant pleaded, that the plaintiff was outlawed; the plaintiff replied *null record,* and being at issue thereon, the tenor was brought in by *mittimus,* by which it appeared, that there was a variance between the day of the return of the exigent, and that where the outlawry was pronounced; and this was held a failure of the record. *Dyer 187.*

*In afflhe, the tenant pleaded, that before that time the now defendant had brought an afflhe against his father; who pleaded, that the defendant had made a feoffment to him, and the plaintiff was an heir of the feoffor; the defendant pleaded *null record,* and upon that issue the tenant brought in the record, by which it appeared, that the afflhe was brought against his father and mother; adjudged, that this variance did not make a failure of the record in *Filler* and *Farsett's* case. *Hib. 55.*

Upon another motion for non-joinder of persons, the defendant pleaded in bar a common recovery of the said manor against the donne in tail, who replied *null record,* and being at issue, the defendant brought in the record, by which it appeared, that the recovery was of the manor of *Iffield,* instead of *Iffield;* adjudged, that this being in a common recovery, it shall not be a failure of record for this small variance, but it shall be amended, it being the misprision of the clerk. *5 Rep. 46. Coke's* case.

In debt upon an escape, the plaintiff declared, that he had obtained a judgment in an inferior court, upon which the party was taken, and the sheriff suffered him to escape; the defendant pleaded *null record,* and being at issue, the defendant brought in the record at the day, by which it appeared, that there were several variances in the continuances and process; but yet, because the plaint, count, and judgment certified, did agree with the plaintiff's declaration; adjudged, those variances made no failure. *Hib. 179. Coachman v. Hally.*

Upon another motion for non-joinder of persons, the defendant pleaded another information exhibited against him the 28th of April 13 J. ac. in the Exchequer, for the same offence; the plaintiff replied *null record,* upon which they were at issue; and upon the record certified it appeared, that the information in the Exchequer was exhibited the 29th of April in the same year, and it was right in every other thing; and thereupon this was adjudged no failure of the record. *Hib. 209. Parv. v. Pari.*

In afflhe, the defendant pleaded, that the plaintiff was outlawed, the plaintiff replied *null record,* and being at issue, the defendant brought in the tenor by *mittimus,* adjudged, this was a failure of the record. *Dyer 187.*

The defendant pleaded that the plaintiff was outlawed, who replied *null record,* and before the day in which the defendant was to bring in the record, it was removed by writ of error, and thereupon he brought in an *exemplification,* by which it appeared, without any fail; but that of the King's Bench; adjudged, that this was a failure of the record, and so it had been, if it had been reverted upon the writ of error, though there was such a record at the time of the plea pleaded. *Dyer 227.*

Upon *non damniuration,* the plaintiff pleaded, that he was indicted in *Middlesex* for the same offence; the plaintiff replied *null record,* and being at issue, the defendant took out a *certiorari* directed to the justices of peace, and at the day brought in the tenor of the record, certified by the *cujus rotularum* by *mittimus,* now, though this certificate was void, because it was not made by the justices of the peace to whom the *certiorari* was directed, and by consequence the defendant had failed to bring in the record at the day; yet because it was the award of the court, it was held to be no failure in the defendant. *Hib. 135. Pie verius Thrill. Antea Certiorari (B. J.) s. C.*

*In audita querela* the plaintiff set forth, that he was taken in and set upon a copy of *lettum* on an outlawry after judgment, and that the sheriff suffered him to escape; the defendant pleaded, that after the escape, and before the audita querela brought, the outlawry was reverted for error, and to *null record.* 8 Rep. 142. in *Dr. Driver's* cafe.
A recognition with condition will not vouch a recognition pleaded in person, and that record. 1 Lord Raym. 84.

A false action, (Fr. Faute.) Is a signified action, that is, such action as, that although the words of the writ be true, yet for certain causes he has no title to recover thereby. And a false action is whereby the words of the writ are false. Coke on Littil. fol. 301. yet sometimes they are confoundcd.

Claimants, (from the Fr. Faute, faule.) Signifies a false, curious, or collusive manner of pleading, to the deceit of a third party. Cowell. See Pleasing.

Fair pleading. See Beauplacier.

Fairs and markets. Fairs, (Fr. foire, Lat. mundana) A solemn or greater market, granted to any town by privilege. Though the more speedy and commodious provision of such things as the subject needeth, or the utterance of such things as we abound in above our own uses and occasions; both our English and French word seem to come from foire, because it is always incident to a fair by privilege, that a man may not be molested or arrested in it for any other debt, than what was first contracted in the fair, or at least to be promised to be paid there.

1. Of the right of holding a fair or market ; where, when, and how long to be held.

2. Of the duty and power of proprietors of fairs and markets; the toll and duties they are intituled to; and how for a sale in an open fair or market changes the property of a thing sold therein.

3. Of the right of holding a fair or market; where, when, and how long to be held.

The first institution of fairs and markets seems plainly to be for the better regulation of trade and commerce, and that merchants and traders may be furnished with such commodities as they require, at a particular mart, without that trouble and loss of time, which must necessarily attend travelling about from place to place; and therefore as this is a matter of universal concern to the commonwealth; so it hath always been held, that no person can claim a fair or market, unless it be by grant from the King, or by prescription, which supposes such a grant. 2 Inst. 221. 3 Mod. 123.

And therefore if any person sets up any such fair or market, without the King's authority, a quo warranto lies against him; and the persons who frequent such fair, &c. may be punished by fine to the King. 3 Mod. 127.

Also it seems, that if the King grants a patent for holding a fair or market, without a writ of ad quod damnum executed and returned, that the fair may be repealed by faire facias; for though fuch fairs and markets are a benefit to the commonwealth; yet too great a number of them may become nuisances to the publick, as well as a detriment to those who have more ancient grants. 3 Lev. 223.

So where a writ of ad quod damnum is decisively executed, as where f. S. intending to get a patent for a market every Tuesday in Chatham, which is within a mile and a half of Rochester, in which there is a market every Wednesday and Friday, took out a writ of ad quod damnum, which was executed the same day it bore sale, and thirty miles from Rochester, without notice to the mayor, &c. of Rochester, and the patent obtained thereupon was repealed by faire facias. 3 Lev. 220, 221. 2 Vent. 344. S. C.

Replevin. The question was upon the pleading between the Earl of Nottingham and the corporation of Durham, whether the King can grant a fair with the duchy of Lancaster, and out of the county palatine, under the Great Seal of England? And after several arguments at bar, it was adjudged, Pash. 10 Will. 3. C. 8. that he well might; because it is a new royal franchise of a new creation, and was not at any time an inheritance in the Duke of Lancaster. Nut 167, the café of Suffolk Walden. Regi. Entr. 324. Square impaled.


It seems clearly agreed, that if a person hath a right to a fair or market, and another erects a fair or market so near his, that it becomes a nuisance to his fair, &c. that for this detriment and injury done to him, an action on the cafe lies; for it is implied in the King's grant, that it should be free from prejudice to another. 3 Rel. Att. 140.

Also, although the new market be held on a different day, yet an action on the cafe lies; for this, by forefelling the ancient market, may be a greater injury to the owner, than if held on the same day with his. 2 Swain. 172. 1 Mod. 69.

If a person erect a fair or market, and a stranger disturbs those who are coming to buy or sell there, by which he losses his tell, or receives some prejudice in the profits arising from his fair, &c. an action on the cafe lies. 1 Rel. Att. 106. 2 Vent. 26, 28.

So if upon a fale in a fair a stranger disturbs the lord in taking the toll, an action upon the cafe lies for this. 3 Rel. Att. 106.

The King is the sole judge where fairs and markets ought to be kept; and therefore it is said, that if he grants a market to be kept in such a place, which happens not to be convenient for the country, yet the subjects can go to no other; and if they do, the owner of the fair which they resort to is liable to an action at the suit of the grante of the market. 3 Mod. 123.

But if no place be limited for keeping a fair by the King's grant, the grantees may keep it where they please, or rather where they can most conveniently; and if it be fo limited, they may keep it in what part of such place they like. 3 Mod. 168.

By the 13 Eliz. cap. 5. No fairs or markets shall be kept in churchyards.

By the 27 H. 6. cap. 5. "Fairs and markets on the principal feats, viz. Ascension day, Corpus Christi day, Whitsunday, Trinity-Sunday, and all other Sundays, the Assumption of our Lady, All Saints, and Good Friday, shall cease from all dealing of goods and merchandise, necessary viuclus only excepted; upon pain of forfeiture of their goods flowed, the four Sundays in harvest excepted; and the fairs or markets, which are granted to be holden on these festivals may be holden within three days before or after."

But by the Statute 1 Cor. 1. cap. 1. and 29 Cor. 2. cap. 7. by which it is enacted, That no persons whatsoever, above 14 years old, shall exercise any worldly labour, business, or work of their ordinary calling, on the Lord's day except works of necessity and charity, and the dressing and selling of meat in an inn and victualling house, for those who cannot otherwise provide a Sunday's entertainment, and be free of the said day, and no person shall publicly cry or expel to fale any goods whatsoever on this day (except milk, which may be sold before nine in the morning, and after four in the afternoon) on pain of forfeiting the same.

By the Stat. 2 Ed. 3. cap. 15. it is established, That it shall be confined to all the berthers of England, and elsewhere, where need shall require, to cry and publish, within liberties and without, that all the lords which have fairs, be it for yielding certain form for the fame to the King, or otherwise, shall hold the fair for the time that they ought to hold it, and no longer, that is to say, such as have them by the King's charter granted them, or for the time limited by the said charters; and also they, that have them without charter, for the time that they ought to hold them of right; and that every lord, at the beginning of his fair, shall there do, cry and publish, how long the fair shall endure, to the intent that merchants shall not be at the same fairs over the time so published; and upon pain of being grievously punished towards the King; or the said lords shall not hold them over the due time, upon pain to feize the fairs into the King's hands, there to remain till they have made a fine to the King for the offence, after it be duly found, that the lords held the same fairs longer than they ought, or the merchants have continued above the time so cried and published.

And
And by the 5 Ed. 3. cap. 5. reciting, That by the above mentioned statute 2 Ed. 3. called the statute of Northampton, there is no certain punishment ordained against the merchants; if they fell after the time, it is added, "That the said merchants, after the said time, shall close their boots and stalls, without putting any manner of ware or merchandise to sell there; and if it be found that any merchant from henceforth sell any ware or merchandise at the said fairs, after the said time, shall forfeit to our Lord the King the double value of that which is sold; and every man that will sue for our Lord the King shall be received, and also have the fourth part of which shall be left at his suit."  

2. Of the duty and power of proprietors of fairs and markets; the toll and duties they are intituled to; and how for a sale in an open fair or market changes the property of a thing sold therein.

If the King grants unto one a fair or market, he shall have, without any words to that purpose, a court of record, called a court of piepowder, as incident thereto, for the tryal of causes of expounding justice, and for the supporting and maintenance of the fair or market. 2 Inf. 320.

Owners and governors of fairs are to take care that every thing be sold according to just weight and measure, for that and other purposes may appoint a clerk of the market, and pay for his maintenance, and for his duty herein can only take his reasonable and just fees. See 4 Inf. 274. 1 Mas. 523. 1 Salk. 372.

Fairs and markets are such franchises as may be forfeited, as if the owners of them held them contrary to their charter, as by keeping a longer time than the charter admits, by diversifying, and by extorting fees and duties where none are due, or more than are justly due. 2 Inf. 220. Finch 164. 3 Mod. 108.

Toll payable at a fair or market is a reasonable sum of money due to the owner of the fair or market, upon the sale of things falling within the fair or market, for stallage, package, or the like. 2 Inf. 222. 2 Jon. 207.

Toll is a matter of private benefit to the owner of the fair or market, and not incident to them; therefore if the King grants a fair or market, and grants no toll, the proprietors can have none, and such fair or market is counted a free fair or market. Cro. Eliz. 558. 2 Inf. 320. S. P. 2 Lat. 1336. S. P. resolved.

Alfo if the King, at the time he grants a fair or market, grants a toll, and the fair is outrageous and excessive, the grant of the toll is void, and the fair becomes a free fair or market. 2 Inf. 222. 2 Lat. 1336.

But the King, after he grants a fair or market, may grant that the patentee may have a reasonable toll; but this must be in consideration of some benefit accruing from it to those who trade and merchandize in such fair or market. 2 Inf. 221.

No toll shall be paid for any thing brought to the fair or market, before the fair is, unless it be by custom time out of mind, and upon such fale the toll is to be paid by the buyer; and therefore my Lord Coke says, that a fair or market by prescription is better than one by grant. 2 Inf. 221.

And by Weym. 1. cap. 31. "Touching them that take outrageous toll, contrary to the common custom of the realm in market towns, it is provided, that if any do in the King's town, which is let in fee-farm, the King shall seize into his own hand the franchise of the market; and if it be another's town, and the name be done by the lord of the town, the King shall do in like manner; and if it be done by a bailiff, or any mean officer, without the commandment of his lord, he shall restore to the plaintiff as much more, for the outrageous taking, as he had of him, if he carried away his toll, and shall have forty days imprisonment." But where by custom a toll is due upon the sale of any goods in a fair or market, and he who ought to pay it refutes, an action on the cafe lies against him. 1 Rel. Abr. 123, 104, 126. But see 3 Lev. 400. where this point is doubted, because toll is quid pro debt, for which del or an affirmans lies.

If goods or wares be brought into a market, the owner of the ground cannot disfrain them damage-fojeant, because stallage, &c. is not tendered; as appears from the following case. The plaintiff brought an action of trespas, for taking with force and arms 7 Aug. 1731. his goods and chattels, vis. 100 bullocks of beasts, 20 cabbages, &c. at Golspornt in the said county of Southampton, and carried them away, to his damage of 40L. The defendants are without force and arms, &c. pleaded Not guilty; upon which if-fue was joined; and as to the right of the trespass they justify, as bailiffs to Richard lord bishop of Winchester, the taking the beans, &c. in a piece of ground called The Market-Place, at Golspornt in the said county of Southampton, on the day of the 7th day of August, 1731, without the will and command of the bishop, and there and there damage-fojeant, as a diftrefs, &c. The plaintiff replied, that King George the First by his letters patent dated the 10th of April in the third year of his reign, granted to Jonathan then lord bishop of Winchester and his successors, that they might have and hold three days fair every Thursday, Friday, and Saturday, in every week for ever at Golspornt aforesaid; for raising and selling flesh, fifth, and other provisions, and all manner of goods and merchandizes commonly bought and sold in markets, with all tolls and other profits to those markets belonging. Then he sets fouts, that before the time when, &c. viz. Saturday, the 7th of August, did bring into the said piece of ground called The Market-Place at Golspornt aforesaid, into the said fair market there as aforesaid thereof, the goods in the declaration, being goods commonly bought and sold in markets, to expound them to sale and to sell them; and the said goods in the said piece of ground in the market then there held did expound to sale, as he well might; which goods were in the said piece of ground in the market aforesaid fo by the plaintiff exposed to sale, until the defendants of their own wrong afterwards, viz. the said 7th of August, during the said fair market fo as aforesaid held, the said goods in the said piece of ground in the said fair market fo as aforesaid exposed to sale, took and carried away, &c. The defendants, after having prayed and had over the said plaintiff's amends without any merit and repula-

tion, by which the markets were granted to Jonathan bishop of Winchester and his successors, with general words of all tolls and other profits to the said markets belonging, rejoin and say, that the plaintiff, before and at the time the said goods were taken at Golspornt aforesaid, unjustly and without any pretense of damage-fojeant, brought the said goods into the said piece of ground called The Market-Place into the said fair market there held and to be held, and to lay them upon the ground there, and to expound them to sale and fell them in the said fair market, without payment of any toll for the same, and absolutely refused to pay any thing to the said plaintiff; whereas the defendants as bailiffs of the said bishop of Winchester at Golspornt aforesaid requested the plaintiff to carry his said goods in the declaration mentioned out of the said piece of ground called The Market-Place; but the plaintiff then and there refused to do; per quod the defendants, as bailiffs of the said bishop of Winchester aforesaid, and consequently the plaintiff exposed them there to sale and to sell them: that in publick markets all subjects have right to bring in their goods; and though where toll is due they will be obliged to pay the toll, yet if they do not, that will not make them trespassers for bringing in their goods, nor can the owner of
of the market disfrain them damage-foajant. 

**Cra. Eliz. 75.** The Mayor of Lancington's cafe; and **Cra. Eliz. 628.** Sauyer v. Wilkinfor, where it was held by the court, that the ox-hide bought into Londonhall market and sold, could not be said damage-foajant. And as to the matter infalted upon in the rejoinder by the defendants, that they took the goods for not paying of toll; Mr. Draper infalted, that the rejoinder could not be supported, because they did not know, that any and what toll was due, which ought to be set out, that the court might judge whether the toll was reasonable. 2 **Inf. 222.** And that toll was only payable by the buyer without special custum, which was not pretended in this case. 2 **Inf. 220, 221.** 2 **Lattu. 1379, 1376.** Light v. Pym; but not that any toll was demanded by the defendants in the plaintiff in particular. And Mr. Jerjeant Bifkfield, who was countel for the defendants, gave up the rejoinder as naught, and not to be maintained; but then he took ex-ceptions to the replication, that that had not avoided the matter pleaed in bar, because he inferred upon it that the plaintiff ought to pay flallage, or f fleece that he had ten-ded it, otherwise he could not bring his goods into the market; and cited 2 **Vul. 155 f.** B. R. N. Cathkyn's cafe; where it was held, if A, has a fair in a place, there who have their houses next adjoining to the fair, cannot lawfully open their shops to sell their goods in the fair, but flallage is due for it, for they cannot take any benefit of the fair without paying the duties which belong to him that has gained the free fair, and a flallage is a part of the carriage to the fair to the market fair, More 474. Heddy v. Wheelbye: and therefore it appearing by the defendant's plea, that the place where, &c., was the bishop of Winchester's freehold, and that the plaintiff brought his goods into the market; yet since it did not appear, that he had paid or tendered flallage, the defendant relied lawfully taken them as a diffeins for damage-foajant, for the plaintiff was thereby become a trepfafer ab initio.

But to this Mr. Draper for the plaintiff answered, that the defendants have no where fhewn, flallage was de-manded and refused, but rely only upon non-payment of toll in their rejoinder; and further, that if it was due and demanded, yet the not paying it would not make the plaintiff a trepfafer ab initio. So is Six Carpenters cafe, 8 **Co. 146. b.** that nonfeasance, where a man does an act by authority in law, as in this cafe where the plaintiff carried his goods to fell into market, will not make him a trepfafer ab initio; but if flallage was due, the de-fendants ought to have demanded any pretence for that, and not diltrain the goods damage-foajant. And as to the principal cafe, he relied on the cafes in **Cra. Eliz. 75 & 628.** as in point; of which opinion were my brothers Page and Prays, and myself, brother Lee being abient for ficknes; and judgment was given for the plaintiff, nisi, &c. Juse the 16th this term. But it was never moved again. Lord Raym. 1589.

If the King or any of his progenitors have granted to any to be dicharged of toll, either generally or specially; this grant is good to discharge him of all tolls to the King's own fairs or markets, and of the tolls, which together with any fair or market have been granted after such dicharge, a bill of exchange or other paper for that, and not for tolls fer-merly to be paid to cajuets either by grant or prescription. 2 **Inf. 221.** 

Also the King hiself shall not pay toll for any of his goods; and if any be taken, it is punihable within the statute Wythen, 1. cap. 31. 2 **Inf. 275.** Alth. 15. 8. 2 **Vul. 72.** and 2 **Inf. 221.**

But this privilege does not extend to him who is a merchant, and gets his living by buying and selling, but is limited only to such tolls as are of feep and sale, and of the land, and of such things which do grow and are the produce of the land. **F. N. B. 228.** 2 **Leom. 191.** 

**Cra. Eliz. 227.** 2 **Inf. 221.** 1 **Rul. Abr. 321-2.**

For the encouragement of trade, and to render con-tracts in fairs and markets secure, by the Common law, every fale made in a fair or market overt transfers a complete property in the thing felled to the vender; so that however injurious or illegal the title of the vendor may be, yet the purchase is good against all men. **Lath. 144. 2 Inf. 713.**

But this general rule, that a fale in a market changes the property, must be understood with the following re-ftrictions: 1. That this sale in a market overt shall not bind the King, altho' it bindeth all others, as infants, feme, clerks, &c., or under age, for in pilton, and whether they were possifed of them in their own right or as executors or administrators. 2 **Inf. 713.**

2. That although fairs and markets are overt, yet the fale must be in feme open place, as in a fhop, and not in a warehoufe, or other private part of the howe, so that people who go along may fea what is doing; and therefore if the fhop door or window be flut, that the goods cannot be fen, this alters no property. 5 **Co. 83. Bishop of Worcefter's cafe.** 1 **And. 344. S. C. and S. P. Mor 360. S. C. and S. P. Poph. 84. S. C. and S. P. **Cra. Eliz. 454. S. P. 8 Co. 127, S. P.

3. The things bought must be of the nature and quali-ty of things which are made in them, and therefore if a plate, &c. are brought in a scrivener's fhop in London, this alters no property, and the true owner may maintain trover for them. 5 **Co. 83. cafe of market overt, de-termined at the Old Bailey, by Popham, Egerton, Ander fon, Brien, and others. Poph. 84. S. C. and S. P. **Cra. Eliz. 360. S. C. and S. P. as the law is the fame, if horses are fold in Cliefne, or flop-goods in Smithfield, *Cra. Tuc. 68, 90. Taybor and Bander, S. P. adjudged.

And by the 1 **Yar. 1. cap. 21.** it is enated, That no fale, exchange, pawn, or mortgage of any jewel, plate, apparel, houhold fuff, or other goods, of what kind, nature, or quality forever the fame shall be of, and that shall be wrongfully or unjustly purloined, taken, robbed or follen from any perfon or perfons, or bodys politic, and which at any time hereafter shall be foul, uttered, delivered, exchanged, pawned, or done away within the fity of London, or liberties thereof, or within the city of Welfington, in the county of Middleter, or within Southurk, in the county of Surry, or within twelve miles of the faid fity of London, to any broker or brokers, or pawn-takers, by any ways or meanes whatsoever, directly or indirectly, shall work, or make any wrong change of the property of other, or from any perfon or perfons, or body politic, from whom the fame jewels, plate, apparel houhold fuff or goods, were or shall be wrongfully purloined, taken, robbed or follen.

4. The goods must be fold, and a valuable considera-tion actually paid for them. 2 **Inf. 713.**

5. If the buyer knows at the time of the fale that the owner has not the absolute property; this will not bar the right owner. 2 **Inf. 713.** 2 **And. 115.** and 3 **Co. 78. b. S. P.**

6. The fale must be without covin, or any combina-tion between the buyer and feller, to defraud the true fuch. 2 **Inf. 713.** 2 **And. 315.** and 3 **Co. 78. b. S. P.**

7. If a fale be made of goods by a stranger in a mar-ket overt, whereby the right of A, is bound; yet if the feller acquireth the goods again, A. may take them again, because he was the wrong-doe, and he shall not take ad-vantage of his own wrong. 2 **Inf. 713.**

8. There must be a fale and contract, and therefore a fale to a man of his own goods in market overt bindeth not; and likewise a fale in market overt by an infant of such tendernes of age, as it may appear to the buyer that he is within age, or by a femer covert, if the buyer know her to be a covert, can not found her as such as the usuall covertes for, or by the consent of her husband, bindeth not. 2 **Inf. 713.**

9. The contract must be originally, and wholly made in the market overt, and not to have the incidence out of the market, and the consummation in the market. 2 **Inf. 713, 714.**

10. The
10. The false must not be in the night, but between fun-rising and sun-set; but a false made in the night is good to bind the parties, but not a stranger. 2 Inf. 714.

Here also we must observe, that at Common law there was no restitution of goods on any profession whatever, except on an appeal of larceny; but to remedy this inconvenience, and to encourage the prosecuting of felony by the party to whom the goods belonged, it was prescribed that if any felon or felons do rob, or take away any money, goods or chattels from any of the King's subjects, from their persons, or otherwise within this realm, and thereof the said felon or felons be indicted, and after arraigned of the said felony, and found guilty thereof or otherwise attainted, the same shall be and is true and perfect, and shall be verbally, by the party to whom the goods were robbed, or owner of the said money, goods or chattels, or by any other by their procurement, that then the party so robbed, or owner, shall be restored to his said money, goods and chattels; and that as well the justices of gaol delivery, as other justices before whom such felon shall be for trial, and otherwise attainted by reason of evidence given by the party so robbed, or owner, or by any other by their procurement, have power by the said act to award from time to time writs of restitution for the said money, goods or chattels, in like manner as tho' any such felon or felons were attainted at the suit of the parties in law against the said offender. 5 Co. Litt. Mark. P. C.

Since this statute it has been the practice to restore the goods stolen, upon the conviction of the offender, to the protector of the indictment, notwithstanding any false of them in a market overt; but he can be restored to no goods but those mentioned in the indictment. 3 Bl. 355. 2 Inf. 714.

2. To the changing the property of horses by a false in a fair or market overt, the said is provided against by the 3 & 3 P. & M. cap. 7. and the 31 Elia. But more especially by the 31 Elia. cap. 12, by which it is enacted, "That no person shall, in any fair or market, sell, give, pay for, or convey, any horse, colt or filly, unless the toll-taker there, or where no toll is paid the book-keeper, bailiff, or the chief officer of the said fair or market, shall and will take upon himself perfect knowledge of the person that so shall sell, or offer to sell, give, or exchange any horse, &c. and of his true christian name, surname, and place of dwelling or residence, and shall enter all the said horse's knowledge in a book there kept for sale of horses, or else that he be folletting or offering to sell, give, exchange, or pay away any horse, &c. shall bring unto the toll-taker, or other officer aforesaid, of the said fair or market, one sufficient and certain receipt, or bond, or shall thereon, or at his toll, certify, and declare unto, and before said toll-taker, or other officer, that he knoweth the party that so shall sell, giveth, or exchange, or putteoth away such horse, &c. and his true name, surname, mystery and dwelling place, and there enter, or cause to be entered in the book of the said toll-taker or officer, as well the true christian name, surname, mystery, and place of dwelling or residence of the person that so shall sell, or offer to sell, give, exchange, or pay away any horse, &c. unless he do indeed truly know the same party, and shall truly declare to the toll-taker, or other officer, as well the christian name, surname, mystery, and place of dwelling and residence of himself, and of the person from whom he shall receive money, either in kind or avouchment; and that no toll-taker, or other person keeping any book of entry of any sale, gift, exchange, or putting away of any horse, &c. unless he knoweth the party that so sell, giveth, exchange, or putteoth away any such horse, &c. and his true christian name, surname, mystery and place, or the party that shall and will certify, or make perfect knowledge of the said horse person so sell, &c. and such horse, &c. and his true christian name, &c. and shall make a perfect entry into the said book, of such
Falces. (Lat. phalerae) Cam bips & curvis & ceteris fulcros. 2 Mon. Angl. fol. 256 b. The tackle and furniture of a cart or wain.

Falcula. A great rock. Concessi quod bohamon logum si quod non fuerit perfam tanborum intactum dicam falcula. Mon. 2 tomo. pag. 165.

Falcula, and Falusia, (Fr. falchette) A hack, hill, or down, by the sea-side.

Falca, and Falca, alias Falke, See Lithophaga and Pterrophi.

Falke, Falke, (Saxon falce.) See Tracemum.


Falmortum, Falmofaneta, Falmetone, From Sax. fell, people, and mote or genta, a convention or assembly; so that a fallmonte was a general word for a common meeting. An assembly of the people, and did not tend to three several kinds of popular concourse. 1. It signified a common council of all the inhabitants of a city, town, or borough, and was then otherwise called burgomane or partwise, conven'd or at times of bound of bell, called mote-bell, to the mote-bal or mote-baung. Or 2. It was applied to a large congress of all the free tenants within a county, called the fllare-mate, where formerly all knights and military tenants did their feast to the King, and elected their annual sheriff on October 1, till this popular election, to avoid tumultuous riots, was devolved to the King's nomination, anno 1315. 3 Edw. 2. after which, the annual fallmonte was found. Charter for the manor of the town and community or common council, and the county fallmonte into the sheriff's turn and sitsizes. But 3. The word fallmonte was sometimes of a left extent, and denoted any kind of populous and public meeting, as of all tenants at the court leet or baron of their lord. So as to a charter of ville de Merion, about 10 Hen. 2. Telfes denomination sunt Falco fecundus de Merion, Laudavus de Hofpat, et tectum falmonum meorum hominum et suorum. — Paroch. Antq. p. 120. See Falmetone.

Falla, action, if brought against one whereby he is called into prion, and dies pending the suit, the law gives no remedy in this case, because the truth or falsity of the matter is not known before it is tried. And the plaintiff be barred or nonsuitet, at Common law, regularly all the punishment is amentee. 1 Ten. Cont. 161.

Falla, action, where a man claims more than his due: As the prior of Lancaster, by reason of a charter, had the tenement of a foale, but the tenant could not get the possession of it, because it was in corvo: And because he made a false claim, and said that he ought to have the tenth of all venison within the forest of Lancaster, as well in carne as in corvo; therefore he was in misericordia de decimo venationum sui in corvo non perhibentur. Manwood's Forell Laws, cap. 25, num. 3. Here is a false imprisonment, (Falum) a trespass committed against a man by impeaching him without lawful cause: It is also used for a writ which is brought upon this trespass. F. N. B. fol. 86, 88. Cowell.

Where a court hath jurisdiction of a cause, altho' the proceedings are in errores errors, yet for an arrest and imprisonment will not lie; as for a capias against an earl; but where the court hath no jurisdiction, then 'tis coram non justice, and the action lies, 10 Rep. 75 Cafe of the Marshalsea.

If an officer hath a warrant upon a ca. fa, against a countee, and he arris her, an action of false imprisonment will not lie, because he is not to examine the juridical act of the court, but to obey; but if the arrest is upon a feigned action out of the counter, in such case the action lies. 6 Rep. 56. Countees of Rutland's cafe. Mar 765. S. C.

King Edw. 6. incorporated the town of St. Albans, and gave the right of making by-laws; the term was kept there, and the mayor, &c. with the assent of the plaintiff, who was one of the burgesses, assemled every inhabitant in a certain sum, for the charges in erecting courts there, and if any one refused to pay, that he should be imprisoned; the plaintiff refusing to pay, &c. was committed, and in action of false imprisonment brought against the mayor, he justified under this by-law; but it was ad-
In false imprisonment against a justice of peace, the defendant justified, for that on the 27th of September 9 face a minister came into the church of St. L. in R. to preach, and that the plaintiff had a warrant against him, together with the churchwardens, laid violent hands on the minister, and hindered his preaching, against the form of the statutes, for which, offence he was brought before him, being a justice of peace, and being thereof convicted by sufficient witnesses, he committed him to prison; and this was held a good plea. 2 Buffle. 14. Crefwick v. Refekyll.

In false imprisonment against a mayor, who justified, for that he being a nigriffare, the plaintiff said he was a fool; adjudged, that the plea was ill, for he cannot justify, if he had called him fool whilst he was in his fear, or in the execution of his office; for in such case, where a man speaks, what is not part of his officio, he cannot take in execution of his authority, or which might disable him to execute his office (if true) he may commit the party. Mor. 247.

In false imprisonment, the defendant justified, for that he having a warrant to arrest J. D. he (the defendant) demanded of the plaintiff what his name was, who answered J. D., whereupon he arrested him; and upon a demurrer to this plea the plaintiff had judgment, because the officer is to take notice of the right party at his peril. Mor. 457. Cost v. Lighthous.

A co. fa. was delivered to the sheriff, who on the same day made a warrant to his bailiff to arrest the party, and when he came to the place, there was a crying error, delivered also to the sheriff, of which the bailiff had no notice, who afterwards arrested the party, and he escaped, and the bailiff having afterwards notice of the error, he arrested the party again, and was adjudged as such false and malicious, and the imprisonment was brought, and adjudged well brought. Mor. 577. Prince v. Allington (A.) 4. S. C. Cr. 918. S. C.

In false imprisonment, the defendant justified, for that he was sheriff of London, and having taken one T. S. he escaped, and being in pursuit after him in Felon- try circa baram manum, in the night, he met the plaintiff, who used him ill; and that the defendant, having given him scurrilous language, and thereupon he being wounding in the street, in the night time, and misbehaving himself, the defendant committed him; and upon a demurrer to this plea it was objected, that it was ill, because circa bonum manum was uncertain as to the time; besides that it was not a time to be committed for a nightwalker, it being usual for men at that time of night to be about their busines; then the using him uncivilly is too general, and the thrashing him against the wall night by night accident; sed per curiam. Taking it altogether it was good, and the defendant had judgment. 1 Rol. Rep. 91.

Judgment against baron and some, and the wife being taken in execution upon a co. fa. and a capi corpus being returned by the sheriff, the same was brought to the bar, and committed by the court, in execution to the marchal; but no committer being entered on the roll, the court brought an action of false imprisonment, and because this was a default in the clerk, it was moved, that it might be altered and amended; sed per curiam. There is a difference where a man is brought into court by an abbas corpus, and by the return of a capi corpus; for in one case an entry is made in the office book of the commitment; but if he is committed, upon the return of a capi corpus, without a abbas corpus, then there is a special entry of his commitment made on the roll; and in the principal case the omission was amended. 2 Rol. Rep. 112. Allington's case.

Upon the return of an abbas corpus, it appeared, that the party was committed by a warrant from the Lord Chancellor, and that the sheriff having matter concerning the same there to remain till delivered by him; adjudged, that the return was too general, for it doth not mention the cause; and likewise uncertain how long he might remain in prison, for it may be during life, if the Lord Chancellor will not deliver him. 2 Cr. 519, Addis's cafe. Chamer's cafe. 5 Gcr. S. P. ipsa Hocbus Corpus. (D. 8.)
The defendant was committed by the justices until he should obey an order for taking upon himself the office of constable of such a place; he denied, that he was an inhabitant within the hundred; adjudged, that he ought not to be imprisoned; and being tendered upon his refusal to take the office; and if upon the indictment he was found to be an inhabitant in the hundred, he should have been fined, and committed upon non-payment of the fine. 

Crawfey's case, Cre. Cas. 490.

In false imprisonment, the defendant justified by virtue of a warrant for his arrest to arrest the plaintiff, and that he ought to be required to affit in doing it, and detaining him till discharged by the sheriff; and upon demurrer to this plea it was objected, that the process being executed, it ought to be returned, otherwise the justification is not good, which is true in respect to the sheriff, if the action had been brought against him, but not in respect to his servant, as the defendant was. Cre. Cas. 332.

Garling's case.

In an action of assault, &c. and false imprisonment, the defendant justified, for that the plaintiff being a common cheater, played with the defendant with false dice, and cheated him of his money; thereupon he molested his hands upon him, and had, upon a convex, a warrant for a voluntary fine. Upon an action of false imprisonment his plea was held ill; for to imprison a man for a quodam contemptus is too general; 'tis true, the officer is to obey the order of the court, but that is where the court hath jurisdiction; and by this plea it doth not appear, that the court hath any jurisdiction of the cause. March 117. Dey v. Dilbe.

Alderman Langham was committed to Newgate by the Lord Mayor and court of Aldermen, who brought his habas corpus; and upon the return it appeared, that there is a custom in London, if a freeman be elected Alderman, he ought to take an oath to serve in that office, and that if he refuses, he shall be committed till he doth; that Langham was a freeman of the city, and that he was dekto modo cetero, that is, he was dismissed from the court, he appeared, and the oath was tendred to him, which he refused to take. In contemptum curiae, & contra confederationem, &c. whereupon he was committed by the court. It was objected, that a custom to imprison was not good, because 'tis against Magna Charta; but adjudged, that 'tis incident to a court of record to imprison, and this being such a court, they might justify the imprisonment without a custom; but a fortiori, where there is such a custom, and especially when that custom is confirmed by act of Parliament. March 179. Alderman Langham's case.

Upon an information given to a justice of peace, that Sir William Brousker had and was guilty of false imprisonment, the justice required him to find sureties for his good behaviour, which he refusing was committed, and afterwards he brought an habas corpus; and this matter appearing upon the return, adjudged, that a justice of peace cannot bind to the good behaviour upon such a general information, nor commit him; in such case he refused to find sureties. 2 Ed. 6. Sir William Brousker's case.

Commission of rebellion against Thurbone, but one Green appeared before the commissioners, and affirmed himself to be Thurbone; whereupon he was apprehended, and in refusing he matched the commission from them, and tore it in pieces; and upon an affidavit made of such matters, was committed; but per Halle Chief Baron. Though he affirmed himself to be the person against whom the commission was awarded, yet that will not excuse the commissioners from false imprison-
same court: And that record have before our justices at Westminster, the day, &c, under our seal, and the seals of four legal men of the said court, that were present at the making of said bond, were present at the good muniments, the said call, that he then be there to hear that record, and have you there the muniments, &c, and this writ. Witness, &c.


Falle Latin. Falle Latin will not vitiate a plea of guilt. If it was held in Oxon. in 1539. 2 Rep. 173. 10.

It will not vitiate an indictment, as it was held in Long's case, which was an indictment for murder, where the word mantilla was spelled with a single m. 5 Rep. It will not vitiate a writ, as where quod ei defcribat was brought against two tenants, and it was quod ei reddat in the singular number. 38. Cr. Eliz. 543. 8. P. So in a declaration by the sheriffs of London against the defendant quod reddat ei in the singular number. 6b. 70. Cr. Eliz. 877. S. P.

Debt against the defendant brought by the sheriffs of London, the declaration was, (viz.) Quarrator de N. B. in mediantibus datos, alias de N. B. in medietatis declaratum; and it was agreed that this declaration, the defendant had judgment in B. R. but it was reversed upon a writ of error in the Exchequer, upon the authorities above-mentioned. 1 Lutw. 854. Raymond v. al ferus Barbon. In trespass against two defendants, for taking a hoghead of cyder, the defendants ven & defendem, &c. but the judge and f耶ffy committit per dicti, &c, and so pleaded in abatement, that the plaintiff is outlawed; and upon demurrer it was objected against the plea, for the falsa Latin, (viz.) Quod ipsi, when there were two defendants; and this was held a good exception, the plaintiff having demurred specially, and flied it for cause; and that it would have been ill upon a general demurrer. 2 Lutw. 1529. Ford v. Edgcomb & al.

In an appeal for murder, the declaration was, that at Cleeham, in the county of Surr, causam praebat "Johannes & quidem Daniel Sobley meli definent;" and upon demurrer it was objected against the plea, for the sentence falsa Latin, yet it would not abate the bill, for it did not at Common law. 1 Salt. 328. Bent v. vertus Presten. See 5 Rep. Long's case, and 10 Rep. 173.

On a writ of error brought, it was assigned for error, that the sentence falsa Latin was given against an defendant, but it was held well enough, for it may be the sufficient tenor of the verb affides, and there is not so much strictness required in verdicts as in pleading, because those are the words of a lay jury. 1 Salt. 328. Redward v. Gaward.

In debt on a bond, if the obligation be falsa Latin, the declaration ought to be good Latin; as if the obligation be viginti, the declaration ought to be viginti; and the court is to construe if it be a variance. 2 Show. 155. Falle Latin was held to be cured by a verdict. 8 Mod. 380. See English, Latin. Falle oat. Till the statute 3 and 4 Hen. 7, which gave power to examine and punish perjuries in the Star-Chamber, there was not any punishment for any false oath of any witnesses at Common law; and now there is a form of punishment provided for perjuries by 5 Eliz. yet before the statute 3 Hen. 7. The King's counsel used to assemble and punish such perjuries at their discretion; and there was no punishment for perjury as Common law, but in case of attainit; as appears D. 772. but in the spiritual courts, pro lesfane fidi, they use to punish them. Cr. E. 540. Mich. 38 and 39 Eliz. C. B. Danport v. Simpson.

If he makes a false oath, the party is punishable for it by an action on the case, if it be not perjury for which he may be indited; there is a difference between a false oath and perjury; for one is judicial, the other is extra-judicial. And the law inficts greater punishment for a falsa oath made in a court of justice than elsewhere, because of the preservation of justice. Per Roll Ch. J. 5134. 2 Eliz. 327. in case of Henrell v. Gunson. At the Common law one may be indicted for a falsa oath in an affidavit. Per Roll Ch. J. Trin. 1652. St. 377. in case of Henrell v. Gunson. At the Common law one may be indicted for a falsa oath in an affidavit. Per Roll Ch. J. Trin. 1652. St. 377. in case of Henrell v. Gunson.
Tenant for life, remainder in tail, reversion in fee to the heirs of the devise; Tenant for life suffers a common recovery, in which he in remainder was vouch'd, and the use declared to him, who was to remain in tail; adjudgment and this recovery all remainders or reversion were barred, for no statute made any provisions for those who had remainders or revocations upon an estate tail, and therefore they could not falsify this recovery; the statute of Wills, 2. cop. 3. provides for him, who hath a reversion after partible of the estate, and the statute 35. H. 8. for those who have revocations or remainders alter an estate for life, 16 Rich. 43. fenning's case.

An infant brought an affize in B. R. pending which action the tenant brought an affize against the infant in the C. P. for the same lands, and had his day or plea by the fact from the infant to the affize brought by the infant, who fret forth all this matter in his replication, and that the demandant, at the time of the second writ brought, was tenant of the land, and prayed, that he might falsify this recovery; and adjudged he might. Gough. 271. "Print's case; because he could not have a writ of error to attain it.

He in reversion suffered a common recovery, and declared the use; adjudged, that his heir shall not falsify it by pleading, that his father had nothing at the time of the recovery suffered, because he is ejected to fay, that he was not tenant to the praevia. Gough. 183. "Duke v. Smirke."

Tenant for life, remainder in tail, join in a lease for years to Brifc. afterwards, in the life-time of the tenant for life, the tenant in tail suffered a common recovery, and the recoverors turned the lease for years out of possession, and made a feoffment in fee to Lincoln college in Gown; then the tenant and heir of the tenant in tail, in the life-time of his father, released to the college with warranty; the lease for years re-entred, then both the tenant for life and tenant in tail died, and the issue in tail made a distress on the cattle of the lease damage-free, who brought a replevin, and adjudged, that the taking the cattle was not wrongful, and that the person in tail was not barred by the recovery; 'tis true, where there is a tenant for life, and he in remainder in tail suffer a recovery in the life-time of the tenant for life, he is ejected to say, that he had nothing in the freehold, and the heir is liable to this eftoppel, as well as he is inheritable to the land; and the reason why the father or founder is here excluded, is, because the father, who falsified this recovery, is fupposed to have a real recompence in value from the common vouchet, but here he had no real recompence, but only in eftoppel, and thus himself was ejected, yet, by the re-entry of the leeqe for years, the eftate for life, and the remainder, were again reduced to the tenants in tail, but because neither the remainder in tail, nor his son and heir, had any thing in interest, when the releas was given to the college, therefore that releas should not enure to that body of men, nor the warranty; for 'tis the nature of a warranty to keep one out of possession who never had it, and therefore it ought to be made to one who is in possession; and because the tenant in tail in this case was never out of possession, in inte eft, but only in eftoppel, neither the releas or warranty shall discontinue the tail; so that the issue in tail is not barred by this recovery, but he may falsify it in a null-flory action; as this is. Mor. 245. Brifc. v. Chamber."

Tenant in tail made a feoffment in fee to his own son, who was then of full age, and afterwards he diffided him, and then levied a fined, but before the land proclamation the fon entred, and made a feoffment, then all the pro-
clamations were made, and afterwards both the father and son, before the time of the son made a lease to RC. and died feied, and the issue of the tenant in tail brought a formaudo against the heir of the said feed fucces, who was in by defect, and recovered against him by a feint defence of his title, and then he turned the leeqe for years out of possession, and thereupon brought an ejectment; adjudged, that he might falsify the recovery had by the issue in tail, because the issue in tail was bound by this fine; but because it appeared by the pleading, that the fine was levied by the father to that to every person, to whom the leeqe of the son had granted this lease for years, and who was not aware of it, and it is not being averred to be levied to any other use; therefore his lease was extinguished, and he was incapable to falsify the recovery obtained by the tenant in tail. Mor. 391. King v. Hunt.

See Fines and recoveries, and 12 Vin. Abc. tit. Falsify your recovery.

Falsifying a verdict. Wherever in any real action, there is a verdict against tenant in tail, the issue can never falsify such verdict in the point directly tried; but only in a special manner, as by saying that some evidence was omitted, Sc. Lord Ryna. 1550.


Fallo reviceum byzantium, is a writ living resint the sheriff, for false returning of writs. Reg. Judic. fol. 43. 8.

Familia, Signifies all the servants belonging to a particular matter; in another sense 'tis taken for a portion of land, viz. as much as is sufficient to maintain one family, viz. Et confiitincti ei terras 70 familinmam laginum. Smeon Danelm. So in Brempton, Dedi ci monasterio trinquitana familinm in bue. Du Cange. Pro beia, naffo, manfa, carucata - Donatur terram quinquaginta familinmartum ad...沸腾tertium Leg. Hov. fol. 4. e. 3. This term hide is, by burnt writers, sometimes called a manse, sometimes a family, sometimes carucata, or a ploughland; containing as much as one plough and oxen could cultivate in a year. Creiffy's Church Hist. fol. 723. 6. Ubi Bida familiam, Encyclopaedia juris pertinent. Contraction of carucata; or, a particular term of land. 271. Dedic a x. Simeon de Savigny. Egl. in x. Script. Cowell, edit. 1727.

Fannatika, A general name for Aquati, Aequatipis, and all other sectaries and faithless dissenters from the church of England. Stat. 13 Car. 2. cop. 6.

Fannelini, (Monfa fannellii.) The levelling-time or fence-maker, who cleared land, and made fences for others, and fifteen days after; when great care was taken that no disturbance should be given to the does or their young faws. See Kennedy's Polity in Fannatica. During this time, by the Laws of the Forrest, all hunting is prohibited: Privilegium de idem ad pluccion forsete at epsilon effe, carretta, et carucata in Forresta Regis tempore fojuvi, ubi 15 dictus aut antecedens familis Johanni Bapst. & 15 dictus post idem fett. Hoveden, fol. 724. 6. See Fennitella.


Fannotia, (from Fr. fanne,) A fawning or bringing forth young, as doe do fawns. Charta Forresta, cap. 8.

Fannumcian, (from the Sax. fann, to travel.) According to the interpretation of Scier du vorher. Sciren is a merchant stranger, to whom, by the laws of Scotland, justice ought to be done with all expedition, that his business or journey be not hindered.

Fardel of land, (Fardella terra,) is, according to some authors, the fourth part of a yard-land; yet others, in his Complete Lathys... pag. 57, will have two twelfths of land make a nook, and four nooks make a yard-land.

Fartinga-drl, (Sax. fard, i.e. quarter, & dol or ded, part.) Alias farndle of land, quadranta terra, being the fourth part of an acre, Gram. for. fol. 220. Quadrantia terra is read in Reg. Orig. fol. 460. In those books, where there are no footnotes, after liberae & liberae terra, which probably must arise in proportion of quantity, as in half-penny, penny, thilling, pound, rife in value or estimation; then must abouria be half an acre, denariae a terra, seditaria twelve acres, and librae twelve score acres; and yet we find in fragment libratea terra sed reddita. Reg. Orig. fol. 94. and fol. 348. whereby it feemeth, that librae terra is so much as yeeldeth twenty thilling per
Far

per annum, and Centum solidatarum terrarum, tenementorum & reddituum, fol. 149. And in P. 299 fol. 22, we find that these words stand for "rent real and rents," which argueth it to be so much land as yields twenty shillings per annum. See Furlong. Others hold solatia terre to be but half a perch, and demanirata a perch. See Sylm. Gloss. varia Obolata terre. Scient, &c. me R. de f. dudde medi- datur solatius terre, de men domino, &c. Mon. Angl. 2 par. fol. 917. b. At Monkland in Herefordshire, they call it a vernal of land. Couell, edd. 1727.

Farding, or Farting of gold. Seemeth to be a coin used in ancient times, containing in value the fourth part of a noble, viz. twenty pence in silver, and in weight the fourth part of a tun, (from the word tuns, and so called for tuns) with twenty shillings in silver. This word is used 9 H. 5. c. 5, and this, Item: That the King do be ordained good and just weight of the noble, half farthing, and farting of gold, with the rates necessary to the same for every city, &c. by which place it plainly appeareth that there was been a coin, as well as the noble and half noble, Kingeston, in the year 1345, faith Fedun ambus noble & solat. and darting de ante varenum ferrum in Anglia. Couell, edd. 1727.

Fart, Signifieth a voyage or passage, or according as we now use it, money paid for pulling by water. 2 & 3 P. M. c. 16.

Fartingium, Toll of meal or flour. — Et quand de cetero habebant, servus suus capiat fartingium, &c. Ordinamina Julian. in Infula de Jersef. 17 Ed. 2.

Fartel, or Fartlet, In the manor of West Shapton in com. Devon. if any tenant die possessed of a cottage, he is by the custom to pay to the lord finesse for a farthead; which may be in lieu of a houfe. For in some manors wastefull, they distinguit farthead to be the beft of the goods, as heriot is the beft beale, payable at the tenant's death. Couell, edd. 1727.

FartingArti, Whomengers, adulterers; from the Sax. farting, farmer. Couell, edd. 1727.

Fartingiun, Toll of meal or flour. — Et quand de cetero habebant, servus suus capiat fartingium, &c. Ordinamina Julian. in Infula de Jersef. 17 Ed. 2.

Farter, He who rents a farm, or is leasee thereof. Termes de la ley. And it is said generally every lessee for life or years, although it be but of a small house and land, is called farmer, as he is who occupieth the farm. As this word implies no mystery, except it be that of husbandry, husbandman is the proper addition of a farmer, 2 H. 7 Sir. 74. By law, 21 Hen. 8. c. 13. No person or spiritual person may take farms or leases of land, on pain of forfeiting 10l. per month. And by law, 25 Hen. 8. c. 13, and 32 Hen. 8. c. 28. No person whatsoever shall take above two farms together, and they to be in the same parish. See Farmers. Cf. Joc. &c. Not to be deemed back- runs, 5 Gen. c. 30. felt. 42. For farmers in Norfolk and Suffolke, see Norfolk and Suffolke.

Farmers of crime, Their authority, 16 & 17 Car. 2. 4 4.

Farting, (in Sax. farthing.) Was the fourth part of a Saxon penny, and frequently in use among them. See Penny.

Farting of land, (Sax. farthing.) Seems to be a great quantity, and differs much from farthing-deal; for in a book of Survey of the manor of West Shapton in com. Devon, there are an entry made: By Ser. 25, for farthings of land at 3½d. per annum. See Farthings-deal. Forthing always importeth the fourth part; and therefore quarter-right, or pieces of gold that paid for two shillings and sixpence, the fourth part of a real car-
Justices cannot order a maintenance for a child to be paid by the father, without adjudging that the child is poor, or likely to become chargeable. Lord Raymond, 699.

Children not demanding their legacies of their father when they come of age, or after, is no discharge of them; and the father is bound to manage them during their minority, and their portions given by a fiancer are not to be admitted to them if they had not any; and where they lived to be fit for service, and served their father; their service was more worth than the interest of the legacy (which was 50 l. specie) and fo interred was allowed.

But were one of the daughters married and a year's board after marriage, the father must allow for it, unless an agreement be proved to the contrary. Pescb. 7 Ann. 3 Ch. R. 168.

Strickland v. Hudfon and Mofon.

Ad. 250 l. to his fon, and made his wife executrix, who married another husband. On a bill brought against them by the son, the legacy, the defendants would have discontinted maintenance and education; but the court would not permit it so as to diminish the principal sum; for it was said, that the mother ought to maintain the child. 2 Vent. 353; Mich. 33 Car. 2. Annu.

But a sum of money paid for the binding him out apparently was allowed to be discounted. 2 Vent. 353. Annu.

And the mother was decreed a reasonable allowance for maintenance of her fon from two years of age, when the father died, to 18, when the fon died; the he having received the rents of 33 l. per annum deferred from the father on the son, as heir at law. Pescb. 7 Ann. 3 Ch. R. 164. Walfic v. Everard.

A father prepared a bond conditioned for payment of 120 l. a year for life by his fon, to whom a very large estate had been devised, and upon proposing to it the son, he refused to execute it, saying it was more reasonable and depended upon his honour. Upon which the father left the bond with the son, saying, if he would not sign it he might let it alone. But afterwards in the father's absence the son figgled it just before he went to travel, and directed, that it should be delivered to his father. Id. Ch. Parker said, that those words might be sleek fo, as to amount to a threatening, and to intimidate; but it might also be otherwise, and the father feared to acquitse under the fon's answer, and for ought appeared it was his free act, and what he thought himself obliged in honour to do, and therefore without any proof to impeach it, it should not be set aside in equity. Wmd. Rep. 602, 607. Hill. 1719. Blackhall v. Edgley.

If it should ever appear that the power of a parent over a child has been abused, as by his gaining a releafe of the child's on-hangage parts by threats, &c. a court of equity will certainly set aside a releafe thus unacquiesly gained. Per Ld. C. Parker, Pescb. 7 Ann. 350. Wmd. Rep. 639, 640. in case of Blundon v. Borker.

Faciuit. (L. L. H. cap. 70.) Perhaps the same with the Six. sextus, id. i. fatisitum feu iniuriamur multo feu componatia.

Fattia multi, A whore. Cum quadam fatia multa, unde in lete cum nulla estin SCRIPT. 61 De Feci. 3.

Fauiterium. A fower, a medicinal pipe or flute.


Fantas, Are favours, supporters, abettors of others. Caufes &c. 2 & 2 St. 5.

Fautour. See Fantours.

Foil. The tenants by knights-service did swear to their lord to be feal and lead, i. e. faithful and loyal, See Spelman of Parliament, pag. 59.

Foil, Fiaiton, (from the French foit, lies, truth,) See Cefam,降到 2, & 2 St. 5.

Foiltope, Fiaiton, (from the French foit, lies, truth,) See Cefam,降到 2, & 2 St. 5.

Foiltope, Fiaiton, (from the French foit, lies, truth,) See Cefam,降到 2, & 2 St. 5.

Foiltope, Fiaiton, (from the French foit, lies, truth,) See Cefam,降到 2, & 2 St. 5.

Foiltope, Fiaiton, (from the French foit, lies, truth,) See Cefam,降到 2, & 2 St. 5.

Foiltope, Fiaiton, (from the French foit, lies, truth,) See Cefam,降到 2, & 2 St. 5.
given to a man and the heirs of his body; the reason whereof is given by Littleton, lib. 1. cap. 2, because a man feied of land by such a gift, if he marry one or more wives, and have no issue by them, and at length marry another by whom he hath issue; this issue shall inherit the land, whereas if a man and his wife are feied of lands to them and to their two bodies. The reason is given likewise by Littleton in the same place, because in this case the wife dying without issue, and he marrying another by whom he hath issue; this issue cannot inherit the land, being specially given to our forefathers. This fee-tail hath the original from the statute of Westminster, 2 Ed. 1. yet fee Britton, lib. 2. cap. 5. num. 3. in his Verbis. Item quaedam obiitata & quaedam stita & coarctata sunt certis heredibus. To whom add Plowden, fol. 235. Wilson’s case; for before that statute, all land given to a man was certain; the general or special, was accounted in the nature of a fee; and therefore a man might be so firmly in him to whom it was given, that any limitation notwithstanding, he might alien, and sell it at his pleasure, much like which the Civilians call num- dum praesumptum, binding rather by counsel and advice, than by any actual grant. But this seeming unreasonable to the wisdom of our realm, that a man might alienate that thing well to this or that poverti of himself, or his friends, might be forthwith devised of his intention; the said statute was made for redress of that inconvenience, whereby it is ordained, that if a man give lands in fee, limiting the same to another, by whom it is granted, with a reserve to himself, or his heirs, for default, etc. that the form and due meaning of his gift shall be observed: He then that hath fee, holdeth of another by some duty or another, which is called service; and of this service, and the diversity of it, fee Chivulry and Service. Sec- ondly, This privilege is only to be used within us for the compacts or circuit of a manor or lordship. Britton, lib. 2. cap. 5. in eadem villa & de eadem feenda. Thirdly, It is used for a perpetual right incorporeal, as to having the keeping of priors in fee, Old Nat. Brev. fol. 41. Fother in fee, ed. fol. 6. rent granted in fee, ed. fol. 8. Sheriff in fee, in Ed. 1. fol. 3. cap. 6. Lastly, It is taken for a reward or wages given to one for the execution of his office, as the fee of a forester, of a keeper of a park, or of a sheriff for serving an execution, limited by 20 Eliz. cap. 4. And also for that consideration given a feer, as a law or counsellor, or a physician, for their counsell in the suit of the process, which, as it is well observed by Sir John Davis, in his_TRAITORS, Reports, is not properly near, but honorarium; yet in the law language it is called a fee. Cowell, edit. 1727.

**FEE TAIL. See CLARIE.**

**FEE-EXCEPTION. Is by the Feudists termed feudum exceptualium, or exceptionem subfagacitate usd. Matthew de Affidis dicit 261, no. 2. fol. 47. See CLARIE.**

**FEUDAL, (Feudi firma) Is when any one, of the gift or grant of another, holds to him and his heirs, rendering either the half or the third part, or at least the fourth part of the true value.**

**FEO, FEO, FEO,**

Is a compound of feed and service, and signifies in a legal sense land held of another in fee, that is, in perpetuity to himself and his heirs, for so many years, rent, and in a reasonably worth, more or less, so that in one part of the world, with our homage, fealty, or other services, other than are specially comprised in the feudum; but by Fitzherbert, in his Nat. Brev. fol. 210, it feemeth, that the third part of the value may be appointed for the rent, or the finding of a chamberlain, and the fourth, as the nature of it is thus, that if the rent be behind, and not paid for the space of two years, then the sojourner, or his heirs, have an action to recover the lands as his demesnes. Britton, cap. 66. num. 4. but observe, that Wills, in his Symbol. part. 1. lib. 2. sect. 459, says, that the feudo, fide, and livery, are a part of court, as well as rent, and in Termini de la Ley, that therefore feudum.
oweth feaky though not express'd in the feediment, for
that feaky belongeth to all kind of tenures; this is near
the nature of that which, among the Civilians, is called
Ager vellitgali, qui in proprium lactum habe leg, ut quidunt pro eo vellitgali fudatorum, sibique eftis qui
conducint, qui in laurn auro confequentur, eft
fami cum laume. The fee-farm rents remaining to the
Kings of England from their ancient demesnes, were
many of them alienated from the crown in the reign of
King Charles the Second. But how doubtful men are
of the title to alienation of any nature, is evident from
this, that whilfe those rents were exped to fall for ready
money, scarce any would deal for them, and they remained
unfold, till the method of doubling orders did a little help; but that which made men earnest indeed to buy them, was the floup upon some of his Majefly's other payments, which made men ready to return to this the most chafing bar confiderance. Cowell, edis. 1727.

By flat. 22 Car. 2. c. 6. feft. 4. Letters patents granted by the King of certain fee-farm rents, before the 24th of June 1672. are confirmed.

Sed. 10. Purchasers may buy and enjoy the fane rents, notwithstanding any ftature of mufniture.

This was not wiffed to be neceffary to enable the King to make a grant of thofe rents, but to encourage purchasers, and to give fuch privileges to the fubjecl, which the King could transfer without act of parliament, and to cure and supply the defects of non-recital or mis-reflation; and the act itself is an authority that the King might make fuch declarations as the letters patent good, which were granted before; per Holt Ch. J. Mich. 7 Will. 3. B. R. Skir. 606. In the Bankers cafe.

The fayd flat. 22 Car. 2. cap. 6. feft. 6. enachts, That the trufts and the furviver or furvivors of them, fhall execute to purchasers, indentures of bargain and fafe, containing a conveyance of the faid rents, and reciting the confideration of money paid, which fhall be inrolled in any of the four courts of Wiltminfter, within fix months after the date thereof.

Sed. 12. Instructions to be obferved in the fale of their rents, yet fo as the non-performance of them fhall not weaken purchasers titles.

1. Contracls for fales fhall be figned by the Lord Treafurer or commissioners of the treafury, or two of them.

2. The trufts fhall convey to fuch as by order from the Lord Treafurer or commissioners of the treafury, or two of them, fhall be directed.

3. Every contract fhall, on or before felling his conveyances, pay any money at lift for his purchase-money into the Exchequer; and before he receives his conveyance give fuch fecurity as the Lords Treafurer or Commissioners, or, fhall approve for the other money.

4. Such as pay down their whole money, fhall be allowed for prefent payment of their fecound moiety, not excepted in 2. 1752.

5. Immediate tenants liable to pay any rents, fhall be preferved in the purchafe of it before others, fo as they tender themselves to the Lord Treafurer or commissioners of the treafury, to convey within fix months after felling the faid patent, and notice thereof publifhed by proclamation; for if the tenant refuseth to partake of their contract, and pay or secure the money within six months after, at fuch rate as fhall be agreed, not exceeding 20 years purchase.

6. If the immediate tenant, or fome on his behalf, do not tender and perfed his contract, all benefit of performance to be loft.

7. The purchafe may have his conveyance in the name of any perfon he fhall defire.

8. If any rent be charged with an incurrence, confideration fhall be had of it and reprife allowed; and the purchafe fhall covenant to take upon him fuch incurrence.

9. The trufts fhall hold the rents to the King's life till fale.

10. The trufts fhall covenant with the purchafers against their own act. And by flat. 22 & 23 Car. 2. c. 24. feft. 9. The trufts are empowered to convey the faid rents to purchafers either by the words expreft in the letters patent, or by particulars to be made by the auditors, or by the original grants from the crown, faving the Queen's right to the rents hereby vefted.

22 Car. 2. c. 6. feft. 7. enachts, That purchafers fhall hold the faid fervice charged of any breach of truth, which may be pretended to be committed by the trufts, and fhall not be deftricted, excepting the prerogative proceeds of the Exchequer.

Sed. 9. Purchacers of rents referred by any letters patents of lands and tenements, &c. and fold after the paffing of this act, fhall enjoy them; any cancelling, avoidance, or determination of fuch letters patents notwithstanding. This act fhall not be conflrued to avoid any covenant for rents in the King's party, in the orifinal reefervation of fuch rents; nor deters any in the court of Augmentation or court of Exchequer before the 28th of October 1642, or before the 28th of May 1660. whereby fee-farmers were to be difcharged, and allowances out of the faid fee-farm rents to be made.

To encourage purchasing fee-farm rents, this act gives the purchafors the fame power of diftraits not only on the land out of which the fee-farm rent ifues, but on any other of the lands of the tenant as the king had. Hill. 1715. 2 Vern. 713. Att. Gen. v. Mayor, &c. of Cowper.

Fee-farm rents, when granted by the King, become rent-feeck, and therefore not to be extended. Arg. 9 Med. 72. cites Cro. E. 616. — Fee-farm rent is extendible upon an elegit, and yet the words of the fature, which gives the fcriführ authority, are only land, viz. medullia terre. Arg. 10 Med. 526.

A. claims a fee-farm rent under this fature, and there is a fqueffer from the land, out of which the fee-farm rent ifues; the court cannot order the fequeftor to pay the arrears out of the money in their hands, but declared the grantee might take his remedy at law notwithstanding the fequeflation. Per Cooper C. Hill. 1715. 2 Vern. Att. Gen. v. Mayor, &c. of Cowper. The court left him without remedy, as he diftrained for his tenant, without incurring any contempt in equity, and that no leave or effate derived under the fequeftors, fhould be made use of in evidence against the claimant of the fee-farm rent, to prevent the diftraits. Win's Rep. 308. S. C. Tho' the King might diftrain on any other lands of his tenant, as well as on tho' out of which the rent ifues; yet, if the tenant alien or leafe at will only his other lands, the crown cannot difstrain on thofe lands. Hill. 1715. Arg. 2 Vern. 714. Att. Gen. v. Mayor, &c. of Cowper. S. P. held by Cooper C. affi'd by the Lord Ch. J. Parker and King. Win's Rep. 327. S. C.

So, if there be an extent upon an elegit of fuch other lands, the court will not extend the rents, and the fale by virtue of the fatur'd will not be extended for this is a greater extent than an effate at will. Per Cooper C. affi'd by Ch. J. Parker and King. Win's Rep. 307. S. C.

As to the cafe of the Att. Gen. v. The Mayor of Cowper, the Reporter fays, that afterwards Ch. J. Parker informed him, that he thought it might have been proper to have determined that the fequeflation was as the hand of the court upon the effate, and where a right to a fee-farm rent appear'd to be prior and indifputable, the court might reasonably enough have order'd payment, elle A. for aught appear'd, would be in a worse condition, than if there had been no fequeflation; for till the fequeflation there was no payment made the rent voluntarily, and now are disabled purely by the fequeflation; and putting A. to diftrain was putting the charge of the suit upon the effate; whereas nothing appear'd to the contrary, but that the corporation was fensible of A.'s right to the rent, and defir'd it might be paid. Win's Rep. 308, 309.

By 22 & 23 Car. 2. c. 24. f. 2. All purchafers of fee-farm rents are to be kept harmless from all incurrences made by the trufts.

Sed. 9. enachts, That rent not usufally paid by the larger space of 40 years latt past, shall not be infribed in fuch letters patents, and tenants shall hold their lands discharged of any rent, referred by virtue of any patent of concealment, or compifion of defective titles, and usufally paid.
paid by the greater force of 40 years, until the fame shall have been recovered by due course of law.

And by 19. 14. So much as is due for any uses out of the premisses to be settled upon trustees shall continue to be paid; and the trustees are hereby authorized to convey, for performance of such uses, fees of the said fee-farm rents, &c., as shall amount to the sums charged, after which conveyance the purchasers of the retitle to be discharged thereof.

By 22 & 23 Car. 2. 24. &c. If in the title of the said rents, the receivers of the King's revenue shall gather the same.

Stat. 9 to 13. 8. Subjected fee-farm rents to payment of taxes.

Stat. 7 Gen. 2. 7. &c. 5. enacted, That lands, &c., subject to fee-farm rents, &c., if such rent amount to 20s. per annum or more, the landlord may deduct the taxes; such deductions to be allowed by the persons intituled to the rent without fee or charge for such allowance.

Sellt. 26. Receivers of fee-farm rents to allow 21. per pound to the parties without fee, on penalty of 20l.

Stat. 22 & 23 Car. 2. cap. 24. &c. 8. All purchasers may make a general justification without producing any letters patent, by laying that the trustees were sealed in fee, and fo conveyed to them. And by Stat. 20. c. 18. &c. 4. Where any fee farm rents, intended by the acts of 22 Car. 2. and 22 & 23 Car. 2. to be sold, and which are sold pursuant thereto, shall be named and described in any deed or free, declaration, or other pleading, by any one, it shall be lawful for such parties or descriptions, as the same were described in the indentures of bargain and sale made by the trustees for sale thereof, such names and descriptions may serve for conveying or pleading the title to such rents from and under the trustees.

Sellt. 5. Provided, that this act shall not give any benefit in pleading, or deriving a title to any rent, which hath not been paid or levied within 20 years, next before the time of such pleading or deriving such title.

Feud. or Fidel, (Fea/de or fideis.) Signified in the German tongue, guerram, that is, capitularies inimiciis. Husaum Diput. de Feudis, cap. 2. Lamb. in his exposition of Baron words, writes it feet, and faith likewise, that it denotes capitularies iniquities. And also that feud now used in Scotland, and in the North parts of England, is the same that is, a kindred, to revenge the death of any of their blood against the killer, and all his race. See St. a de Vergor, fugit. fideis Abridg'd.

This act allowed to a clerk who have to do with the administration of justice, as a recompence for their labour and trouble; and there are either ascertained by acts of parliament, or established by ancient usage, which gives them an equal function with an act of parliament. 2new Agr. 493.

1. In what cases fees shall be due, and how much.

2. At what time fees shall be due, in what court to be recovered, and pleadings in actions for fees.

1. In what cases fees shall be due, and how much.

At Common law no officer, whole office related to the administration of justice, could take any reward for doing duty, unless he was to receive from the King.

Ca. Lit. 368. 2 inst. 175. 268. 9.

And this fundamental maxim of the Common law is confirmed by Wis. 1. cap. 26. which enacts, "That no officer, or other King's officer, shall take any reward to do his office, but shall be paid of that which they take of the King, and that he who doth shall yield twice as much, and shall be punished at the King's pleasure." This statute comprehends ecclesiasts, coroners, bailiffs, gaolers, the King's clerk of the market, sulinoger, and other inferior ministers and officers of the King, whose offices do any way concern the administration or execution of justice.

And so much hath this law been thought to conduce to the honour of the King and welfare of the subject, that all previsions whatsoever, which have been con-
for any sheriff, under-sheriff, bailiff of franchises or liberties, nor for any of their, or either of their officers, ministers, servants, bailiffs or deputies, nor for any of them, by reason or colour of their, or either of their office or offices, to have, receive or take of any person or persons whatsoever, and without the due and proper induction or any extent or execution upon the body, land, goods, or chattels of any person or persons whatsoever, more or other consideration or recompense than in this present act is and shall be limited and appointed, which shall be lawful to be had, received and taken; that is to say, twelve-pence of and for every twenty shillings and six-pence of and for every twenty shillings, over and above the said sum of 100. l. that he or they shall fey or extend, and deliver in execution, or take the body in execution for; by virtue and force of any such extent or execution upon payment of the act, that all and every sheriff, under-sheriff, bailiff of franchises and liberties, and their and every of their ministers, servants, officers, bailiffs or deputies, which at any time shall directly or indirectly do the contrary, shall be and forfeit to the said parties, his, her, their or the moiety thereof to our Sovereign Lady the Queen, her heirs and assigns; and the other moiety thereof to the party or parties that shall sue, for the fame, by any plural, action, suit, bill or information, wherein no effion, wager of law, or execution, shall be allowed.

"Provided always, that this act, or any thing therein contained, shall not extend to any fees to be taken or had for any execution within any city or town corporate."

In the construction of this statute the following points have been held:

1. That though the words of the statute are, that it shall not be lawful for the sheriff to take any more, or greater fees, than by the act is limited, &c. that herein by implication at least, if not by express words, a right is given the sheriff to demand those fees mentioned in the statute; and consequently that he may, as in all cases where a statute creates a debt or duty, maintain an action of debt for them. Mor. 853. Latch 19. Poph. 175. Palm. 400. 1 Salk. 331. S. P. admitted.

2. It hath been adjudged, that the sheriff shall have a hilling per pound for the first hundred, and six-pence per pound for every hundred and upwards exceeding a hundred, and ten shillings per pound where the whole debt happens to exceed a hundred; for by this construction the sheriff would have left where the debt was 199 l. if it were but 100 l. And the intention of the statute was to allow sheriffs such reasonable fees as would encourage them to discharge this branch of their duty, so much favoured by the law, with vigour and success; who before were backward and intimidated, by reason of the dangers they run from eapes, &c. from engaging herein; and therefore it has been held the most reasonable construction to allow them their fees in proportion to such danger. Poph. 173. Latch 17, 18, 52. Palm. 399. 1 Salk. 331. S. P. adjourned.

3. It hath been resolved, on the proofs of the said statute, that it shall not extend to any fees to be taken for any execution within any city or town corporate; and this must be intended of executions on judgments given in those courts; and that therefore where a sheriff executes a judgment given in Westminster Hall to a city or town corporate, he is as much intituled to his fees, pursuant to this statute, as if the execution had been done in any part of the county at large; for herein the sheriff runs as great a risk, and his trouble is as great; but where both the judgment and execution are within a city or town corporate, it can't be properly, for be attended with equal difficulty; and therefore the proofs in the statute excludes them. Latch 17, 18. Poph. 173. Palm. 399. 400.

4. It hath been resolved, that the bailiff of a liberty, with extend a judgment given in Westminster Hall, is entitled to the fees, within the words and meaning of the statute; and not the sheriff of the county who directs his precept to him. Latch 19, 52. Poph. 175. 1 Salk. 331. Dallt. Ser. 526. S. P.

5. It seems agreed, that if a sheriff makes an extent, and before the liberate a new sheriff is chosen, the new sheriff is not entitled to the extent, by the statute. Winch 50, 51. Dallt. Ser. 526.

6. It hath been resolved, that the statute does not extend to real executions, such as habeas facere sejusnum, or poissimus, but only to executions in personal actions; also it is said, that the statute and does not extend to executions upon execution after recognition, &c. that, and that the act is to be understood of cases where the judgment, rediturus in invitum, and not by the voluntary confession of the party; but 22. Salk. 331.

7. That for executing a capias uti legatum, or for a warrant to execute it, no fee is due to the sheriff, because this is at the suit of the King. Heley 52. 2 Brow. 282.

8. It seems to have been resolved, that upon a capias ad satisfaciendum, the sheriff shall have his fees for the whole debt; also if in one execution dies, and a fieri facias lies against his goods, the sheriff shall have his fees for the whole of the execution of the fieri facias; for his trouble was as great as at first. 1 Salk. 331.

2. At what time fees shall be due, in what court to be recovered, and pleadings in actions for fees.

It is extortion for any officer to take his fee before it is due; and therefore where an under-sheriff refused to execute a capias ad satisfaciendum till he had his fees, the court held, that plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indit him for extortion. 2 Gil. 668. 10 Co. 102. a. 1 Salk. 330. Officer must oblige a writ, though fees unpaid. Stran. 814. Proces must be obeyed though fees are not tendered. Stran. 1262.

If an abatus corpus ad satisfaciendum be directed to a gaoler, he must bring up the prisoner albeit his fees were not paid him; and he can't excuse himself of the contempt to the court, by alleging that the prisoner did not tender him his fees. 1 Esp. 272. pl. 57.

Alfo it is no excuse for not obeying a writ of abatus corpus ad satisfaciendum & recipiendum, that the prisoner did not tender him his fees. March 89. 2 Esp. 280. 2 Esp. 179. but 1 Esp. 566.

But this brings upon the prisoner by virtue of such abatus corpus, the court will not turn him over till the gaoler be paid all his fees; nor, according to some opinions, till he be paid all that is due to him for the prisoner's diet; for that a gaoler is competent to find his prisoner sufficiency. See 1 Rol. Rep. 339. Co. Lit. 295. 9 Co. 87. Plowd. 60. a. 2 Rol. Abr. 32. 2 Jon. 178.

If a person pleads his pardon, the judges may in the usual fee of gloves to themselves and officers, before they allow it. Fitz. Creon. 294. Pulten. De Pace 88. Keling 25. 2 Jon. 56. 1 Salk. 452.

If an erroneous writ be delivered to the sheriff, and he execute on it, he have his fees, though the writ be erroneous. 1 Salk. 332.

It seems to be laid down in the old books as a definition, that upon an extent of land upon a statute, the sheriff is to have his fees, so much per pound according to the statute immediately; but that upon an ejectment he is not to have them till the liberate. Poph. 156. Winch 51. S. P.

But where the sheriff, having executed an ejectment, brought an action of debt for his fees; and it was objected, that this was not within the statute, the execution not being complete, for the plaintiff could not enter but must first have a claim; and it was held by Holc, that there was the same reason for the fees for executing an ejectment, as for an ejectment the sheriff returns, that he has taken an inquisition, extended the lands, and delivered them to the plaintiff, and that there is a liberate in the body of the writ of ejectment, or the return of which the plaintiff may enter; yet by the return he becomes
comes tenant by *eleviz*, and may maintain an ejectment, and assign his interest upon the land; but the defendant continuing in possession after the return of the writ turns the plaintiff to a relitigant, and therefore he must enter to affiavit, and his being put to an ejectment is no reason, for in case of an extent upon a flateau, where the liberate is distinct, he can't enter by force; it is true he may without force, and fo he may here; and *Powell* said, that extent generally is the word of the flateau 26 Eliz. and that an extent upon a flateau was an extent within the flateau, as well as an extent upon a flateau: 1 Salk. 333.

A solicitor in Chancery may exhibit his bill for his fees for busines done in that court; and fo he may where the busines is done in another court, if it relates to another demand other than that which makes in Chancery. 1 Fern. 203. 2 Chom. Cat. 153.

But it hath been held, that chancellors, registrers and proctors who are officers of temporal profit, and whose fees do not relate to the jurisdiction of the spiritual court, can't sue for them in the spiritual court. See 3 Lorn. 268. 2 Rol. Rep. 59. 1 Mad. 167. 2 Kel. 615. 3 Kel. 393. 441. 515. 4 Mod. 253. 5 Mod. 249.

As where the registrer in the ecclesiastical court libelled there for 4. d. for his fees, and proceeded to excommunication; and the defendant sugetted, and moved for a prohibition, which was granted; for the court hath no power to compel the party to pay fees to their officers, but they must either have their quantum meruit laid on their office be a freehold, they may bring an affize; for the denial of just fees is a diffiicul: although it was objected, that this case differed from that of a proctor, because a registrar is a mere officer of the court, and the court may appoint a reasonable fee to the offices that attend them. 1 Salk. 333.

So a prohibition was granted to play a suit in the archdeacon of Litchfield's court, against churchwardens for a fee for swearing them, and taking their preffents: because no fees could be due but by custom, or for work done, in which case a quantum meruit lay. 1 Salk. 350.

So that where the manager and chapter of the cathedral church of Exeter, having the freehold and inheritance of the said church, had by prescription 10 l. for every corps that was buried in the said church; and the defendant's tenator being buried there, without their licence, the defendant refused to pay the 10 l. for which they sued him, in the Ecclesiastical court; and the defendant was no reason why a prohibition should not, it was urged, that none can prehieve to have a burying-place in a cathedral church, for the parioners have nothing to do with it, nor pay any tithes to it; but in the parish church to which they pay tithes and other duties, there such a prehieve is allowed, and in the churchyard there they have a right to be buried without a prescription; but the court held, admitting, that no person could prehieve to bury in a cathedral church, and admitting, that this fee, like that of 20 l. which is usually paid for burying in the cathedral church of Westminster, is reasonable, yet it is not of spiritual cognizance, but is in nature of a licence, on which a quantum meruit may be brought, and the conffant usage to pay so much is given in evidence; and therefore the prohibition was granted. 2 Bar. Abr. 468. Hil. 5 Ann. Dean and Chapter of Exeter v. Druc. 1 Salk. 334. S. C.

A prohibition was moved for to the nonconfent of the court of the bishop of London, to play proceedings in a suit commenced there by a parish clerk, for dues, according to a rate agreed to by the parish. Against the prohibition, it was said, that he is to be choos by the parson, and that his office is ecclesiastical, and consequently his fees are of ecclesiastical conffance. On the other hand it was urged, that such as were done for him, his office is merely temporal, and the profits of it itself be fo likewise, and especially in the present case, where they are demanded pursuant to a rate. *Per Car.*

The questions who has the right of nomination, and what efface the clerk has, whether at will only, or for life, are quite immaterial in the present case. The Law is certain, that his office is temporal, it was so determined in 2 Beavon. 38. And if fo, his salary, or whatever is given for the service of that office мүAtt of conffance be of temporal conffance. But whether his office be temporal or spiritual, if the matter in question is tempora-

ral, the ecclesiastical court can have no jurisdicton. Now here the demand is in pursuance to a rate agreed to by the parish, and there is no doubt but that he may bring his action upon that agreement; and accordingly a pro-

hibition was granted. 12 Fin. Abr. 155. Hill. 12 Gr. 2. C. B. Pitts. 25 Co. 22c.

If A. delivered an execution to the sheriff at his suit against B. and in consideration that the sheriff without any fee will execute it, he promised the sheriff to pay him a certain sum, which was the same as the sheriff was allowed to take by the flateau of the 28 Eliz. *Gland. d.* held the consideration not good; for at Common law he would not to take any fees, but it was excepted, which the flateau is only to discharge the sheriff from; but the other judicier and barons held it to be a good conffance, and were of opinion to have affirmed the judgment. But another error being asigned, viz. that the *toles de circumstantialis* was returned by the plaintiff who brought the action by the name of the sheriff of the same county, and therefore judgment was re-


In the setting a dispute, whether the warden of the Fleet might return a non effi inventus whereupon to found a fequestration, or that such return must be by the jer
tain at arms before a sequestration could go, Lord Chancellor ordered the sheriff to look into precedents, and certify him, how the practice had gone; but said, that if the jermain at arms was intituled by the ancient course to a fee by the caption in such cafes, it could not be altered without an aet of parliament. Mich. 1770. Ch. Proc. 551. *Jofphon's* cafe. See 13 Fin. Abr. tit. Fees.

Feudal adson, 89 tit. In a motion for a mandamus to the sheriff to sequestrate indivisa, the chancellors referred the books to the new wardens, &c. *twas* afterwards shown for cause against the motion, that *twa* new, and the like had never been made before in this court; but *twas* infiffed on, that the old churchwardens had a right to keep the books, and so the rule was discharged. For a contest between parish officers, which of them ought to keep the books, must be tried at law by a jury. 8 Mod. 98. Mich. 9 Gr. 1. The King v. Street and Strawd. In such cafes, which are merely local, and the *centre* can't be altered, they will, upon good reason, make them try it upon a feigned action, and if no contente be, they will grant interlocution. *Per Pemberton Ch. J. P. 34 Car. 2. B. R. 8tit. in the case of* Greyham. And Dehens J. remembered the case of Lord Gerard of Brasley and Speaker in the Exchequer, when Hale was Chief Baron, who, upon affidavit, that the plaintiff had lived long in Lancashire, and kept great hospitality, and bid every body welcome, &c. and the defendant was a southern gentleman, and lately come into Lancashire, Hale did not suffer them to proceed in their ejfectment in Lancashire, but made them try it in five feigned actions by a jury of Hersforthshire. Skin. 44. Pash. 34 Car. 2. B. R. at Jofp. See *Huite.*

*Feltus,* A small bundle, an armful. Cowell, edit. 1727.

*Feligus* (Joint. feld can os ligatus) A companion, but particularly a friend who was bound in the decernary for the good behaviour of another. So in Legibus Irt., e. 15. *Tis said, if the murderer could not be found, &c. the parents of the deceased should have fixe marks, &c. and the King forty; if he had no parents, then the Lord should have it: *Ej. dominium non habetur, feligus sise,* Cowell, edit. 1727.

*Feld* is a Saxon word, and signifies an eld, and there
dore, feld eyric is a country church, feld boye is a tent: In its compound it signifies wild, as feld haining is wild honey, feld mynt, is wild mint, &c. Cowell, edit. 1727.

*Felle homages, i.e.* Faithful subjects, from the Sax. feor, i.e. felle. Cowell, edit. 1727.
F E L

felo de se, or felon of himself, is a person, who being of sound mind, and of the age of discretion voluntarily killeth himself. 3 Inf. 54.

If a felon or felon of himself, intending to be felo de se, and die not within the year and day after the wound, he is not felo de se. 3 Inf. 54.

A person who wilfully detruits himself is termed a felo de se, and is said to be guilty of the worst sort of murder, as he acts against the first principle of reason, which is to preserve the species. Plow. 261. Dame Hul's case. Yet in some cases it is considered as a different offence from murder; and therefore if the King pardons all crimes, except murder, this offence shall be pardoned; for though in a strict sense it may be called murder, yet according to the usual interpretation of words, the offence of a person who murders another, and that of felo de se, are considered as different offences, and as such are distinctly treated of by authors who have written of these matters, as Stann. P. C. 185, 572. Besides, the end of excluding murder seems to be, that the offender might be brought to justice, and that the law of God and nature, which require blood for blood, might be satisfied; but the discharging a chattel, or pardoning a forrefture, is not of any such consequence; also it hath been held by divines, that pardoning murder draws periculum animarum with it, as being contrary to the law of God, which requires blood for blood. The King ver. Ward. 1 Lev. 8. 1 Sid. 150. 1 Keb. 66. 548. S. C. also in certain cases and in particular sense taken as a different offence from other felonies; and therefore a grant of bona & catalla felemum will not carry the goods of a felo de se. 1 Sid. 420. 1 Vent. 32. 1 Sand. 274. adjudged.

No person can be felo de se, who is under the age of discretion, or non comus at the time he commits the fact; and therefore if an infant kill himself under the age of discretion, or a lunatic during his lunacy, he cannot be a felo de se. Crom. 30, 31. H. P. C. 28. 3 Infj. 54.

In 3 Med. 100. it is said to be the prevailing opinion, that a person who kills himself must be non comus of course, on this supposition, that it is impossible a man in his fenses should do a thing so repugnant to nature; but in 1 Hawk. P. C. 67, and in Comb. 22, 3. this notion is justly exploded; for if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as for instance, that of a mother murdering her child, which is also against nature and reason: And this consideration, that it is impossible a man in his senses and of a sound mind, could make it a crime at all; for it is certain a person non comus mentis can be guilty of no crime. 1 Hawk. 67.

Not only he, who deliberately kills himself, but also he, who maliciously attempting to kill another happens to kill himself, is a felo de se; as if A. discharging a gun at B. with an intent to kill him, and the gun burthes or kills A. or if A. strike B. to the ground, and then hastily falling upon him, wound himself with a knife which B. has to happen in his hand, and die; in these cases A. is felo de se; for he is the only agent. Bre. Coram. 12, 14. Dall. c. 92.

A man be be killed by hastily running on a knife or sword, which a person assaulted by, and driven to the wall, holds up in his defence, he shall not be adjudged a felo de se, but the other shall be adjudged to have killed him se defendendo. Stann. P. C. 16. H. P. C. 28. Pult. 110. b. Crom. 28. cont. 3 Infj. 54.

If one person kills another, and the by his desire and intent the perfon killed is not a felo de se, but he who killed him is as much a murderer as if he had killed it of his own head; for every affent of that kind is void, being against the law of God and Man. Keilu. 130.

But if two persons agree to die together, and one of them at the percussion of the other, buys ratbane, and mixes it in a potion, and both drink of it, and he who bought and made the potion survives, by using proper remedies, and the other dies, it seems the better opinion, that he who dies shall be adjudged a felo de se, because all that happened was originally owing to his own wicked purpose, and the other only put it in his power to execute it in a particular manner. Mor. 754. pl. 1081. 1 Hawk. P. C. 58.

No person can be a felo de se before he is found fuch by some inquisition, which ought regularly to be by the coroner super visum corporis, as the body can be found, H. P. C. 29. 3 Infj. 54.

But if the body can't be found, fo that the coroner, who has authority only super visum corporis, can't proceed, the inquiry may be by justices of the peace, who by their commision have a general power to enquire of all felonies, or in the King's Bench, if the felony were committed in the county where the fact court fits, and such inquisitions are tradervable by the executors, &c. 5 Inf. 54. H. P. C. 29. 2 Lev. 141. 1 Hawk. P. C. 89.

But it was formerly held, that with regard to the high credit which the law gives to inquests found before the coroner, that no such inquest found before him could be traversed; but this has been ruled otherwise of late, and it seems now settled, that such inquest being moved into the King's Bench by certiorari, may be there traversed by the executor or administrator of the person deceased, or by the King or lord of the manor, &c. Bre. Coram. 151. 2 Lev. 141, 152. 2 Keb. 859. 2 Ion. 198. 1 Feni. 278. 3 Keb. 504, 566, 604, 800. Slim. 45.

All inquisitions of this offence, being in the nature of indictment, is regularly and certainly to be tried in the circumstances of the fact; as the particular manner of the wound, and that it was mortal, &c. and in the conclusion add, that the party in such manner murdered himself. 1 Salis. 377.

And therefore if either the premises be insufficient, as if it be found that the party thought himself into the water, &c. &c. is ipsum energit, which is non fene, because emerges signifies only rise out of the water; or if there be wanting the proper conclusion &c. fes ipsum murdravit, the inquisition is not good. 3 Lev. 140. 3 Med. 100. Yet if it be full in substance, the coroner may be Served with a rule to amend a defect in form. See 2 Lev. 153. 1 Sand. 225, 345. 1 Kel. 907.

A felo de se forfeits all chattels real and personal, which he hath in his own right, and also all such chattels real whereof he is possessor, either jointly with his wife, or in her right; and also all bonds, and other personal things in action, belonging solely to himself; and also all personal things in action and of some interest to another, the possession on which he was intituled jointly with another, or any account, except that of merchandise; but is it said, that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing at all of what he was possessor of as executor or administrator. Stann. P. C. 188, 189. H. P. C. 29. Plew. 243, 262. Crom. 31 a. 3 Infj. 55. Rym. 7.

But the blood of a felo de se is not corrupted, nor his lands of inheritance forfeited, nor his wife barred of her dower. Plew. 261.

Also no part of the personal estate is vested in the King before the fell-murder is found by some inquisition, and consequently the pardon取决于 the offence before such finding. 5 Co. 110. 3 Infj. 54. 1 Sand. 302. 1 Sid. 150, 162. 2 Med. 53. 3 Med. 100. 241. cont. 1 Lev. 8. 1 Keb. 67, 68.

But if there be no such pardon, the whole is forfeited immediately after such inquisition, from the time such forfeiture is thereby declared, and all subsequent alienations are avoided. Plew. 260. 5 Co. 110.

Felons goods, (Bona fugitivorum) Are the goods of a felon, who fleith for the felony, and are not forfeited till 'tis found by indictment, that he fled for the felony, and therefore they cannot be claimed by prescription; but a man may preferibe to have wains, eddias, treys, trouts, which by reason of the trove, wreck of the sea, because they may be gained by usage without matter of record. 5 Rep. 109 b.

The flat. de Praerog. Rec. (17 Ed. 2, c. 1) grants to the King, among other things, the goods of felons and fugitives.
The archbishop of Canterbury had felon goods in the manor of R. and afterwards he committed treason; then the King made a general grant to the almoner of the goods of felo de fe; Hales, a leafe for years, was found in the manor, and nowwithstanding this grant to the lord almoner, the King granted the term for years to B. G., adjudged, that he should have it, and not the almoner, because the almoner had no property, but only an interest as a minister, and the grant to him need not be recited in the last grant to B. G. 2 Man. Dyer 107.

Where the King granted to a man and his heirs, felon goods, &c. within such a place, the grantee cannot devise them, nor leave them to devise for a third part, upon the statute '32 H. 8, because they are not of any yearly value; but if a man is feized of a manor, to which a leer or wall, or eftays are appendant, tho' they are of no yearly value, the feize of the manor, with the appurtenances, because the statute which enables the tenant to devise the manor, by consequence enables him to devise all the incidents which belong to it. 3 Rep. 31, in Butler and Baker's cafe.

If a felon feals goods, and hides them, and afterwards by these goods are not searched, and wastes in law; for those are when the felon hath the goods about him, and being closely purfued, leaffeth them for fear of being taken, and that he may more readily get away; in such case the goods are forfeited, but in the other case the owner may take them wherever he finds them. 5 Rep. 100, Flexo's case.

Suo supere sedes, &c. for claiming felon goods; the defendant pleaded, that the abbot of Strata Marcella lawfully had and enjoyed them till the dissolution of the abbey, and then they were given to the King by the statute '27 H. 8. and then pleaded the statute '32 H. 8. cap. 10. by which all the privileges lawfully used by the abbots, were revocd and vested in the King; who being seised of the said privileges and franchises, to have felon goods in the, he granted the manor of W. in R. parcel of the possessions of the abbey to B. G. & tot, taifa & tanta privilegia as the late abbot had, under whom the defendant claimed the said manor by seiftom, &c. & warranta clamat libertates & franchos tanquam manoris prae feteftan'; adjudged, that because the defendant had conveyed to himself a title to the manor, &c. by seiftom, which he pleaded generally, without setting forth the deed, he did not convey to himself a title to the felon goods, for they were not paft without a deed; but if the King had granted lands & tenem & bena & castell & felonia which any merio feteftan', they paft, tho' they cannot be appendant to a manor. 9 Rep. 235. Abbot de Strata Marcella. Mm 197. S. C. by the name of The Queen v. Vaughan.

The plaintiff being committed upon suifition, that he committed felony, the money which he had about him was taken away with the conviction of him, and he was caught an act of trCHAFT, and declared for feizing his money, &c. and this was upon the 1 R. 3. cop. 3. by which 'tis enacted, That no perfon shall have the goods of another, &c. After a verdict for the plaintiff, it was moved in arreft of judgment, that this cafe was not within the statute because money was not goods; but it was adjudged to the contrary; and that same term. Raym. 414, Optras v. Wendlall. See Flight.

Felony, (Felonia.) Is derived, according to Sir Henry Spelman, from the Saxon word seof, a reward, or an eftate, and the German las, price; because this was formerly a crime punished with the price, that is, the los of estate; for before the reign of King Hen. 1. felonia were punished with pecuniary fines; he being the first, who ordered felons to be hanged, about the year 1108. Spelm. Giff.

Felony, lays Lord Coke, Ex vi termini signifies quidlibet crimine capitale fello animo perpetra tdrum, i.e. every capital crime committed in which the offender is found to have been guilty of pernicious and capital felony is to be treated as such. And in ancient times this word felony was of so large an extent, that it included high treason; and therefore in our ancient books, by the pardon of all felonies, high treason, or counterfeiting of the Great seal, and of the King's coin, &c. was pardoned. But afterwards it was reolved, that in the King's pardon or charter, this word felony should only extend to common felonies, and that high treason should not be comprehend ed under the same, and therefore ought to be specially named, and yet that a pardon of all felonies should extend to petit treason; wherefore by the law at this day under the word felony in commiisions, &c. is included petit treason, murder, homicide, burning of houses, burglary, robbery, rape, &c. chancemelied, &c. and petit larceny. For such of these crimes for the which any shall have this judgment, To be hanged by the neck till he be dead; he shall forfeit all his lands in feste-siple, and his goods and chattels for felony by chancemelied, or fe defendants, or petit larceny, he shall forfeit his goods and chattels, and no lands of any effect of freehold or inheritance. And all by felony shall pass and be a good and just punishment according to the course of the Common law, are either by the Common law, or by statute. Co. Lit. 31t.

Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misinmadversion; as where pertons break open a door to execute a warrant, which will not justify such a proceeding; Affilia enim tua nonem imprimit operi tu: item crimen non contradictur nisi memendi voluntas intercedat. But the bare intention to commit a felony is so very criminal, that at the Common law it was punishable as felony where it mitigated itself through some accident, which no way lessened the injury offended; but if seems agreed at this day, that this felony shall not be imputed to a bare intention to commit it, yet is it certain that the party may be very severely fined for such an intention. 1 Hawk. P. C. 65.

1. Statutes concerning felony in general.

2. Felonies within clergy.

3. Felonies without clergy.

1. Statutes concerning felony in general.

Felons standing mute shall be put to strong and hard imprisonment, 3 Ed. 1. c. 12.

The goods of felons and fugitives ought to be inventoried and rolled by the coroner. Artic. Exon. 14 Ed. 1.

Breaking prison felony, only where the prifoner was in custody for felony, 3 Ed. 9. c. 2.

Writs to take felons shall be directed to all the counties, 5 Ed. 3. c. 11.

Felons goods and lands shall not be seized before conviction. Stat. de Catall. felen. inserti temp. 1 R. 3. c. 3.

His chattels shall be forfeited on the return of a non fit in- sensual, 25 Ed. 3. c. 5. c. 14.

Proceeds against all felons.

One charged in the Exchequer with felon goods may charge another over, 31 Ed. 3. A. 1. c. 3.

Justices of the King's Bench may remand felons into their proper counties, 6 H. 8. c. 6.

Stolen goods shall be reftored upon the attainer of the felen, 21 Ed. 2. c. 1.

How foreign pleas pleaded by felons shall be tried, 22 H. 8. c. 2. & c. 14. 1 Ed. 6. c. 12. sct. 11.

No forfeiture for killing a man attempting to commit murder or robbery, 24 H. 8. c. 5.

The clerk of the affidavit, &c. shall certify the names of the felons convicted in the King's Bench, 34 & 35 H. 8. c. 14.

Repeat of all felonies made since 1 H. 8. 1 Ed. 6. c. 12. sct. 4. 1 M. f. 1. c. 1.

All felonies and offences of praemunire since 1 H. 8. repealed, 1 M. f. 1. c. 5.

Persons indicted for felony in imbellising fines may make defence by witnesses, 31 Eliz. c. 4.

Apprehenders of burglars and thoplifters to have a certificate to discharge them from parish offices, 10 & 11 W. 3. c. 23. sct. 2.

Further intitled to 40l. reward, on tendering certificate of conviction, 5 Ann. c. 31.

Burglars
Burglars and shoplifters discovering their accomplices, &c., to be pardoned, 10 & 11 W. 3. c. 23. 5th.
Felons to be burnt in the cheek, 10 & 11 W. 3. c. 23. 6th. repealed 5 Ann. c. 6.
Fee for drawing a bill of indictment fretted at two shillings, 10 & 11 W. 3. c. 23. 7th.
Offences committed at sea may be tried as directed by commission, and peron flanding mute, &c. to suffer death, 1 Ann. 11. c. 3. 9th. 5th.
Felons may be burnt in the hand, and committed to hard labour, 5 Ann. c. 6.
Felton discovering and convicling two accomplices, intitled to a pardon, &c. 5 Ann. c. 31. 4th.
Receipts of stolen goods made accессary, 5 Ann. c. 31. 5th.
Stages to settle the rights and shares of persons intitled to certificates, 5 Ann. c. 31. 7th.
Intitled to the same certificate as for apprehending highwaymen, 6 Geo. 1. c. 23. 9th.
Proclamation for offenders to surrender to be printed in the Gazette, 9 Geo. 1. c. 23. 4th.
Judges to give certificate to persons wounded, or to executors of persons killed in apprehending felons, 9 Geo. 1. c. 22. 12th.
Returning from transportation excluded clergy, 25 Geo. 2. c. 10.
The court may order the expense of prosecuting a felon to be paid by the treasurer of the county, 25 Geo. 2. c. 36. 11th.; and the expense of the attendance of poor wifes, 27 Geo. 2. c. 3. 3rd.
Buying or receiving lead, iron, copper, brass, metal or folder, knowing it to be stolen, 29 Geo. 2. c. 30. Penalties on having these materials without being able to account for them, 29 Geo. 2. c. 30. 6th.
2. Felonies within clergy.

Armour. Imbezzling it, 31 Eliz. c. 4. See Felonies within clergy in this title.
Affraight. Afflicting persons with intent to tear or spoil their clothes, 6 Geo. 1. c. 23. 11th. See Robbery under this division.
Bridge. Defrauding London bridge, 29 Geo. 2. c. 40. 6th. See Felonies without clergy.
Or Whiten bridge, 20 Geo. 2. cap. 22.
Or Hampton-Hartbridge, 23 Geo. 2. c. 37. 12th.
Or Bills bridge, 24 Geo. 2. c. 38. 31st. 31st.
Or Sandwich bridge, 28 Geo. 2. c. 55.
Or Why bridge, 24 Geo. 2. c. 73.
Or Black Friars bridge, 29 Geo. 2. c. 86.
Or Jeremy Ferry's bridge, 30 Geo. 2. c. 59.
Or Old Brentford bridge, 30 Geo. 2. c. 63. 19th. 31 Geo. 2. c. 46.
Bail. Perfoning bail before commissioners in the country, 4 W. & M. c. 4. 4th. 4th. See Felonies without clergy.

Bigamy. See Polygamy.
Blacklead. See Lead.

Stacks of corn, house, &c. in the night-time, 22 & 23 Car. 2. c. 7. 2nd. See Felonies without clergy.
Cattle. Killing them in the night, &c. 22 & 23 Car. 2. c. 7. 2nd. See Felonies without clergy.
Cloth. Stealing it, or wool, left to dry, off the ten- ters, &c. the third offence, 15 Geo. 2. c. 27. See Felonies without clergy.

Corn. Destroying granaries, the second offence, 11 Geo. 2. c. 22. See Felonies without clergy and See Burning, ante.
Council. See King.
Copper. See Money, Lead.

Coffin. Running goods five in company armed, 8 Geo. 1. c. 18. 6th. See Felonies without clergy.
Assembling armed to the number of three for running goods, 9 Geo. 2. c. 35. 10th.
Perons deemed smugglers according to the description of 9 Geo. 2. c. 35. 13th.

Harbouring offenders against the laws of customs, 19 Geo. 2. c. 34. 3rd. See Felonies without clergy.
Dike. Cutting them in martha land, 22 H. 8. c. 11. 2 & 3 P. & M. c. 19.
Eype. See Priefour.
Fib. Fitting in another pond with intent to steal, 31 H. 8. c. 2.
Flees. See Lach.
Foreign State. Sending it without taking oath of allegiance, 33 re. c. 4. 1st.

Forgery. Of bank bills, 11 Geo. 2. c. 9. 6th. 6th.
Of bank notes and indorsements, ibid. See Felonies without clergy.
Gauler. Foreign prisoner to become approver, 14 Ed. 3. c. 10.

Hawk. Stealing one, 37 Ed. 3. c. 19.
Hunting. In the night or in disguise, 1 H. 7. c. 7. 7th. See Felonies without clergy, title Black act.
Iron bars. Stealing them, fixed to buildings, 4 Geo. 2. c. 32. See Land.
King. Conspirering or imaging to destroy him, or any of his council, 3 H. 7. cap. 14. See Felonies without clergy, title Privy counsellors.

Labourers. Confederacies of masons to prevent the flatures of labourers, 3 H. 6. c. 1.
Lead. Entering mines of black lead with intent to steal, 25 Geo. 3. c. 10.
Stealing it, fixed to buildings, 4 Geo. 2. c. 32.
Receivers of lead, fleten, ibid. 3rd.
Buying or receiving lead, iron, copper, &c. knowing it to be stolen, 29 Geo. 2. c. 30.
Locks. Perons guilty of demolishing them, or of fencing or fastening, 11 Geo. 2. fl. 2. c. 10.

Maining. And after cutting out tongues or putting out eyes, 5 H. 4. c. 5. See Felonies without clergy.
Marriage. Solemnizing it clandestinely, 20 Geo. 2. c. 33. 8th. See Women.

Mariners. See Mutiny, Seamen.

Money. Transportion of silver, or importation of false money, 17 Ed. 3. not printed.
Multiplication of gold or silver, 5 H. 4. cap. 4. repealed by 1 W. & M. fl. 1. c. 30.
Cointng or bringing in gally-half-pence, fuskins or dodkins, 3 H. 5. c. 1.
Payment of blanks, 2 H. 6. c. 9.
Blanching copper, or putting off counterfeit money, 8 & 9 W. 4. c. 36. 6th.

Mistri. In mariners, hindering commanders from fighting, 22 Car. 2. c. 11. 9th.
Officers, &c. defrauding ship, ibid. 12th. See Felonies without clergy.
Officers or follower upon or beyond the sea raising mutiny, defrauying or refuting superior, 2 & 3 Ann. c. 20. 5th.

35. Palaces. Entering into King's houfe with intent to steal, 33 H. 8. c. 12. 27th.

Plague. Perfons infected with it going abroad, 1 Jas. 1. c. 31. 7th.

Polygamy. By 1 Jas. c. 11.

Priefour. Affiling one committed for treason or felony (except petty larceny) to attempt an escape, 16 Geo. 2. c. 31. See Gauler.

Precepts. Opposing the execution of it in any pretended privileged place, 9 Geo. 1. c. 28.

See Felonies without clergy.

Pursuer. In some cases by 28 Ed. 1. fl. 3. c. 2.

N.B. Purveyance is taken away by 22 Car. 2. c. 24.

Rape. By 13 Ed. 1. c. 34. See Felonies without clergy.

Records. Withdrawing them, 8 H. 6. c. 12.

Refuer. Refusing the body of offender executed for murder from the sherif or surgeons, 25 Geo. 2. c. 37. 10th. See Felonies without clergy, Hunting, Spirifituous liquors.

Rogue. Incorrigible, breaking out or escaping from house of correction, or offending a second time, 17 Geo. 2. cap. 5. 9th.

Adjudged
F E L

Adjudged to the galleys without licence, 39 Geo. c. 4. 1 1st. c. 7. & 25. repealed by 12 Ann. 8. c. 23.

Robbery. Stealing furniture from lodgings (if under 12 d.) 3 W. & M. cap. 9. sect. 5. See Felonies without

clergy.

Affranging with intent to rob, 7 Geo. 2. c. 21. sect. 1. Servants. Defrauding, 5 Geo. 5. c. 27. See Felonies

without clergy.


Servants. Taking their master's goods at their death. 23 H. 6. c. 1. 2. If in use?

Affranging, &c. master wool-comber or weaver, 12 Geo. c. 3. sect. 6.

Imbussing goods delivered to them to the value of 40s. 21 H. 8. c. 7. perp. by 5 Geo. 10. Appen-
dences under 18 excepted, 21 H. 8. c. 7. sect. 2.

Shop. Exporting them alive, the second offence, 8

E. c. 3. sect. 2. See Felonies without clergy.

Ships. Defrauding them, 22 25 & 2 Car. 2. c. 11.

See Mutiny acts, and Felonies without clergy.

Slaves. See Loss.

Smuggling. See Custom.

Spirituous liquors. Refusing offenders against the acts concerning these liquors, 11 Geo. 2. c. 26. sect. 2.

24 Geo. 2. c. 40. sect. 28.

Stolen goods. Buyers or receivers of them, 5 Ann. c.

31. sect. 5.

Taking towards to help one to stolen goods (if he do not

apprehend offender) in some cases, 4 Geo. 1. c. 1.

11. sect. 4.

Store. Imbussing them to 20 l. value, 31 El. c.

4. sect. 4.

Treason. Anonymous accusation of high treason, 37

H. 8. c. 10. rep. 1 Ed. 6. c. 12.

Turnpikes. Defrauding them, 5 Geo. 2. c. 33. See

Felony without clergy.

Waterman. Carrying greater number of passengers than

allowed, if any passenger be drowned, 10 Geo. 2.

c. 21. sect. 9.

Women. Taking them away, and marrying or de-

filing them, &c. having lands or goods, 3 H. 7. c. 2.

See Felonies without clergy.

Wounds. Firing them, 1 Geo. 1. ft. 2. c. 48. sect. 48.

See Felonies without clergy.

Wool. Exportation of it, other than to the staple at

Calais, 18 H. 6. c. 15.

Transporting it out of England, Wales or Ireland,

17 & 14 Car. 2. c. 18. altered by the 7 & 8 W. 3. c.

28. See Cloth, and Servants ante.

3. Felonies without clergy.

Assizes. Before the fact in petty treason, murder,
burglary, robbery in dwelling-houses, or in churches, or

in or near the highway, horse-burning, or burning of

barns where there is corn or grain, 25 H. 8. c. 15 

& 6 Ed. 5. c. 9. 4 & 5 P. & M. c. 2.

Before and after in horse stealing, 31 El. c. 12. sect. 5.

Before the fact in stealing women, having lands or

goods, or being heirs apparent, 39 El. c. 9. sect. 2.

Before the fact in withcraight, 1 1st. c. 1. c. 12. re-

pealed by 9 Geo. 2. c. 5.

Before the fact in procuring any fire, recovery, deed

inrolled, statute, recognizance, bail or judgment to be

acknowledged in the name of another, 21 1st. c. 26.

Before the fact in maiming, 22 23 Car. 2. c. 1.

Before the fact in burglary, shoplifting, &c. 3 & 4

W. & M. c. 9.

Before the fact in robberies in shops, warehouse,
cash-houses or stables, 10 & 11 W. 3. c. 23.

Before the fact in piracy, in some cafes, 11 & 12 W.

3. c. 7. 8 Geo. 1. c. 24.

To forgiy any deed, will, bond, bill of exchange,

note, indorsement or alignment of bill or note, or any

acquittance or receipt, 2 Geo. 2. c. 25. perpetual by 9

Geo. 2. c. 18.

Vol. II. N°. 73.

F E L

To forging bills of exchange, accountable receipts, warrants, or orders for payment of money or delivery of goods, 7 Geo. 2. c. 22.

Before the fact in sheep stealing, 14 Geo. 2. c. 6.

And se 15 Geo. 2. c. 34.

Before the fact in stealing cotton, &c. from bleaching

grounds, 18 Geo. 2. c. 27.

Before the fact in thefts to 40 l. value in any vessel or

in any wharf, 24 Geo. 2. c. 45.

Before the fact in defrauding London Bridge, 31 Geo.

2. c. 30. sect. 6.

Author. See Store.

Ammunition. See Forgery.


Bank. Officer or servant of bank (receiving or im-

bussing any note, &c. 15 Geo. 2. c. 12. sect. 12. See

Forgery, Robbery.

Banks. Defrauding them, 6 Geo. 2. c. 37. sect. 5.

perpetual by 31 Geo. 2. c. 42.

Bankrupt. Not surrendering, or not submitting to be

examined, or concealing or imbussing their effects, 5

Geo. 2. c. 30.

Baffard. Mother concealing the death of a baffard

child, 21 1st. c. 21. sect. 4.

Bedford Level. See Fen.

Black act. Hunting armed and disguis'd, and killing

or stealing deer, or robbing warran, or stealing fish out

of any river, &c. or any persons unlawfully hunting in

his Majestys forests, &c. or breaking down the head of

any fish pond, mill, &c. of cattle, or cutting down trees,

or setting fire to house, barn or wood, or for the- and

tailing at any pertron, or sending anonymous letter, or

igned with fictitious name, demanding money, &c. or re-

fusing such offenders, 9 Geo. 1. c. 22. perpetual by 31

Geo. 2. c. 42.

Black lead. Offenders committed or transported for

entering mines of black lead with intent to steal, efta-

ping, or breaking prifon, or returning from transportation,

25 Geo. 2. c. 10.

Black mail. See Cumberland.

Bonds. See Forgery, Robbery.

Books. See Robbery.

Bridge. Wilful damaging London Bridge, 31 Geo.

2. c. 10. sect. 6.

Defrauding Wiffhmeier Bridge, 9 Geo. 2. c. 29. sect. 5.

Or Fulham Bridge, 13 Geo. 1. c. 56. sect. 3.

Burgery. By 25 H. 8. c. 6. 2 & 3 Ed. 6. c. 29.

revived by the 2 Geo. 17.

Burlzy. By 1 Ed. c. 6. c. 12. 18 El. c. 7. 12 Ann.

c. 7.

Burning. House or barns with corn, 23 H. 8. c.

1. 25 H. 8. c. 3. 22 & 23 Car. 2. c. 7. 43 El. c.


Breaking prifon. See Black lead, Perjury, Robbery.

Cattle. See Black Act, Sleep.

Challenge of jurors. Challenge above twenty, if the

indignity be for such offence for which the offender

would have been excluded clergy, if convicted or con-

fession, 25 H. 8. c. 4. 5 & 5 P. & M. cap. 4.

3 & 4 W. & M. c. 17.

Cloth. Stealing it from the rack or tenters, 25 Car.

2. c. 5. sect. 3.

Coal. Firing colliers, 10 Geo. 3. perpetual 31

Geo. 2. c. 42.

Corn. Persons transported for defrauding grannies re-

turning, 11 Geo. 2. c. 23. sect. 3. See Black Act, Burn-

ing, Cumberland.

Counsel. See Priy Couneil.

Cumberland. Forcibly carrying subjests out of Cum-

berland, Northumberland, Wifhmoreland, and Durham,

and taking or giving black mail, burning corn, &c.

43 El. c. 13. sect. 7.

Notorious thieves, or spoil-takers in Northumberland

or Cumberland (or to be transported at discretion of

judge). 18 Car. 2. c. 3.

Coventry. Persons liable to transportation for offences

against the customs, offending again, after having taken

the
the benefit of the indemnifying aet, 9 Geo. 2. c. 35. sect. 7. 18 Geo. 2. c. 28. sect. 7.
Perjury, convicted of wounding custom-house officers, returning from transportation, 6 Geo. 1. c. 21. sect. 33. 3 Geo. 2. c. 29. sect. 25. See Smuggling.
Cutpurses. See Pickpocket.
Deer. Perjury convicted of second offence in hunting and taking them away, or for coming armed into a forest with intent to steal them, 10 Geo. 2. c. 32. sect. 7. See Black Act.
Deeds invalid. Acknowledging them in the name of another, 21 Jac. 1. c. 26.
Egyptians. Remaining in the realm one month, 1 & 2 P. & M. c. 4. sect. 3.
Affiliating with them one month, 5 El. 2. c. 3. 5 East India Bonds, &c. See Forgery, Robbery.
Exchequer Orders. &c. See Forgery, Robbery.
Fines. Acknowledging them in the name of another, 21 Jac. 1. c. 26.
Fith. See Black Act.
Footgates. See Turnpike.
Forgift. See Black Act.
Of testimonial of justices by soldiers or mariners, 39 El. c. 17. sect. 3.
Of deeds, will, bill of exchange, note, indorsement, or receipt, on first conviction, 2 Geo. 2. c. 25. sect. 1. perpetual by 9 Geo. 2. c. 13. and fee 31 Geo. 2. c. 22. sect. 81.
Of authorities to transfer flock, or perforating proprietors, 18 Geo. 2. c. 22. Extended to funds established since 8 Geo. 1. by 31 Geo. 2. c. 22. sect. 80.
Of order for payment of annuities, or perforating proprietors, 9 Geo. 1. c. 12. sect. 4. 9 Geo. 2. c. 34. sect. 8.
Of new flamps, or receipts for monies payable on indentures, 8 Ann. c. 8. sect. 41.
Of the hand of accountant general, registrar, clerk of the report-office, or any of the catheters of the Bank, 12 Geo. 1. c. 32. sect. 9.
Of East-India bonds, 12 Geo. 1. c. 32. sect. 9.
Of South-Sea common seal, bonds, receipts, or warrants, to dividends, 9 Ann. c. 25. sect. 57. 6 Geo. 1. c. 4. sect. 56. 6 Geo. 1. c. 11. sect. 50. 12 Geo. 1. c. 32. sect. 9. and other subsequent acts.
Of Mediterranea payers, 4 Geo. 2. c. 18.
Of any entry of acknowledgment of bargain in bargain and sale in the registry of Park, the second offence, 8 Geo. c. 6. sect. 31.
Of stamp for marking gold and silver, 31 Geo. 2. c. sect. 15.
Of debentures, 5 Geo. 1. c. 14. sect. 10.
Of the marks on leather, 9 Ann. c. 11. sect. 44.
5 Geo. 1. c. 2. sect. 9.
Of the marks on linnen, 10 Ann. c. 19. sect. 97.
4 Geo. 3. c. 37. sect. 26.
Of regifter or licence of marriage, 26 Geo. 2. c. 33. sect. 16.
Of the common seal of Bank or Bank notes, 8 & 9 W. 3. c. 20. sect. 36. 11 Geo. 1. c. 9. sect. 6. 15 Geo. 2. c. 13. sect. 11.
Of Exchequer bills, &c. 7 & 8 W. 3. c. 31. sect. 78. 9 W. 3. c. 2. sect. 3. 5 Ann. c. 13. 3 Geo. 1. c. 8. sect. 40. 6 Geo. 1. c. 4. sect. 91. 9 Geo. 1. c. 5. 15 Geo. 1. c. 11. sect. 17. 6 Geo. 1. c. 3. sect. 156. 33 Geo. 2. c. 1. sect. 156.
Of lottery orders, 12 Ann. c. 2. 5 Geo. 1. c. 3. and other subsequent lottery acts.
Of flamps, 5 W. 3. & M. 4. c. 21. sect. 11. 9 & 10 W. 3. c. 25. sect. 59. 19 Ann. c. 23. sect. 64. 10 Ann. c. 19. sect. 115. 16. 13 Ann. c. 18. sect. 72. 5 Geo. 1. c. 2. sect. 9. 6 Geo. 2. c. 21. sect. 60. 29 Geo. 2. c. 12. sect. 21. 29 Geo. 2. c. 13. sect. 5. 30 Geo. 2. c. 19. sect. 27. 32 Geo. 2. c. 35. sect. 17. 2 Geo. 3. c. 36. sect. 8.
Of the hand of the receiver of the prefinies, 32 Geo. 2. c. 14. sect. 9.
Of the acceptance of bills of exchange, or accountable receipts, 7 Geo. 2. c. 22.
Of any warrant, or order for payment of money or delivery of goods, 7 Geo. 2. c. 22.
Fugitive, Stealing it from bleeding grounds, 4 Geo. 2. c. 16. 18 Geo. 2. c. 27.
Geld. See Breaking Prisun.
Helping to steal goods for reward. In some cases, unless the helper apprehends the offender, 4 Geo. 1. c. 11. Top. Cutting hop-binds, 6 Geo. 2. c. 37. sect. 6.
Hotels, sitting in, 7 El. 8. c. 8. sect. 2. 1 Ed. 6. c. 6.
12 sect. 10. 2 & 3 Ed. 6. c. 39.
Horses-breaking. See Robbery.
Houses. See Burning, Black Act.
Hunting. See Black Act.
Jewitt. See Prisum.
Judgments. Acknowledging them in the name of another, 21 Jac. 1. c. 26.
Letters threatening. Sending them, or refusing such offenders, 27 Geo. 2. c. 15.
Letters anonymous, or signed with fictitious name. See Black Act.
Landing. Stealing it from bleeding grounds, 4 Geo. 2. c. 16. 18 Geo. 2. cap. 27. See Forgeries 59.
Breaking into shops, &c. to real or deft linnen, yarn, or implements, 4 Geo. 3. c. 37.
Locks. See Turnpike.
Letters. See Forgery.
Maid. See Woman.
Maiming. Any person maliciously lying in wait, &c. 2 & 3 Car. 2. c. 1.
March. Firing engines for draining them, the second offence, 12 Geo. 2. c. 34. 14 Geo. 2. cap. 24.
21 Geo. 2. c. 13. 17.
Marring. Wandering without testimonial of justices, 39 El. c. 17. sect. 2. See Forgery.
Departing within the year from the service of those who took them, to save them from execution, 39 El. c. 17. sect. 4.
Marrage. See Women.
Marrying. Uttering false money the third time, 5 Geo. 2. c. 28. sect. 3.
Musters. Standing mute, or not answering directly, 25 H. 8. c. 3. 1 Ed. 6. c. 12. 4 & 5 Pb. & Mar. cap. 4. 3 W. H. & M. c. 9. 1 Ann. c. 9.
Northumberland. See Cumberland.
Notes. See Forgery, Robbery.
Ordinances. See Stowes.
Outlawry. For offences not within the benefit of clergy, 1 Ed. 6. c. 12. 4 & 5 Pb. & M. c. 4. 8 El. c. 4. 18 El. c. 7. 22 Car. 2. c. 3. 3 & 4 W. & M. c. 9. Petty Treasons. See Murder.
Perjury. Person convicted of wilful and corrupt perjury, escaping, breaking prision, or returning from transpor- tion, 2 Geo. 2. c. 25. sect. 2. See Priusins.
Pickpocket. Taking clan & secreto from the person above the value of 12d. 8 El. c. 4.
Person laying violent hands on his commander, to hinder him from fighting, &c. to suffer as a pirate, 11 & 12 W. 3. c. 7. sect. 9.
Trading with pirates, 8 Geo. 1. c. 24.
Plague. See Qurantine.
Payroll recusants. Refusing to oblige, or not departing the realm within a time limited, or returning without the King's leave, 35 El. c. 1. sect. 3. 35 El. c. 2. sect. 10.
Priusins and Jewitt. They who receive, relieve or maintain them knowingly, 27 El. c. 2. sect. 4. See Priusins.
Prisons. Taking the benefit of insolvent acts and forswearing themselves, 28 Geo. 2. c. 13. sect. 2. 1 Geo. 3. c. 17. sect. 25. 5 Geo. 3. c. 41. 

Refusing to deliver up their effects, or concealing to the value of 20l. 28 Geo. 2. c. 13. sect. 39. 1 Geo. 3. c. 17. sect. 46. 

Perfons transported for affiling prisoners to escape, and returning, 16 Geo. 2. c. 31. 

Privy counselors. They who attempt to kill, or to strike or wound them in the execution of their office, 9 Ann. c. 156. 

Proofs. Perfons disguisted, abetting ritters who oppose the execution of process in pretended privileged places, 9 Geo. 1. c. 28. sect. 3. 

Quarantine. Not performing it, 7 Geo. 1. c. 3. 8 Geo. 8. c. 1. 8 Geo. 2. c. 13. 6 Geo. 3. c. 34. 26 Geo. 2. c. 8. 

Matters of ships offending against directions of 26 Geo. 2. c. 6. sect. 2. 

Concealing the having infected person on board, 26 Geo. 2. c. 6. sect. 3. 

Refusing to perform quarantine, 26 Geo. 2. c. 6. sect. 8. 

Sound and performing entering l:azard, and escaping before they have performed quarantine, 26 Geo. 2. c. 6. sect. 10. 

Superintendent of quarantine neglecting duty, 26 Geo. 2. c. 6. sect. 17. 

Concealing or clandestinely conveying letters or goods, 26 Geo. 2. c. 6. sect. 18. 

Rape. By 18 Ed. 2. c. 7, sect. 1. 

Carnally knowing a woman child under the age of ten years, 18 El. c. 7, sect. 4. 

Rebels. Pardoned and returning from transportation, or going into the dominions of France or Spain, 20 Geo. 2. c. 46. sect. 2. 

Perfons aiding them to such purposes, 20 Geo. 2. c. 46. sect. 2. 

Or holding correspondence with them, or with perfons employed by them, by letters or otherwise, 20 Geo. 2. c. 46. sect. 3. 

Receivers. Acknowledging it in the name of another, 21 Juc. 1. c. 26. 

Recovery. Acknowledging it in the name of another, 21 Juc. 1. c. 26. 

Refus. Refusing convicts from transportation, 6 Geo. 1. c. 23. sect. 5. 

Refusing any person committed for, or found guilty of murder, or going to execution, or during execution, 25 Geo. 2. c. 37. sect. 9. 

Perfons transported for refusing the body of such offenders, after execution, from the thieff or surfeages, &c. and returning, 25 Geo. 2. c. 37. sect. 10. See Black act, Letter threatening, Turnpike. 

Riots. Affirming bonds, divided warrants of bank, South-Sea, East-India or other company, bills of exchange, navy bills or debentures, goldsmiths notes, or other bonds or warrants, bills or promissory notes, &c. is felony the same as if the money secured by such bond, &c. had been stolen, 2 Geo. 2. c. 25. sect. 3. and sect 31 Geo. 2. cap. 22. sect. 81. 

Offenders ordered to be transported for affailing with intent to rob, breaking goal or escaping, 7 Geo. 2. c. 21. sect. 2. 

Rogue. Branded, and afterwards offending, 1 Juc. 1. c. 7. repealed by 12 Ann. f. b. 2. c. 23. 

Sacrilege. See Robbery. 

See. Treasons, robberies, felonies, murders and confederacies done upon the sea, 28 H. 8. c. 15. sect. 3. 

Seamen. Persecuting them to receive their pay, 31 Geo. 2. c. 10. sect. 24. 

Shruffstealing. By 14 Geo. 2. c. 6. extended to bull, cow, &c. By 15 Geo. 2. c. 34. 

Ships. Defrauding them wilfully, 22 & 23 Car. 2. c. 11. sect. 2. 1 Am. f. b. 2. c. 9. 4 Geo. 1. c. 12. 11 Geo. 1. c. 20. See Robbery, Week. 

Shooting. See Black act. 

Sluicer. See Turnpike. 

Smuggling. By 8 Geo. 1. c. 18. 

Applying armed for running of goods, 19 Geo. 2. c. 34. sect. 5. 

Perfon transported for affiling in running goods, and returning, 9 Geo. 2. c. 35. sect. 10. 

Perfons convicted of running goods, returning from transportation, 8 Geo. 1. c. 18. sect. 6. See Customs. 

Soldiers. Departing without licence, 7 H. 7. c. 1. 

3 H. 8. c. 5. & 3 Ed. 6. c. 2. sect. 6. 

Swearing without testimonial from justices, 39 El. c. 17. sect. 2. See Forgery. 

Departing within the year from the service of those who took them to save them from execution, 39 El. c. 17. sect. 4. 

Inscribing or causing others to lift in foreign service, 9 Geo. 2. c. 30. 

Accepting commission from the French King.—Continuing in the French service after 29th of September 1757. 

Contradicting to lift in foreign service, 29 Geo. 2. c. 17. South-Sea company. Officer or servant immizling their effects, 24 Geo. 2. c. 11. sect. 3. See Forgery. 

S. 3. bonds. See Forgery, Robbery. 


Stolen goods. See Helping to stolen goods. 

Stones. Embrazing them to the value of 20l. or offending against 31 El. cap. 4. concerning embrazing of flowers, 23 Car. 2. c. 2. sect. 3. 

Transported. Felons returning within the time, 4 Geo. 1. c. 11. 6 Geo. 1. c. 23. 16 Geo. 2. c. 15. See Refus. 

Tres. See Black act. 

Turnpikes. Defrauding them, or locks, fliazces, or floodgates, or refusing such offenders, 8 Geo. 2. perpetual by 27 Geo. 2. c. 16. 

Warren. See Black act. 

Wharf. See Robbery. 

Wharfinger. By 1 Juc. 1. c. 12. repealed by 9 Geo. 2. c. 5. 

Woods. See Black act. 

Wool and woollen manufactures. Unlawful exporters returning after transportation, 4 Geo. 1. c. 11. sect. 6. 

Opposing officers of customs, excise, &c. in seizing wool, 12 Geo. 2. c. 21. sect. 26. 

Defrauding woollen goods, or rack, or tools, 12 Geo. 1. c. 34. sect. 7. See Cloth. 

Women. Stealing them, and marrying or defiling them, having lands or goods, or being heirs apparent, 39 El. c. 9. 

After conviction of an offence that was within clergy, outru of it on conviction of any other felony, 3 & 4 W. & M. c. 9. 

Wreck. Making holes in ship in diffre, or steaiing pump, 12 Ann. f. b. 2. c. 18. sect. 5. 

Plundering shipwrecked goods, or beating, &c. with intent to kill, or otherwise obtructing the escape of any person from such ship, or putting out false lights with intent to bring any ship into danger, 26 Geo. 2. c. 19. 

See Arefey, ante. 

See
FEM

See Eligies.

And for the furred specie of fable, as Murder, Burglary, Rape, Saboty, Larceny, and many others, see the respective heads.

Féalty under colour of law. A man came to Smithfield market to sell a horse, and a fellow inquired of the owner delivered his horse to the jockey to ride up and down the market to try his prices; but instead of that, the jockey rode away with the horse: this was adjudged felony. 

King 52.

Coming into a house by colour of a writ of execution, and carrying away the goods, is felony. 2 Port. 64. cites Farr's cafe—Sid. 254. Psief. 17 Cor. 2. B. R. The King v. Farr. A. comes into a seamstress's shop and Cheapens goods, and runs away with the goods out of the shop, openly, in her fight; this is felony. Regn. 276. Chiffer's cafe. So, under colour of outlawry, to take, when there is no color of felony. — So by ejectment fully obtained getting into possiflion of a house, and converting the goods. Psief. 31 Cor. 2. in Suet. Regn. 276. in Chiffer's cafe.

A special truth prevails the felony, until such special truth is determined. Psief. 8 Ges. 2. 3 Mol. 76. King v. Melon. But while that truth is determined, the party may be guilty of felony; as where a carrier carries goods to the place appointed, and after carries them away, and defpofes of them, this is felony; because by the law they are bound to deliver them to the buyer; if he brings them determined, and the defpofition is then in the first owner. King 23. cites 13 Edw. 4. 9 b. — So, if one delivers goods to a porter in London to carry to a certain place, and he takes them and carries them away to another place, and there opens and defpofes of them; this is felony; which fur confused is supposed to be committed in the 13 Edw. 4. 9. ibid. Feltrum. A course hat, a felt. See Fittrum.

Feme covert, is a married woman, who is also foid to be covert baoen. 27 Eliz. 3. See Elzon and feme.

Feme flete, (Fr.) A woman alone, that is, single or unmarried. See Barn and femc.

The office of reaper or mower of the manor of D. was granted to a feme with a fee of 20 quarters of corn yearly, for excifling the fafe office for term of her life. Br. Grants. pl. 127. cites 30 Aff. 4. A woman may be a commissioner of fowers, and the ordinances and decrees of fowers made by her, and the other officers of fowers are not to be impeached for the caufe of her fex. Callis of Sweors 201. 202. cites Counter of Worwich's cafe.

The custody of a caflle was granted to a feme to be excifled per se et deputation femm. and held; that it may be good, tho' it was objected, that it appertains to the ward, and to be executed by men only. Mitch. 1 Taco. B. R. Caf. 7. 18. Lady Roffell's cafe.

A woman was appointed by the jutfices to be governcr of a workhouse at Chelford; and it was moved to quaff the order, because it was in the nature of a house of correffion, and to the office was not fitufible to her fex. But it was refufc to be altered. To a good appointment, and the may be capable of exercising the office, either by herfelf, or deputy, as the Lady Broughton did, who was keeper of the Gatehouse at Weftminster. 3 Salk. 2 cites Mitch. 2 Ann. Ann.

In an affiftant, for money had and received to the plaintiff's use, tried in London, coram Lee Ch. J. the following cafe was made for the opinion of the court of B. R. vla. That upon the death of Robert Bly, fefton of the parish church of St. Batholph's without Aldergate, two candidates offered themselves to be elected in his room; vla. the widow of the fefton deceased, and the plaintiff; the other were the books, the plaintiff appeared to have a majority of male votes, but that afterwards, the widow polled 40 women, and then he had the majority; that the widow, and all the female voters were housekeepers, paying foot and 1/2, and to all parish rates and aflaffims. And the first question was, if a woman was capable of this office; yea, Whether women could vote in such election. After three arguments at bar, it was resolved, that the office of fefton was no public office, nor a matter of skill or judgment, but only a private office of trufl, viz. to take care of the church, the wellfare of the minifter, and the books, viz. of the church; and that the widow had only a personal tie to the office, very proper to execute it, and if there was anything to be done in this parifh by a fefton, not proper for a woman, (as in every place the office varies in some respect or other,) the court faid, the cafe was defive in not fettling it foorth. And fecondly, it was resolved, that being a matter of no public concern, and only relating to themfelves and the reft of the parishioners, women have like- wise a right of election of fuch officer; for they have an equal interest in the church; St. as the male parishioners, and therefore ought to have an equal right to appoint a fecton to be elected in it. 13 Fid. Ars. 159. Trin. 13 Ges. 2. B. R. Oliva v. Bape. Feme fole merchant, is where the feme trades by hcrfelf in one trade, with which her husband doth not meddle, and buys and fells in that trade; there the feme shall be fuid, and the husband named only for conformity; and if judgment be given againft him, execution fhall be only againft the feme. Gra. Cas. 69. Psief. 3 Cor. C. B. Langh. 183.

Such a feme may sue for an action without her husband; per Wyat Ch. J. Psief. 31 Eliz. B. R. Le. 131. in the cafe of Chamberlaine v. Toorp.

Every feme fole, which trades in London, is not a mo. chargeable to fuch fume. A writ of execution the sheriff returned, that the plaintiff brought his action in the sheriff's court in London againft the defendant; and his wife as a feme fole merchant, and had a verdict; and how that by custom in the city of London the Lord Mayor is Chaffellor, and may call caufes before him out of the fhiriff's court, and rule them according to equity; and fiews how that the Lord Mayor had called this caufe before him, and ordered the plaintiff fliould have judgment, and that the defendant fhould pay costs within 14 days; and that the fume fhould be paid by 50. quarterly, or else that execution fhould go; and that this was the reafon why he could not make execution: The court held the return fufficient, and the custom rafoonable, tho' it had of late been abufe. Skem. 67. Mich. 34 Cor. 2. B. R. Barns v. Barns. Cafe was brought in the Mayor's court upon an indeb. off. for 57l. according to the custom of the city. The evidence was, that the defendant traded in fome office, or other way for her life; the jury fuded, that defendant had been a ferman, but left off his trade 20 years before, and turned diflinguifed teacher, but the wife lived apart from him within the liberty of the city, and exercised the art of making gin, lace, and the husband no ways intermeddled; that the said her mother, kept no fhop but worked in the garret; that the husband got the goods of the plaintiff to carry her trade, amounting to 57l. and that after her death the defendant promised payment; judgment was given by Rider for the defendant, and be declared, that Tryby was of the fame opinion. Mich. 2 W. & M. Show. 183. Favelon v. Piant.—The Reporter who argued this cafe for defendant, makes a quare, and says it deferves confideration, if fuch a feme fole trader dies, and leaves an estate, and the husband poiffeffes himfelf of it, if he fhould not be aferverable for her debts.

If the husband relin qué, or become bankrupt, or be overtaken by another trade, or new incumblance with her trade, the is within the custom. Show. 184. in the cafe of Favelon v. Piant. cites Het. 9. 10.—or if both execute the feme trade difcilily by themselves, and not intermeddled with one another, Het. 9. 10. Psief. 3 Cor. C. B. Doust v. Langbam. A woman, who being a wife, and the husband had left her above twelve years before, and had carried on a trade in her own name as a widow, and gave receipts in her own name, being fued for a debt contracted in the way of her trade, gave co- venture in evidence, and gave evidence of her husband's being lately alive in Ireland; and Hold Ch. J. directed the jury to find for the defendant, and fo they did. 12 Mol. 603. Mich. 13 W. 3. Ann'. A widow
A widow and administratrix of B. used to deal in tea in B.'s life-time, and bought four tubs of C. at so much per tub, one of which A. paid for and took away; leaving 50 l. in earnest for the other three. Ruled at Guildhall, per Hals Ch. J. that the husband was liable on the wife's contract. Phil. 7. Ann. Sal. 113. Langfort v. Administratrix of Tiler. See London, Fenella, A woman. Flet. lib. 2, c. 1. p. 17.

Flence, is a hedge, ditch, or other inclosure of land for the better manure and improvement of the same. Jenner.

If A. be bound to incline against B. and against C. and the beasts escape out of C.'s land into B.'s land, and thence into the land of A. in this case A. shall not have treafu against C. But if A. be bound to incline against B. and D.'s beasts escape into A.'s land, and thence into the land of one D.; a stranger, there D. shall have treafu, and B. be put to a curia claudenda against A. F. N. B. 128. (268) in the notes there, cites 10 E. 4. 7. 36 H. 6. Bar. 68.

If cattle break in at my fence, I cannot punish the owner; but if after notice he sufferers them to continue, he has been reprieved by his judgment, though he may be at default. 2 Le 93. Arg. cites 22 Ed. 4. 49.

A. and B. exchanged lands, whereupon A. agreed to make the fences, and maintain them.—A. did not make them, but for want thereof, B.'s beasts break into A.'s ground.—A. brings treafu. Per three J. against Potons, viz. that it is bo to break into the land of A. into A.'s piece; but his remedy is by an action of slander on the premises, if without deed, or on covenant, by deed. Mich. 41. and 42 Eliz. 6. R. Co. E. 705. Newell v. Smith.

One cannot have treafu for breaking another man's fences, but if he be dammified by the breaking of it, he may have action on the fence against the party that broke it; per Rall. J. Mich. 24 Car. B. R. Stj. 131. in case of Sir A. A. Cooper v. J. F. God. A. sells to B. a piece of pasture lying open to another piece of pasture belonging to it, and R. a piece of pasture in running from into A.'s piece. So of dung, &c.


A. was poftelled of a close adjoining to a close of B. the fences between the said closes had, time out of mind, been repaired by C. though and through of my default. 2 Le 93. Arg. cites 22 Ed. 4. 49.

A. and B. exchanged lands, whereupon A. agreed to make the fences, and maintain them.—A. did not make them, but for want thereof, B.'s beasts break into A.'s ground.—A. brings treafu. Per three J. against Potons, viz. that it is bo to break into the land of A. into A.'s piece; but his remedy is by an action of slander on the premises, if without deed, or on covenant, by deed. Mich. 41. and 42 Eliz. 6. R. Co. E. 705. Newell v. Smith.

One cannot have treafu for breaking another man's fences, but if he be dammified by the breaking of it, he may have action on the fence against the party that broke it; per Rall. J. Mich. 24 Car. B. R. Stj. 131. in case of Sir A. A. Cooper v. J. F. God. A. sells to B. a piece of pasture lying open to another piece of pasture belonging to it, and R. a piece of pasture in running from into A.'s piece. So of dung, &c.


A. was poftelled of a close adjoining to a close of B. the fences between the said closes had, time out of mind, been repaired by C. though and through of my default. 2 Le 93. Arg. cites 22 Ed. 4. 49.

A. and B. exchanged lands, whereupon A. agreed to make the fences, and maintain them.—A. did not make them, but for want thereof, B.'s beasts break into A.'s ground.—A. brings treafu. Per three J. against Potons, viz. that it is bo to break into the land of A. into A.'s piece; but his remedy is by an action of slander on the premises, if without deed, or on covenant, by deed. Mich. 41. and 42 Eliz. 6. R. Co. E. 705. Newell v. Smith.

One cannot have treafu for breaking another man's fences, but if he be dammified by the breaking of it, he may have action on the fence against the party that broke it; per Rall. J. Mich. 24 Car. B. R. Stj. 131. in case of Sir A. A. Cooper v. J. F. God. A. sells to B. a piece of pasture lying open to another piece of pasture belonging to it, and R. a piece of pasture in running from into A.'s piece. So of dung, &c.
cap. 46. to be present with the escheator in every county at the finding of offices, and to give in evidence for the King as well as the value as the tenant: His office also was to survey the lands of the waste, and make the entries true which thereof into court; to align dower unto the King's widow, to receive all the rents of the ward's lands within his circuit, and to answer them to the receiver of the court. This officer is mentioned 32 H. 8. cap. 46. and is wholly taken away by 12 Car. 2. cap. 34. And in some ancient written indents that noble problems had their particular feodaries. Humfrey count de Stafford & de Perch, seigneur de Turbone & de Chauve, a nositer feodator en le count de Warwicke, &. Suches que nos, &c. Dat. 17 H. 6. Couvill. ed. 1727. See Kenet's Gloss, on the word Feodary, feodatory. These grants, to whom lands in fee or fee were granted from a superior lord, were called generally in Latin, bonitus, men, or bonamors, and in some other writings are termed valets, feuds, and feudatories. At the first infliction of beneficia, or fees (as they were afterwards called) they were revocable at the will of the lord, patron, or donor, when he pleased. Afterward they were granted for a year, and then for the life of the feodatory or valet, then in process of time they became irrevocable to the heirs male, and by degrees hereditary to the female. Couvill, edit. 1727. See Dr. Brady's Glossary, pag. 35.

Festum, festum litteraturæ, festum litteratorum v. Fes. Ty. 'tis mentioned in Thurn, Ann. 1721. Fesuit et reditium, relegium, feoditatem, fesam curiae, &c. Festum latrum. A lay-fee, or land held in fee, from a lay-lord by the common services to which military tenure was subjected; in opposition to the ecclesiastical holding in frank-almaine discharged from those burdens. See Kenet's Glossary.

Festum militis, or Militare. A knight's fee, which by vulgar computation contained four hundred and eighty acres, as twenty-four acres made a virgate, four virgates a hide, and one hide was one knight's fee. By which the common relief paid to the King or other lord was one hundred thilings; yet no doubt the measure was uncertain, and differed with times and places. Couvill, edit. 1727. Kenet's Glossary.

Festamonevus tertii et novi, or De festamenone tertii et novi. These phrases began in the reign of Hen. 2. when those knights or military tenants, who had been infeoffed in any fees or parts of a fee, at or before the death of the King Hen. 1. were said tenen teno de tertii et novi festamento. But thence, who had been infeoffed in their lands after the death of the said King, were said tenen teno tertii et novi festamento. Couvill, edit. 1727. See Citate.

Feoffment, (Feoffamentum,) by the opinion of Sir Thomas Smith de Repub. Anglor. lib. 3. cap. 8. and Wolf, part 1. Symb. lib. 2. fett. 280. is defended from the Gablew word feudam, which we interpret fee, and signifieth dominacione feudal. But (as the Gablew Wolf adds) it signifieth in our common law any gift or grant of any honours, causes, manors, messuages, lands, or other corporeal and immovable things of like nature, unto another in fee simple, that is, to him and his heirs for ever, by the delivery of seisin, and the possession of the thing given, and the title must be proved by deed or writing. And when it is in writing it is called a deed of feoffment, and in every feoffment the giver is called the feoffor, feoffator, and he that receiveth by virtue of the same, feoffee, feoffiteur. And littleton faith, That the proper difference between a feoffor and a donor is, that the feoffor giveth in fee sempiternum, the fee for ever, but the donor doth not; and it is the ancient and most necessary conveyance, because solemn and publick; and also because it cleareth all different abatement, subterfions, intrusions, and other defeentries, by which the entry of the feoffor is lawful, which neither fine, recovery, nor bargain or sale by deed indented and infeoffed above him in this. See Co. en Litt. lib. 1. c. 1. f. 1. Couvill, edit. 1727.

As all property in lands began by occupancy, so it seems the first method of transferring property was by

investiture; for as no man could originally appropriate, but by settling himself in the possession and application of it to his own use; fo no man could transfer but by a solemn public publication of the trust which the possession, and the ceremony used in such act of delivery is in our law called livery and scin, and is thus defined, Salamens rei fluidalis traditio sub praestatione fidem coronis titulils vavalis foata. Spelin, Gloss. 510.

The end and design of this institution was, by this form of ceremony or solemnity, to give notice of the transfer of the feud from one hand to another; because if the possession might be changed by the private agreement of the parties, such secret contracts would make it difficult and uncertain to discover in whom the estate was lodged, and consequently the lord would be at a loss of whom he might claim the rents and services of his manor, who by feoffing equally perplexed to discover against whom to commence actions for the profession and recovery of their right; to prevent therefore this uncertainty, the ceremony of livery and sein was instituted. 2 Bayl. Abr. 482.

This method of conveyance was made use of before men were acquainted with letters, and therefore was it required to be on the land, or near the land, that the other tenants of the manor might be witnesses of it, who in those days were called to the lord's court, to determine all controversies relating to such transfer; and after the use of letters a charter of feoffment was introduced, by which their recerciments were tended to the authentication or evidence of it; and so our law determined, before the statute of frauds and perjuries. 2 Bayl. Abr. 483.

For the better understanding this manner of conveyance, it is thought proper to consider,

1. The several sorts of livery, viz. livery in deed, and livery within view, or in law.

The livery in deed, is the actual tradition of the land, and is made either by the delivery of a branch of a tree, or a turf of the land, or some other thing, in the name of all the lands and tenements contained in the deed; and it may be made by words only, without the delivery of any thing; as if the feoffor being upon the land, or at the door of the house, says to the feoffee, I am content that you should enjoy this land according to the deed, or Enter into this house or land, and enjoy it according to the deed; this is a good livery to pass the freehold, because in all these cases, the charter of feoffment makes the limitation of the estate, and then the words spoken by the feoffor on the land, are a sufficient indicium to the people present, to determine in whom the freehold resides during the extent of the limitation; besides, the words being relative to the charter of feoffment, plainly denote an intention to enfeoff. Co. Lit. 48. a. 9 Co. 137. b. Thorowgood's case. 6 Co. 26. Sharp's case. 2 Roll. Abr. 7. and see Gro. Jus. 80. which seems cert. But if a man without any charter, being in his house, says, I here demise you this house, as long as I live, paying you 5s. per year, he hath only an estate at will, because the word demise denotes only the extent of the limitation of the estate intended to be conveyed; but bare words of limitation, without some act or words to deliver the intention of the feoffor to deliver over the posseslion, are not sufficient to convey the freehold; for if a charter of feoffment be made to a man and his heirs, this, without some other act, or word to give the possession, only passes an estate at will, because the act of delivery is requisite to the perfection of the charter;
but besides the charter of feoffment, there must be some act or words to deliver over the possession, before the feejee can enjoy it pursuant to the charter. 6 Co. 26. 2 Roll. Abr. 7. Co. Lit. 48. Cr. Litiz. 482. 9 Co. 138. Mor. pl. 43. 2.

If the feejee had delivered the charter upon the land in the name of fein of all the lands comprised in the deed, this had been good to execute the deed, and to give livery also; because the bare delivery of the deed or any other thing, in the name of fein of the land, is sufficient to give the same, and makes the feejee as, only to discover to all persons in whom the freehold is lodged; and this end is as effectually answered by the delivery of a deed, or any thing else in the name of a fein, as of a turft or a twig, the one being equally as visible and notorious as the other. 9 Co. 137. b. 138. a.

2. A being feized of land in fee borrows 20l. of B, and for repayment agrees to affio him the land; and thereupon they both went to the place, where A said to B, I am indebted to you 20l. and if I don't pay you before Michaelmas, then I bargain and sell this land to you; and if I don't pay you, with all my lands and goods, and that puts B in possession of the land; this was held a good livern, because here the possession was actually delivered pursuant to the agreement of affuring the land for the security of the money, which possession was to be reveld on the payment of the money by A the feejee. 2 Roll. Abr. 7. 10 Co. 26. 3.

The livern within view, or the livern in law, is when the feejee is not actually on the land, or in the house, but being in fight of it pays to the feejee, I give you vendor vogue, or land, go and enter into the same, and take possioon of it accordingly; this sort of livern seems to be made at first only at the court barons, which were anciently held sub dis, (that is, in the open air) in some open part of the manor, from whence a general survey or view, might have been taken of the whole manor, and the parts curi easily distinguished that part which was then to be transferred to the security. 2 Roll. Abr. 7. 10 Co. 26. 4.

But this sort of livern is not perfect to carry the freehold, till an actual entry made by the feejee, because the possession is not actually delivered to him, but only a licence or power given him by the feejee to take possession of it; and therefore, if either the feejee or feejee do enter, and take possession of the land, according to a perfeft intendment to the freehold, and this livern within the view becomes ineffeclual and void; for if the feejee dies before entry, the feejee can't afterwards enter, because then the land immediately depends upon his heir, and consequently no perfon can take possession of his land without an authority delegated from him who is the proprietor for the benefit and use of the heir of the feejee, because he is not the perfon to whom the feejee intended to convey his land, nor had he an authority from the feejee to take the possession; besides, if the heir of the feejee were admitted to take possession after his father's death, he would come in as a purchaser, whereas he was mentioned in the feejee to take as the representa- tive of his ancestor, which he can't do since the eftate was never vested in his ancestor. Co. Lit. 48 b. 2 Roll. Abr. 37. 1 Pent. 186. Mor. 85. Pollex. 48. 5.

But if the feejee, in such case, dare not enter into the land without peril of his life, he may claim the land, as near as he may safely venture to go, and this shall be sufficient to vest the possession in him, and render the livern within view perfect and complete; for no-body is obliged to expose his life for the security of his property; but when he has gone as far as he may with safety, the land is in his possession, and looks upon such intendment to be as effectual as the act itself; for otherwise it would be a power of a man, by his own act of violence, to deprive another of his right, and thereby to receive an advantage from an unlawful act. 2 Roll. Abr. 3. Co. Lit. 48 b. 6.

If a man delivers a charter of feoffment to his feejee, within view, and says, I will that you have the land that you see there, the which are comprised in this charter, according to the purport of the charter, this is a good livern within view; for the charter of feoffment fully denotes the intention to enfeoff, and the words are a licence to the feejee to enter into the land, and to take the possession thereof, according to the charter. 2 Roll. Abr. 7. 7.

But if the feejee had only delivered the charter of feoffment within view, and only flawed the feejee the lands, without paying any thing, the feejee had actually entered, and taken possession, and the other agreed to the entry, yet this, it seems, is not a good feoffment, because the bare shewing of the lands to the feejee implies no authority or licence from the feejee to take possession; and consequently the entry being without any authority, can't vest the freehold in him, because there was no written act, nor any public declaration made by the feejee, by which the parts might discovery a real intenion to change the possesion, and the subsequent agreement of the feejee can never support an act which was originally void; for tho' the feejee, after the delivery of the charter, might have the usufructory possession as tenant at will, yet the freethold makes still continued to the feejee; for that can't pass from one to another, without some solemn or publick declaration, that the parts may, upon any dispute, determine in whom the freehold reftes. 2 Roll. Abr. 7. 2 Co. 55 b. 8.

If a man makes livern, within view, to a woman, and before she enters the feejee marries her, and afterwards never claims any thing, but in right of his wife, this is a good execution of the livern; for the husband claiming the land in right of his wife, shall be sufficient to reduce the lands actually into her possession, since he is the proper person to transfer for her; therefore it is to be presumed to have parted with and delivered up the possession to her, since after the covariance he claimed the land only in her right. Perk. tit. 214. 2 Roll. Abr. 3. Era. Feoffment. 57. 1 Vent. 186. Pollex. 53.

So where two tenants were joint-tenants in fee, and one of them made a feoffment to a man, and livern within view, by saying, Go enter and take possession, and before the man entered he married the feejee; his entry after the marriage is a good execution of the livern, because by the livern within the view, an interefj paffed to the feejee, which was not revocable by the feme; and his entry after the covariance makes the utmost notoriety the thing is capable of, to discover in whom the freehold is lodged, and this entry shall be intended for his benefit; and therefore shall have a retrospect to the livern in view, to make it a perfect feoffment. 1 Mod. 91. 2 K. 894. p. 180. 1 Pent. 186. Parfons and Pears. Pollex. 45 to 53.

The livern within view may be made of lands in another county than where the lands lie, because the transmission of the feud was often made at the court-baron, in the presence of presse curi; and these courts being held sub dis, the feejee could have a view of every part of the manor; and therefore it was proper to attend this sort of livern in every part of invetiture, tho' the lands were in a different county, for notwithstanding that, they might have been part of the same manor for which the court was held. Co. Lit. 48 b. 9.

2. The effeéft and operation of livern, viz. the effeéft thereof to pass a future interest; the operation thereof where the feejee is out of possession; in what cases several parcels will pass by one livern, or where several parties may take by livern to one.

This ceremony was first instituted, that the parts of the county may, upon any dispute relating to the freehold, determine in whom it is lodged, and from thence be the better enabled to determine in whom the right is. Hence therefore it is, that if a man makes a feoffment, or lease for life, and the lessee dies, whereby his executer makes by it very immediately, the livern is void, and only an effeéft at will passes to the feejee; for the design of the investiture would fail, if such livern were effectual to pass the freehold; for it would be no evidence, or notoriety of the change of the freehold, if after the livern made, the freehold still remain in the feejee, the use of the investiture would rather create than prevent the uncertainty of the freehold, and in many cases would put men to fruitless trouble and expense in pursuit of their right; for
for by that means, after a man had brought his præcipit
against a person, whom he supposed to be tenant to the
freehold, and had proceeded in it a considerable time, the
writ might abate by the freeholder's vesting in another, by
virtue of a livery made before the purchase of the writ.
Another reason why such future interest, or any interest
in the life of a livery was, because no man
would be safe in his purchase, if the operation of livery
might create an estate, to commence many years after
the livery was made; and though they have allowed a
future interest, to commence by way of livery, yet that
had no such ill effect in making purchases uncertain, be-
cause a tenant under the power of the free-
holder, who by recovery might destroy them; and now,
unless such leases were made upon good considerations,
they are fraudulent against a purchaser; and 'tis not to be
presumed, that leases at such distances should be pur-
chased for value. 

Cor. Eliz. 451. 2 Fent. 204. Co. Lit. 217. 5 Co. 94. b.

Hence, by the way, we may account why a freehold
in reversion or remainder can't be granted in futuro,
though there no livery is necessary to pass it; as where
A. is tenant for life, remainder to B. in fee; A. makes
a lease for years to C. afterwards; and D. has
freedman, co. and where belides, feoffment
2 no

Cor. Eliz. 451. 2 Fent. 204. Co. Lit. 217. 5 Co. 94. b.

the livery, because such future grants create an
uncertainty of the freehold, and the tenant of the free-
hold being the person who is to answer the stranger's
præcipit, and where he takes this grant for the service,
was not sufficient to permit him, by any act of his
own, to prevent or delay the prosecution of their right.
Cor. Eliz. 451. 2 Fent. 204. Co. Lit. 217. 5 Co. 94. b.

But where a man makes a lease to commence from
Michaelmas, and after Michaelmas makes a livery
and seisin, this is sufficient to pass the freehold, because
in this case, at the time of the livery made, the postridge
and freehold were actually transferred to the leiffe, and
did not remain in the leiffe, after the notary's month,
which gives notice of transferring the freehold. 

Hob. 314. 

3 Bald. 290. Smith and Bale.

Yet if the feoffor had made a letter of attorney to
give livery, the attorney could not give livery after Mi-
chaelmas, without the livery and seisin being con-
tained for it; because the natural import of such autho-
ricity is to give livery immediately, and the authority of
the representative can't extend beyond the delegation.

Cor. Jac. 563. 
Hob. 314. 

A. by indenture demised to B. habendum, a die datâ
(with the date of June) indenture præcipit, for his
life, with a letter of attorney to make livery; the at-
orney made livery the 23d of July following, and
the livery was held to be void, because the effe in life be-
ing by the indenture to commence the 10th of June, the
attorney had no authority to change the commence-
ment of the estate; and therefore having not pur-
fued his authority, by not giving livery to the free-
hold commence, according to the deed, what he did
afterwards was without any authority, and consequently
void; but in this case, if the deed had not been delivered
till after the day of the date, and the attorney had given
livery at the time of the delivery of the deed, this had
been a good livery, because the deed of feoffment was
to govern the livery, but the deed itself had no effect till
the delivery; and therefore the attorney making the livery
at the time the deed of feoffment began to operate, which
was to govern it, seems to have been well enough exec-
uted. 

Cor. Jac. 153. Harington and Fau-
chardin. Mor. pl. 876. Cr. Eliz. 873.

If a man makes a feoffment to commence after his
own death, or makes a feoffment in this manner, being
upon the land; I do here, referring an effe in my own
and another's life, give you thefe my lands, to you and
your heirs; these are void feoffments, because the postridge
is not delivered at the time of the notoriety made;

and therefore if such feoffments were allowed, the in-
vestiture would be so far from being an evidence, to
discover in whom the freehold is lodged, that it would
often mislead the juries in such inquiries; besides, it
were asfo to suffer a man to revere a particular effe to
himself, and therefore the general inheritance be allowed
under such a feoffee. 

Cor. Eliz. 344, 345. Pob. 47, 48. 2 Rel.
Abr. 7. Collard and Collard. 


If a leafe for years be made to A., the remainder to
B. for fee, and livery is made, the freehold is well
conveyed to B., but this livery can't be made to B.
himself, because the postridge can't be delivered to him,
for that belongs to A. during the term; the livery there-
fore must be made to A. who is to receive the postridge,
and such livery actually vests the freehold in B. because
the presumption is, that every man accepts of a gift, which
is, for his interest; and A. is looked upon as the free-

Co. Lit. 60. 5 Co. 94. b. Co. Lit. 49. 2 Rel.

Abr. 8.

But this livery must be made to A. upon the land, for
a livery within the view will not pass the freehold to B.
for this livery within the view being ancienly made in
court, could only be made by the immediate h记者了解es of
the court freehold; and if the livery is not being a
freehold, an homager to the court, since he was only leiffe
for years, was not capable of such livery within the view.

Co. Lit. 49. b. 2 Rel. Abr. 6.

And this livery to A. must be made to him before
actual notice of the postridge, by virtue of the leafe, because
if the postridge be once filled by the leiffe for years, there
is no vacant postridge to be transferred by the livery, for
quod semel munem est amplius munem effe non pasti; no man
can receive that from another which is already in his po-

Cor. Lit. 60. Co. Lit. 49. 3 Co. 94. Mor.

1 Pead. 156.

If a leafe for years be made to A. remainder to the
right heirs of B. and livery and seisin is made to A.
yet the freehold does not pass from the leiffe; and therefore
the livery is void, because there was no person in being
at the time of the livery made, in whom the freehold
could vest, and the livery must not excite such future operation of the investiture,
because it would create an uncertainty of the freehold,
which would necessarily perplex and delay all proceedings
against the freehold. 

Co. Lit. 217. a.

If a leafe for years be made to begin at Michaelmas,
remainder to B., and livery and seisin is made,
the livery is void for the former reason; but a
lease for years may be made to commence in futuro,
because the freeholder, who is to answer the stranger's
præcipit, is, notwithstanding such future interef, cer-
tain and known, and therefore not within the reason of the
former case. 

Pead. 156. a. Co. Lit. 217.

If A. makes a leafe for five years to B. upon condition,
that if B. pays him 10l. within two years, then he
shall have a fee-fimple in the lands, and makes livery
and seisin to B. this passes the freehold immediately, and
B. has a fee conditional, because if the freehold were not
to vest in B. in the condition performed, it would be dif-
cult to determine in whom the freehold is, for such con-
ditions may be infringed in deeds, which are perfed
privately between the parties, and therefore not to pro-
per to govern the postridge and seisin of the freehold, as the
folemn investiture by livery, which is made in the public
view of the court freehold; therefore this formality was
first appointed to give notice of the transferring the freehold, it follows, that from the reason of the investiture
the freehold must pass at the time of the seisin made,
or not at all; but if A. had made a leafe for life, upon
like condition, to have fee, the livery made thereon shou'd
not pass; and therefore this formality might be dispensed
with because there pass a certain freehold, in all events, to the
leaffe, and the livery gave notice in whom it was lodged,
If a lease for years be made to A. and B. the remainder to C. in fee, and livery made to A., in the absence of B. whether the conveyance be by deed, and without the livery, 'tis good to vest the remainder in C. because by the bare demise, A. and B. have an interest in the land, during the term, without any farther ceremony, and each being equally invited to the possession, either may invest himself of the possession by entry, or receive the possession from the lessor by the solemnity of the livery; and therefore when the whole livery is delivered by the lessor, and livery made to A. in the absence of B. in the name of both, this livery is sufficient to vest the remainder in C. because, if A. had as much power to receive the possession of the whole, as the lease for years had been made to him only, he and B. being joint tenants by the demise, and thereby feised per my & per tuit. Co. Lit. 49. 5 Co. Lit. 94. 2 Rol. Abr. 8.

But if the lease for life had been made to C. to commence immediately, and C. had appointed A. and B. his attorneys to take livery from the lessor; the livery made to one of them alone had been ineffectual and void, because one only, without the other, had no authority from the delegation to receive the possession, and consequently to vest the remainder, because a tenant in common, by the authority of the principal, is a nulity, and void; but afterward it is, if the letter of attorney had been jointly and severally to receive livery. Co. Lit. 49 b. 5 Co. Lit. 94 b. Palm. 23.

Thus if there be livery for years of a house and severalclothes, and the lessor and all his servants being in the house, the lessor enters into one of the clothes, and makes a feifment of it, and gives livery, this is a void seifment; because the possession of part of the thing demised is the possession of the whole, for the impossibility, that a man should be in the actual possession of every part of the land at the same time; and consequently the lessor can not take possession of the clothe, which was filled by his lessor; and therefore the livery must be void, because the seifment had been made to A., whereas the livery was made to B. Co. 31 b. Bettsworth's cafe. Mar. pl. 397. 2 Rol. Abr. 4. Co. Lit. 48. Dyer 18 b.

So it is if the livery for years himself had not been in the house, or any part of the land, yet if his wife, children or servants had been on any part of the land, that part would be void. Co. Lit. 48. Upon the land, without either wife or servant on the land, does not fill the possession as to prevent the lessor from entering and making a good livery to pass the freedom, because the castle can't be said to continue upon the land annuis poftelidibus, for the benefit of their master, as a servant may, and duty ought to do. Co. Lit. 48. 2 Rol. Abr. 4. Dyer 18 b. Bro. tit. Feoffment 66, but Mor. 11. 1.

But if a man makes a lease for life of lands, and afterwards makes a seifment of the same lands, and makes livery and seifmen upon the land, by the assent of the lessor, and in his presence, this is a good livery to pass the inheritance, because the lessor's permitting the seifor to come upon the land, and make livery, is a sufficient quitting of the seifment to him, either by way of surrender, or to create a tenant in fee. And at the same time, to make the seifment and livery more effectual and valid. 2 Rol. Abr. 5. Shepherd and Greg. Bro. tit. Surrender 48.

But if the servant of the lessor were only on the land, the livery of the lessor the seifor, though with the servant's permission, had been seen in the whole livery continued in possession at the time of the livery made; for while the servant continued in possession, it must be only for the use and benefit of him that placed him there; and consequently the possession of the servant must be looked upon as the possession of the master; and therefore the livery must be void, because it could not deliver a possession which was still filled by the master, and which the master never conformed to part with; and the permission of the servant will not admit of such a contravention as was made in the precedent case, because the servant having by interest, by which the lands were feigned, as the echief of the Queen, and make a surrender, or a tenancy at will to the seifor.

2 Rol. Abr. 5.

But it has been held, where a man made a lease for years of a house, and afterwards made a seifment of it, with a letter of attorney to make livery, and the attorney made the seifment, that the servant, whose position in the house, and finding nobody in the house but the servant of the lessor, who quitted the possession of the house at the demise of the attorney, and then the attorney made livery, which the master approved of at his return, saving his term, that this was a good livery; because here the servant actually quitted the house, and thereby the attorney had a vacant possession to deliver to the seifor; to, if the attorney found the house himself upon the house, and had entred and oufet him, and then made livery, that had been good to pass the freeloard; for though a seifment had been made to the lessor, the possession became thereby vacant, and consequently by the livery might be delivered to the seifor. Dyer 303 a. 2 Rol. Abr. 5. Mor. 91.

A. feid of land in fee, held of the Queen in fowage, did, and it was found by officer, that he died without heir, by which the lands were feigned as the echief of the Queen, and B. the heir of A. traversed the office, upon which issue was joined, and pending the issue, B. made a deed of seifment, with a letter of attorney; and afterwards the issue being for B. judgment was given que le missa est R. fecis amns, and then the attorney made livery, after which there was no grant of the seifment: this was held a good seifment and livery; because, by the judgment against the Queen, her poftession was defeated, and B. was restored to his right of poftession, which he might have placed himself in at his pleasure; and therefore the right transfer that to another which he might actually invest himself in at pleasure. 2 Rol. Abr. 5. 6. Terry v. Brown.

Thus if land descends to J. S. who enters but into part of it, and makes a seifment of the whole, and livery in that part, in which he entered in the name of the whole, it is good. 1 Rol. Abr. 23. In this case, an entry into part may be conveired an entry into the whole, the seifor having a power to take the whole into his actual poftession at his will, the very act of poftession, with the livery, in all these cases, may reasonably be taken to be a determination of his will to take the whole; if a servant was in the possession, the seifment and livery would be invalid unless he were in possession. 2 Rol. Abr. 5.

If there be A. livery for years of fix acres, and he makes a seifment for years of three acres to J. S. and he in reversion enters upon J.'s, and makes a seifment with livery, this shall pass the three acres, because by the demise of A. for years, the possession became separate and personal, divided, which was united and one under the lease to A. himsclf; and therefore A.'s continuing in possession of his own three acres could never be in possession of the other three, which he had no right to during the demise 1
to 7. S. but if A. had only made a lease at will to 7. S. of three acres, the entry and livery of the rever- fioner had not pulled them, because he had not so purpo- sed, but had only made a lease for three acres, since he may enter into them when he pleases, by the determination of his own will; for no man can be actually upon every parcel of the land, yet the possession of one acre is very reason- ably confined to be the possession of the whole. 2. Co. 32. 100a. Dyer 18.

So it is in the case of a tenant at sufferance: as if ten- ant in tail makes a feoffment in fee to the use of him- self in fee, and afterwards makes a lease for years, and dies, by which the issue is remitted before entry, and consequently the estate of the fee for years is deter- mined in fee simple, and enters into the tenant at sufferance, because by the fee simple, out of which it was derived, is vanished by the remitter; and the issue enters into part of the land, and makes a feoffment of the whole, and gives a livery of that part into which he entered, in the name of the whole; this shall pass all the lands to which the issue was remitted, tho' the tenant at sufferance was in possession of part, because that possession may be reasonably supposed to be in me, which I may actually place myself in at my pleasure, and therefore the livery in that part, in which the issue had actually entered in the name of the whole, shall pass all the lands.

If A. be feoff for life of Black-Acre, and being like- wise feised in fee of White-Acre, makes a feoffment of both, and gives livery in White-Acre, in the name of both, this is a good feoffment of both Acres, because A. had the freehold and possession of both Acres, and therefore might well deliver them over by the infeftment; or by- wise if A. had been only feoffed of Black-Acre for years, for then it should not pass by the feoffment, because the charter of feoffment passes the interest in the term before the livery made, and a feller eftate by right shall be fup- pofed to pass, rather than a great wrong be done in the first instance, if the freehold in both Acres, no- thing passes till the livery was made; and therefore the livery must operate to pass the fee in both Acres, secundum formam charte, or else it can pass nothing. 2. Roll. Abr. 6. 9 Hen. 7. 25. 6.

But if A. had been feoffed of Black-Acre for years, in enter arius, as guardian to an infant, and had made a feoffment of both Acres, and given livery in White-Acre in the name of both, that had pulled both Acres to the feoffee; because the term being vested in the infant, the guardian could lawfully transfer it as if he had been in possession of it in his own right; and therefore the infant as such fee, in the manner of a fee simple, the husband life time, to the freehold in both Acres, no- thing should pass by the livery, and the livery must operate to pass the fee in both Acres, secundum formam charte, or else it will have no effect at all. 2. Roll. Abr. 4.

If a man makes a lease for life to A. and afterwards makes a feoffment to A. of the land in lease, this is a good livery and feoffment; for tho' the land was in lease to A. yet his acceptance of the feoffment and livery amounts to a furrerent, ut res magis valeat, and consequently the feoffor has thereby poffeffion to transfer by the livery to the feoffee. 2. Roll. Abr. 495. Dyer 338. Mor 636.

If A.'s wife was feoffed in fee in the land, and the husband makes a feoffment of the whole, the wife being upon the land, yet the livery shall pass in the name, because the husband had the whole feoffie, either in his own right, or in right of his wife; and therefore could deliver it over by the infeftment, tho' the wife disapproved to it. 2. Feq. & Tit. 223.

If the Queen be lefsee for years, and be in reversion enters upon the land, and makes a feoffment in fee, this is void; because the law prefers the feoffment for the Queen, who by constantly attending the business of the publick, is presumed not to have leisure to take care of her own interest; but if the Queen had made a lease of years to 7. S. and he in reversion had entered and ousted him, and made a feoffment, that had been good; because the Queen had no right to the possession during the lease to 7. S. and the reverfioner having gained the possession by his ouuting 7. S. might consequently deliver it by the infeftment. 2. Roll. Abr. 5. and see 2. Co. 53.

If a man be feoffed of two acres, and being difeased of one, makes a feoffment of the other, and livery in the acre in possession, in the name of both, this had not pulled both Acres, because the possession of one acre was still out of him, and the feoffment could not be any determination of the will of the difeisor. 2. Roll. Abr. 6. Dyer 18.

But if a man be feoffed of two acres, and makes a lease at will of one, and after enfeoffs 7. S. of both acres, this shall pass, because the very feoffment and livery is a determination of the fate as well, and consequently the feoffor has thereby reftored the possession in order to convey it by livery, otherwise a lease for years, because the possession is in the termor during the lease. Dyer 15. 2. Roll. Abr. 5.

If a man be feoffed of two acres, and makes a lease for years of one of them, and after makes a feoffment of both acres, and livery of the acre in his possession, in the name of both, the livery is void and inefficual to pass to the lease in fee, because that being full of the livery, the feffor had not the possession to transfer by the livery; yet such feoffment is a good grant of the reversion of the former interest, and makes the feffor an attorn for attorneys in Title, every man's act is construed most strongly against himself: and there- fore the feffor shall not be admitted to claim any thing in either of the acres, since the possession of the one was actually transferred by the livery, and the reversion of the other in lease by the deed of seffment, which, with the attornment of the tenant, amounts to a grant. Co. Lit. 49. a. 2. Roll. Abr. 56. Plow. 162.

But if there be a lease for years, remainder to B. for life, and C. the reverfioner in fee makes a feoffment in fee, with livery to A. this is void as a feoffment, because C. had no possession to transfer by the livery, that being already in A. and the freehold in B. by the former lease; and the acceptance of the livery by A. was neither a fur- render, nor an attornment; as in the former case it could not amount to a surrend, because of the intermediate freehold which was in 7. B. nor did the feoffment amount to a grant and attornment; for tho', according to the former case, every man's conveyance is construed against himself, and the act of the grantor shall be construed against himself. If a grant is inefficual, for want of attornment; for A.'s acceptance is not an attornment, because he shall not bring B. within his fenity, by any act which was not in its original intention designed to be prejudicial and injurious to B., by dis-puting his remainder. 2. Roll. Abr. 4. 56. 1. Roll. Abr. 191. 2. Roll. Abr. 111.

It seems, that anciently the feoffment and giving li- very was performed before the partes of the manor, when the lands lay; but this being found too much to frighten the transferring the possession, it was found necessary to admit the testimony of strangers, and this came afterwards to be established by the convenience of it; and because all men of the county assemled at the county-court, in order to determine disputes relating to the whole county, as the tenants of the manor did at their court-baron; and because there lay an appeal from the court-baron to the county-court, so that the partes of the county were thereby ultimately determined of all things relating to the par- ticular manors, it seemed the more reasonable to admit the partes commatis to attend the infeftment thur' any particular manor, and indirectly thur' the whole county; and from hence it came to be admitted, and to the law continues, that if a man feoffed of lands, in several villages in one manor, a feoffment of two acres, if the tenant of the feoffment or the head of the fett was fcin of parcel of the lands in one town, in the name of all the lands in that town and in the other towns, that all the lands of the feoffor lying in that county shall pass, as well as if there had been livery given in each town. Co. Lit. 523. a. 2. Roll. Abr. 11.
FE O

But if a man having lands in two counties makes a feoffment of both, and gives livery of the land in one county, in the name of all, the land in the other county shall not pass, because there was no relation or dependence between one county and another, as there was between the several manors and the county-court; for one county having no power or jurisdiction over another, the
parce pass and consequently there having been no notice given to the parcels of the other county, by any feoffment being void, and the feoffment must refuse where it was placed by the last in-
verfiture. Perk. 253. a. 2 Roll. Abr. 11.

But if a man extends into two counties, and a
feoffment be made of the whole manor, and livery only in the part lying in one county, in the name of the whole manor, yet the whole manor shall pass, because the
inverfiture is a notoriety equally to all the parcels of that manor of the transmutation of the polfleeion; and tho’ they lie in different counties, yet they reside in extant tenures, and that in the day of the seft
preferred to be conmult of every thing done within the
territory or manor to which they belong. Perk. feft. 220.

But if the manor of Dale extends into the counties of
D. and S. S. feoffed to him, by his tenth of the parcels of Dale in D. and livery and feft in D. nothing pass by this
livery but that part of the manor which lies in D. because the
feoffment being confined to the manor of Dale in D. nothing can pass that does not lie in the county of
D. Perk. feft. 218.

If a feoffment be made to A. and B. by deed, and livery
is made to A. in the absence of B, in the name of both, the livery is good to pass the estate to both; but
if the seftment had been made without deed, and the livery given to one, in the name of both, it should ope-
rate to him only, because the parties are united in a deed, they all take as one of the seftment, in the name of
the reft, is an actual delivery to them all, but without
deed they are not so united; and therefore the delivery
to one, in the name of several, is no actual delivery to
the reft, but the whole estate must refuse in him to whom it is delivered, and a subsequent affent can’t take it out of him, such affent being not necessary. But if the
reft, in the case of the seftment by deed, A. may be
looked upon as the attorney of B. to receive livery; and therefore the estate shall immediately vest in B. because
every man is presumed to affent to a grant for his advan-
tage. But if the seftment without deed will admit of no
such construction, because no man can receive livery as
attorney to another, without an appointment by deed.
Ca. Lit. 49. 359. 2 Vent. 203, 205. 5 Ca. 95. 2 Roll.
Abr. 9. 2 Leas. 23. Mutton’s cafe.

3. Who may make a seffment, and of making it by
letter of attorney.

If a person nen compus makes a seffment, and gives
livery himself, this is allowed on all hands to be good to
bind himself, so that he can by no process or plea avoid the
seftment, and refine himself to the polfleeion; the same
law of an ideot; and the reason is, because the
inverfiture being made before the pares curiae, their seftmen
tatulation could not be defeated by the person himself,
because it is presumed they are competent judges of the
ability of the seftor to make such seftment. 3 Roll. Abr.
and see tit. Treats and Innuances.

But if an infant makes a seftment, and makes a
livery himself, this shall not bind him, but he himself may avoid it by writ of dam nullat infra etatatem; yet the seftment of the infant shall not void in itself, as well because he is
allowed to confept for his benefic, as that there ought to
be some act of notoriety to relate the polfleeion to him
equal to that which transferred it from him. 4 Ca. 125.
2 Roll. Abr. 2. 8 Ca. 42. 43. Whittington’s cafe.

But if an infant makes a seftment, and a letter of
attorney to make livery, that is void; so if a person nen
compus makes a surrender or release, this is void in law;
so if he makes a letter of attorney to give livery; but the
pares at law allow, and consequently there having been no notice given to the parcels of the other county, by any notoriety of the transferring of the polfseeion, the
polfseeion must refuse where it was placed by the last in-
verfiture. Perk. 253. a. 2 Roll. Abr. 11.

As the infant’s seftment is voidable by dam nullat infra
etatatem, when the infant is of full age, so it is voidable by
him by entry during his nonage, but his letter of attorney is merely void; and the same law seems to be of a fine convet; for if he makes a seftment upon the land, ‘tis voidable by her husband; but if she makes a letter of
attorney to give livery, ‘tis absolutely void in law; and the
title is, because the contracts of those that are disabled by law to contract were void contracts; but their infe-
dations were not in themselves void, because they were
made coram paribus curia, who were presumed not to at-
test contracts of persons disabled by the law to contract,
especially since such contracts were made for military or
fagage service; but if there were the same causes of
wealth; and by these infeonations a (ranager was directed to bring his prargue against the person that was actually invested in the land, wherefore the infant’s seftment was good till it was avoided by an act of equal notoriety, to
the parties. As in the case of the seftment, the parties
must appear to do it with an act of equality of
livery with the act of seftment, or by bringing an act of
livery at full age, when the law had enabled him; by action
in a court of record, to set aside the seftment that he
had made during his minority; but the law enabled him
by entry to set aside the act coram paribus during his
minority, because the person might unde what was done
in pais; but the courts of justic refuse not to destroy the
act in pais till the infant, by his own discretion, had
chosen to avoid them, because it was derogatory to the
dignity of the courts of justice to set aside the felonum acts
in pais, till the infant had come to such age of discretion,
as might make it fully appear that the seftment was
made during his disability; for the infant was not received
to disable himself during the time of his disability; but
during such disability he might, by equal solemnity in
pais, disable himself, since such an act was only coram
paribus, in the same manner as the seftment itself was
made; but the perfect and express consent of the infant
bound him, and such act was void, and therefore such feoffice was a difficil, as

If an infant had been committed to the attorney
by the courts in pais, he was not admitted to affidavit himself, because there was no stated time, and his posture was not expressly bound to evidence and
therefore they could not bind; but it was to be convicned
and to be conscious themselves of their own follies or deffects; but the King, who had the care of all his subjects, might,
by solemn office found, avoid such acts of infancy,
and so might the heir at law after his death. 4 Ca. 125.
2 Roll. Abr. 2. 8 Ca. 42. 43. Gar-
diner and Norman. Perk. feft. 183.

A man may either give or receive livery by letter
of attorney; for since a contract is no more than the con-
tent of a man’s mind to a thing, where that content or
concurrence appears, it is most unreasonable to oblige
such person to be present at the execution of the contract,
therefore it may as well be performed by any other person
deleagated for that purpose by the parties to the contract.
Ca. Lit. 52. 2 Roll. Abr. 8.

But such delegation or authority, to give or receive
livery, must be by deed, that it may appear to the court,
that the attorney had a consideration to represent the
parties that are to give or take the livery, and where the
authority was purveyed. Ca. Lit. 48. b. 52. a. 2 Roll.
Abr. 9. 2 Polfinam and Grasie.

For if the letter of attorney be to make livery upon
condition, as to make a seftment conditional, and the
attorney delivers falsly in law, the livery is not void,
because the authority is not to create an absolute fee-simel; and
...and therefore such absolute feoffment shall not bind the feoffor, because he gave no such authority; and hence in some books the attorney is called a diffirett. 11 H. 4. 3. 2 Rull. Abr. 90. Co. Lit. 258. Perk. fett. 189.

But if the letter of attorney had been to make livery absolutely, and the attorney had made it upon condition, this forms a good execution of his power, and the feoffment good; because when the attorney had once delivered possession, he fully executed his power; and the condition annexed to it, being without authority, is void; and therefore shall not destroy the operation of the livery. 26 Aff. 39. 2 Rull. Abr. 8. Co. Lit. 258. Perk. fett. 192.

So if a warrant of attorney be given to make livery to one, and the attorney makes livery to two, or if the attorney had authority to make livery of Black-Acre, and he made livery of Black-Acre and White-Acre, tho' the attorney has in these cases done more, yet there is no reason that should vitiate what he has done pursuant to his power, since what he did beyond it is a perfect nullity, and void. Perk. fett. 189.

But if the attorney were to deliver seisin to two, and he had made seisin only to one, that had been void; because he had no authority to deliver the whole possession to one exclusive of the other, and therefore 'tis void for the whole. Perk. fett. 188.

An attorney cannot make a livery within view, because such a livery is not in words, instead of the act of delivery; besides, the power of the attorney is to deliver the possession, but that power is not executed by the livery, because the possession is not in the seisin till actual entry made by him, and consequently the attorney has not executed his authority. Co. Lit. 51. a. 2 Rull. Abr. 9.

If a letter of attorney be given to two jointly to take livery, and the seoffor makes livery to one in the absence of the other, in the name of both, this is void; because they being appointed jointly to receive livery are considered as one person. Co. Lit. 49. 2 Rull. Abr. 8.

But if a seoffment be made to A. and B. and the seoffor gives a letter of attorney to deliver seisin, and J. S. gives livery to A. in the absence of B. in the name of both, this is a good livery; for though the intire seoffment be delivered to one only, yet they being jointtenants, the delivery of seisin to one makes no alteration or change in the seoffment, because, if the livery had been made to both, each had been placed in the seoffment; besides that, every man being presumed to accept a gift for his advantage, A. is looked upon as the attorney of B. to receive the seoffment for him, and therefore the livery to A. ensues to the benefit of B. till he disages to it. Co. Lit. 49. 2 Rull. Abr. 8.

But if a letter of attorney be made to three conjunctimi & divisiim, and two only make livery, this is not good, because not pursuant to their authority, for the delegation was to them all three, or to each of them separately; yet if the third was present at the time of the livery made by two, though he did not actually join with them in the act of livery, yet the livery is good; because when they all three are upon the land for that purpose, and two make livery in the presence of the third, there is his consent to the act, though he did not join in it actually, since he did not dissent to it. Dyer 62. 1 Rull. Abr. 326.

If a letter of attorney be given to A. to make livery of lands already in lease, the attorney may enter upon the lease in order to make livery; because while the lease exists, the seoffor cannot deliver the seisin of it; and therefore to execute the power given him by the letter of attorney, it is necessary he should have a power to enter upon the lease; but by Roll, it is the safer way to infer a clause in the letter of attorney for the attorney to enter to 'other assises side expellense' Co. Lit. 52. b. Poph. 103. Dyer 131. a. 340. a. 2 Rull. Abr. 9.

If A. be divisited of Black Acre and White Acre, and gives a letter of attorney to enter into both, and make livery, if the attorney enters into one acre only, and makes livery, secundum formam chartae, this is not good, because the attorney has not purposed his authority; for the effete of the diffirett cannot be defeated without an entry into every one of the estates, and if the effete the attorney cannot execute his power in the manner it was delegated; and therefore what he did in this case was void. Co. Lit. 52. a. 2 Rull. Abr. 9.

If A. makes a lease for years to B. and after makes a deed of seoffment with a letter of attorney to B. to deliver seisin, and B. makes a livery for the same purpose, this shall not extinguish or affect his term, because the livery was made to pass the freehold, and that he did as representative to the lefessor; and therefore since the seoffice can claim nothing from the lefessor, the interret of the lefessee remains as it was, unaffected by the seoffment. Co. Lit. 52. a.

If lefessor for life make a deed of seoffment and letter of attorney to his lefessor to deliver seisin, if the lefessor makes livery accordingly, 'tis a good seoffment; but the lefessor, notwithstanding he gave livery himself, may enter for the forfeiture of the tenant for life; because the freehold being in the tenant for life, the lefessor was only his representative to transfer it; but if the tenant had been only leffor for years, and the lefessor had made livery, that had been no forfeiture of the term, because the freehold being in the lefessor, he could not be the representative of the tenant for years, for what the tenant had not; and therefore the freehold, which passed by the livery, must proceed from the lefessor himself, and consequently shall bind him. Co. Lit. 52. Perk. fett. 200.

There are few or no perons excluded from exercising this power of delivering seisin, for monks, infants, persons convicted of felony, and excommunicated, villains, aliens, &c. may be attorneys; for this being only a naked authority, the execution of it can be attended with no manner of prejudice to the persons under these incapacities or disabilities, or to any other peron, who by law may claim any interret of such disabled persons after their death. Co. Lit. 52. Perk. fett. 187.

A person at law may be an attorney to deliver seisin to her husband, and so may he in remainder be an attorney to make livery to the tenant for life. Co. Lit. 51. a. Perk. fett. 196.

This power of the attorney must be executed during the life of the person that gives it, because the letter of attorney is to constitute the attorney my representative for such a purpose, and therefore can continue in force only during the life of me, that am to be represented. And hence it is, that if J. S. make a letter of attorney to deliver seisin for life to A., and J. S. dies before A., he can't deliver seisin during my life, for that were plainly without any authority from me; nor can he do it after my death for the former reason. 2 Rull. Abr. 9. Co. Lit. 52. Perk. fett. 188.

This authority to give livery may be delegated by deed indented, though the attorney be not party to the deed, because the attorney takes nothing by the deed, but has only a naked authority delegated to him; and therefore a man may take an estate in remainder, though he is not party to the deed, a forti et uno not party to the deed may take an estate by power or by livery. 2 Rull. Abr. 8. 9. and wide Co. Lit. 52.

But if any corporation aggregate, as a mayor or commonalty, or dean and chapter, make a seoffment and letter of attorney to deliver seisin, this authority does not determine by the death of the mayor or dean; but the attorney so well execute the power after their death, because the letter of attorney is an authority from the body aggregate, which subsists after the death of the mayor or dean, and therefore may be represented by their attorney; but if the dean or mayor be named by their own private names, and die before livery, or be removed, livery after forms not good. 14 H. 8. 3. 11 H. 2. 19. Co. Lit. 52. b. 2 Rull. Abr. 12.

For more learning on this subject, sec 12 Vin. Abr. and 2 Bac. Abr. itt. Feoffment.
Form of a deed of feoffment, with a letter of attorney to deliver feint.

The indenture made, &c. between A. B. of, &c. of the one part, and C. D. of, &c. of the other part, witnesses, that the said A. B. for and in consideration of the sum of twenty pounds of lawful money, to him in hand paid by the said C. D. at and before the fealing and delivery of these presents, the receipt whereof be the said A. B. doth hereby acknowledge, and thereof doth acquit and discharge the said C. D. his heirs and assigns for ever by these presents, hath granted, bargained and sold, aliened, enfranchised, conveyed and confirmed, and the same to have and to hold to him, the said C. D. his heirs and assigns for ever, all that messuage or tenement, &c. now in the possession of, &c. and also the reversion and reversionary, remainder and remainders, rents and profits thereof, and all the fittings, rights, tile, interest, claim and demand whatsoever, of him the said A. B., of, and in to the said premises, and of, in and to every part and parcel thereof. To have and to hold the said messuage or tenement, and premises above-mentioned, with the appurtenances, unto the said C. D. his heirs and assigns, to the only proper use and behone of him the said C. D. and his assigns for ever, under the yearly rent of 6s.

And the said A. B. for himself his heirs and assigns, doth covenant and grant to the said C. D. his heirs and assigns, that he the said C. D. his heirs and assigns, shall and may from time to time, and at all times hereafter possess, have, enjoy and keep the said messuage, tenement and all and singular the said premises above-mentioned to be hereby granted, with the appurtenances, without let, trouble, hindrance, molestation, interruption or denial of him the said A. B. his heirs or assigns, or of any other person or persons whatsoever, claiming or to claim by, from or under him, the said A. B., or any of his aforesaid assignors, and all and every of the said premises above-mentioned, or any part thereof, by, from or under him, the said A. B. shall and may at all times hereafter, at the requit and costs of the said C. D. his heirs and assigns, make, do and execute, his said wife and procure to be made, &c. all and every such further and other lawful and reasonable grants, assigns, and assurances in the law whatsoever, for the further, better and more perfect granting and conveying, and assuring of the said premises by him the said A. B., and with the appurtenances, unto the said C. D. his heirs and assigns, to the only proper use and behove of the said C. D. and his assigns for ever, according to the true intent and meaning of these presents, as by the said C. D. his heirs or assigns, or by his or their counsel learned in the law, shall be reasonably devised and advised and required. And further, the said A. B. doth also covenant and grant, and by these presents doth make, ordain, &c. E. F. of, &c. and G. H. of, &c. true and lawful attorneys, jointly and either of them severally for him, and in his name, into the said messuage and premises, with the appurtenances, hereby granted or mentioned to be granted, or into some part thereof, in the name of the whole, to enter, and full and peaceable possession and seisin thereof for him and in his name to take and have; and after such possession and seisin thereof to taken and had, the like, full and peaceable possession and seisin thereof, or some part thereof in the name of the whole, unto the said C. D. or his certain assigns, or any other person, for and in the said messuage and premises to hold to him the said C. D. his heirs and assigns for ever, according to the true intent and meaning of these presents; raising, confining and allowing all and whatsoever his said attorneys, or either of them, shall do in the premises. In witness, &c.

Feoffor and Feoffee. Feoffor, Is he that infecffs, or makes a feeodment to another of lands or tenements in fee-simple. And feoffee is he that is infecffed, or to whom the feuoffment is to made. Cowell, edit. 1727.

From, According to the Saxons ancients, the word signifies the outlaws of the lord or chare, as customary tenants, rendred unto him a certain portion of viduals and things

Vol. II. No. 74.
Ferling. (Ferlingius.) The fourth part of a penny
quadranis. Quando quotidianum frumentum venditur pro 13 de
narr. tuno parvo coquillic de ferlingius; lat. fil. 12 16
ferramentalibus, e pistas & covil. 54 H. 3. Camden in his Brit.
hist. Huntington says, there were in these four fer-
lings, that is, quarters of wares. Cowell, edit. 1727.
Ferlingata terrae, and Ferlingus. The fourth part of a
yard-land. Declam acem fictam und fil. 34 48
ferlingata virgatum und virgatum militis, E. C. 12 Ed. 2. n. 18. Ebor. In ancient rec-
cords is used both ferlinga & ferlingia terrae. See Min.
Angl. 2 par. fol. 8. My Lord Coke tells us, that ferlingus
terrae is the fame as a quantitaine of land, and that it
contains thirty-two acres. But a quantinaire is no more
than a perche, with which it is but one acre. Cowell, edit.
1727. Da Friesa.
Frem, or Farm. (Ferna, from the French ferme, pudium.) Signifieth with us, house, land, or land, both,
taken by indenture or lease, or leaf parol. This in the
North part is called a Tack, in Lancashire a Farm-bolt, in
Eire a Hille. We may conjecture, that both the
French and English word came from the Latin firmus;
for we find locare ad firmam to signify with others as
much to do or set to farm with us; the reason whereof
may be in respect of the sure hold they have beyond te-
nants at the great foot of the Land. In the terms of the Law it is derived from the Saxon saman, which signifieth to feed or yield virtual; for in ancient time the resevations were as well in virtualls as
money; how many ways farm is taken, see Praedam, 
1727. Fermanup, An hospital: Fria of the fermory; from
Fermifonat, (from the Saxon fermeon, i. e. Lord, or
feeding.) The winter feast of deans, as tempus pingu-
ingum is the summer feast. Reo Dilito Ric. Cofel
caflyt manerii de Braftwyk salutem. Cum mittamus di-
felem vanutum nostrum Johanne de Fulham ad inchanen
fermonam in parici notris libidem, prout volere et filii melius
ad opus nostrum fare videtis faciendum. copiam. Vides man-
damus, &c. Class. 30 Ed. 1. 11. Cowell, edit.
1727. Fervens, A termus pinguedinis.
Ferigmog, A waite place where fenn grows. Cartular.
Ferramentum, (Ferramenta.) The iron tools or
instruments of a mill. Reparae ferramenta ad tris cara-
ra, that is, the iron work of three ploughs. Libeiger.
Ferrandus, An iron colour attributed to horeses, which
we call an iron grey. Ece poe de feru venien quem-
quefait cajusmodi equum babetem ut ille aubiacienctia
brui, et cum aeretet ferrandum, dixit et quendam tame equitatis
p404. Ferrure, The shoewing of hores. See Jonte of
court.
Ferry, Is a liberty by prescription, or the King's
grant, to have a boat for paffage upon a river, for car-
riage of horses and men for reasonable toll: it is usally
to cros a river. Terms of the Law.
A ferry is no more than a common highway; and no
action will lie for one's being disturbed in his paffage,
unless he allege some particular damage, &c. 3 Med.
394. 3.
A ferry is in respect of the landing-place, and not of
the water, the water may be to one, and the ferry to
another; as 'tis of ferries on the Thames, where the ferry
in some places belongs to the archbishop of Canterbury,
where the mayor of London has the interest of the water;
and in every ferry, on the land on both sides of the water,
ought to belong to the owner of the ferry, or otherwise
he cannot land on the other part. 13 April 23 Eliz. in
Stacc. Savil 11. Inhabitants of Isbywh v. Bremen. And
every ferry ought to have expert and able ferry-men, and
to have paffage, and reasonable payment for the paffage.
And it is requisite to have one, who has property
in the ferry, and not to allow every fisherman to
carry, and recarry at their pleasure, for divers inconve-
nicience, espec. that, is kept but out of court. The in-
violations of two counties, any felon may be conveyed
from one county to another, secretly, without any notice.
Savil. 14.
A ferryman, if it be on salt water, ought to be
privileged from being prefud as a fider, or otherwise. Savil
11. 354.
Owner of a ferry cannot suppofee that, and put up
a bridge in its place without licence, and ad quod damnum
per Halts Ch. J. Fajeb. 3 Will. & Mar. Show. 241. 257.
If a ferry be granted at this day, he that accepts such
grant, is, fut interdicts a boat for his ferry, in the case
of Halts Ch. J. Show. 257. in the cafe of Pain v. Par-
tridge.
Custom for the inhabitants to be discharged of toll,
may have a reasonaable beginning by agreement, as
that the inhabitants of the town might be at the charge
of procuring the grant, and in consideration thereof,
man to find the boat, and take toll; and the inhabitants
to pay none; per Halts Ch. J. Show. 257. ut sap.
A common ferry was for all passengers paying toll,
but the inhabitants of A. were toll-free. An inhabitant
of A. may not be obliged for his toll, for keeping up the ferry;
because the former is a private right, but the latter a publick.
But he can't maintain an action for non
passing; for, fo, any other subject might bring an
action, which would be endless; but the taking toll was
founded on jurisdiction, and without special damage he can only
indict, or bring information. ibid.
Ferret, A fare or fare-fret; the customary pay-
ment for a paffage over a river, or crossing a ferry
in a ferry-boat with faring-men, or fares, or paffengers.
Feretchen, To fear sudden. Nemo patef de se,
dominii sibi pliociure fine e, nec ego delet relictum ejus ter-
men, (i.e. to fear suddenly,) nec effe rutilam, (i.e. to
give a bulky account,) de omnibus causis emendabilibus et
nulla imperceptibilia auditus, qui se petiri delet habeat
terminum requirendi & habendi dominam ius. Leg. H. 1.
c. 61.
Fell in capitis, Were some chief holidays, in which
the whole choir wore caps. In telfis quae in capitis sunt
Cowell, edit. 1727.
Fellmugmen, Ut illud monasterii sit liberatum ab illis
incommodis, qua nos Saxoica lingua feltingmum dicimus,
Mon. Angl. 1 par. fol. 125. a.
The Saxo istimummum signifies $fading, a pledge; fo that to be free of felting-
meant to be free of fines, and not to be bound for any man's forthcoming, who
should transfer the law. Cowell, edit. 1727.
Felling-penny, Earnett given to servants when hired
or retained, is so called in some Northern parts of Eng-
land, and in others it is termed yer-lenn, from the
Saxon seifhenn, to fallen or confirm. Cowell, edit.
1727.
Fellum, Properly signifies a feath, but it is usually
taken for a general court, which was formerly taken
for the great festivities in the year. Thus we read in
our historians, that in such a year the King kept his Christmas
at Windsor, at which time, viz. Reo apud Winton maximum felum & conci-
vium celebratum, tempore tatialis Domini, convocatis ille
principis & baronibus suis regn. Cowell, edit. 1727.
Fellum S. Michaelis, Is that day in which the
Christians fought with the Infidels, and obtained a
victory by the help of St. Michael, now called St. Michael's day.
Cowell, edit. 1727.
Fellum S. Patrick, Was thus intitul-
te, vix. A melancholy man, who led an holy life,
did every year hear the melodious harmony of angels in
heaven: At which being wonderfully surprized, and being
one day very earnest in prayer, an angel told him that on
that day the Virgin Mary was born. The day of
her birth was not known on earth, therefore it was
celebrated by the angels: this being told to the church,
that day was afterwards set apart to commemorate her birth. Cowell, edit. 1727. Hon. Angl. Jud. 3. cap. 16.

Feud, See Fred. Fred, Feudus.

Feudus. See Feudal.

Feudal baronies. Feudal baronies were, when the King, in the creation of baronies, gave a certain estate to the baron, he held it of the King, for the defence of the realm. Per Holt Ch. 1. There is no feudal barony remaining at this time, except Arundel. 1 Saiz. 253. Lord Gerard v. Lady Gerard.

Feudus. See Feudary. Feudary, is a recompence for engaging in a feud or faction, and the contingent damages; it having been the custom of ancient times, for all the kindred to engage in the kingman's quarrel; according to that of Tacitus, De moribus Germanorum, suffjære tam intimitias feu patri, feu propteriu, gam amicitias miscet eft. Cowell, edit. 1727.

Feuds. (Feoda.) Estates in lands were originally at will, and then they were called Munera; afterwards they were for life, and then they were termed Beneficia, and for that reason the livings of clergymen are so called at this day; and afterwards they were made hereditary, when they were called Feoda, and in our law fee-simple. Rel. Spel. 9. When Hugh Capet usurped the kingdom of France, about the year 947, to support himself in such usurpation, he granted to the nobility and gentry, that whereas till then they enjoyed their honours for life, or at will only, they should from henceforth hold them to them and their heirs; which was imitated by William called The Conqueror, upon his accession to the crown of England; for till his reign fees or fees were not hereditary, but only for life, or for some determinate time.

1 Saiz. 150. 2 Haw. 289.

Fluit. On a petition to the King, for his warrant to bring a write of error in parliament, he writes on the top of the petition Post fluitia, and then the writ of error is made out, &c. and when the King is petitioned to redress a wrong, he inorders upon the petition, Let right be done to the party. Staudt. Praeleg. Reg. 22.

Ftale, Fiscal, and Fiscalit. Bratt. lift. 3. f. 117. A commission or entertainment made for gain by bailiffs to those of their hundreds, or rather according to Co. 4 Inst. fol. 307. an extortion, color composition. See Stale.

Fiction of law. (Flatio juris, ) is allowed of in several cases: it must be framed according to the rules of law, and what is contrary in the conceptions of man; and there ought to be equity and possibility in every legal fiction. There are many of these fictions in the Civil law; and by some Civilians, it is said to be an assumption of law upon an untruth, in something possible to be done, but not done. Geuthrin and Barri. The feim of the confuence in a fist, is but a fiction in our law; it being an invented form of conveyance only. 1 Lill. Ab. 610. And a common recovery is fictio juris, a formal act or device by convey, where a man is defirous to cut off all the world, remains, &c. 4 Rep. 42. By fiction of law, a bond made beyond for, may be pleaded to be made in the place where abroad, in fiction in the county of Middlesex, &c. to try the fame here; without which it cannot be done. 1 Lev. 281. b.

There are five forts of fictions in law, abeyance, remitter, relation, presumption, and representation; per Dadderidge J. Js. 73.

Fiction is never admitted where truth may work; as where edes qua uhs, and his feejoin in a jfectament, it shall be the fecondament of the feujoin. Hill. 15 Jac. 2. 4 Rep. 126. in the case of Hackett v. Weart.

The law never shall make any fiction but for necessity, and to avoid a mischief; per Care. 3 Rep. 30. in the case of Butler v. Baker. — Ibid. 36. per Dadderidge J. 2 Roll. R. 502. in the case of Sheffield v. Radcliffe. — Js. 73. 5. C. and to avoid abuttedness, and prefer the right of a stranger; per Dadderidge J. 42.1. Cas. v. Pipsw. 1 Cas. in Cam. Suce. The law often makes fictions for prevarication of rights; per Gould J. 2 Med. 290.


Fictions of law must not be of a thing impossible, for the law imitates nature; per Dadderidge J. 2 Roll. R. 502. in the case of Radcliffe v. Sheffield.

You shall never make a man subject to the penalty of a statute, a fiction of law. Arg. Godl. 528. cites 11 Rep. 51.

No ecape can amount to a capital offence, unless for the crime, for which the party was committed, were actually such at the time of the escape; for it is not sufficient that it become such afterwards, from the beginning by a fiction of law; as where one is committed for having given a dangerous wound, and escapes, after which the party dies. 2 Haw. Pl. C. 135. f. 75.

All ficions of law are to certain respects and purposes, and extend only to certain perils; as the law supposes the vouchee to be tenant of the land, where in re verteite he is not; but this is as to the demandant himself, and to enable him to do things as to the demandant, which the demandant may do to him; and therefore a fine levied by vouchee to the demandant, or fine or relie from the demandant to the vouchee is good; but fine levied by a stranger to a stranger, or he made to him by a stranger, is void; per Care. Mch. 32. 43. Eliz. B. R. 3 Rep. 29. b. in Butler and Baker's case.

The King is not to be answered, bound, or defeated by ficions; and therefore he would have been bound in this provision, or remainder by a feigned recompence upon a common recovery, or warranty collative, without true and actual effects, &c. 502. in the case of Sheffield and Radcliffe, cites 6 Ed. 5. 56. and 1 Rep. 43. Altmore's case.

These things are properly ficions of law, that have no real effect in their own body, but are acknowledged and accepted in lieu of some special purposes. Hub. 222. cites Co. Lit. 265. b.

Fictiuta, A sort of payment anciently used in England; but of how much non confiun. Et nhs ut aliqua fightiuta vel mainbata condunmari. Leg. Edm. cap. 3. Cowell, edit. 1727.


 fict. Which we call fict, is in other countries the term for the fict. law, which is taken in the conceptions of man, and that the fiction of law is contrary to chattels. In Germany certain divities are called fict.

Fisci, Fisci. In a writ judicial, that lieth at all times within the year and day, for him who hath recovered in an action of debt or damages, to the sheriff, to command him to levy the debt or the damages to the goods against whom the recovery was had. This writ had

Upon a former relief the Sheriff cannot deliver the defendant goods to the plaintiff in satisfaction of his debt; nor ought he to deliver them to the defendant against whom execution is; but the goods are to be sold; and in flitting the money is to be brought into court. 

**Cra. Eliz. 504. Law. 589. S. P.**

But it has been held, that upon a fieri facias goods may be sold to the plaintiff, who pays out the writ, tho' not actually delivered to him. **Cumb. 452. and see Carth. 419.**

If the defendant dies after the execution awarded, and before it be served, yet it may be served upon his goods in the hands of the executioner or administrator; for by the execution awarded the goods are bound, and the sheriff need not take notice of his death. 

**Cra. Eliz. 181. 1 Med. 188. S. P.**

That this was clearly so before the 29 Car 2, before which statute the goods were bound from the title of the writ, but by this statute they are bound only from the time of delivery of the writ to the sheriff; but even since the statute, the execution feems good in this case, for the statute was made for the benefit of strangers, who might have a title to the goods between the title of the writ of execution and time of delivery to the sheriff, and not for the benefit of the party, or his executors or administrators. See **Cumb. 33. 2 Vent. 218. 1 Salk. 322.**

So if the plaintiff dies, the execution does not abate, and the sheriff may, notwithstanding, proceed in it, and cause the goods to be delivered more to the plaintiff; for by the writ commands him to levy and bring the money into court, which the plaintiff's death does no way hinder; besides, an execution is an intire thing, and cannot be superseded after it is begun. 1 Salk. 322. per cur. 3.

In trespass the sheriff justified, that by virtue of a fieri facias out of the Exchequer for the Queen's debt, he took the plaintiff's bealls, being levant and couchant upon the land of the debtor, and fold them for the Queen's debt; and adjudged that it was not lawful, for they were not to be sold as the goods of the debtor, but they might have been disolved for the Queen's debt. 

**Civ. Et. 431. 57 Eliz. 2 Bull. Ab. 159. S. C.**

If a fieri facias is awarded to the sheriff, upon which he takes an intire chell, and sells it for 40l. and returns the fieri facias with the 20l. into court, he may deatn the furpillage till the defendant comes to demand it of him; for he is not bound to search for the defendant; Per. Popham, and agreed. 

**Ney 59. 38 Eliz. Howde v. Cole.**

But if a fieri facias is awarded for 40l. by force of which the sheriff takes five oxen, every one of the value of 5l. and sells them all, it is clear that the defendant shall have action of trespass against the sheriff; per Gesow; which was agreed. 

**Ney 59. in case of Howde v Cole.**

On a fieri facias the sheriff may not break the outer door of the house, and enter; but if that open he may enter, and then may and ought to break the door of an entry or chamber which is locked, and break open any chell, and take the goods in it, in execution, and if he does it not, and leaves the house liable against him. **Brown. 50. Trin. 44 Eliz. Annu.**

This writ, though mentioned in the statute W. 2. 18, is a writ of execution at Common law, and is called a fieri facias, because the words of the writ directed to the sheriff are Quod fieri facias de bonis & catallis, &c. and from these words the writ takes its denomination. 

**Civ. Et. 290. b.**

The property till sale remains in defendant. **Brown. 41. Trin. 6 facet. Annu.**

The property of goods is vested by the delivery of the fieri facias, and an extent afterwards for the King comes too late, and that on the statute of frauds and piracy; per Holt. **Cumb. 123. Trin. 1 W. & M. in B. R. Lern- mers v. Thoroughgood.**

The King grants an annuity for 40 years to B, to be received by the hands of the receiver of the court of wards. This is a rent-ch,ge, and may be sold by the sheriff upon a fieri facias of the goods of B. It is otherwise of an annuity for years granted by a common person. Resolved in the court of wards by the two Juliets. 

**Ch. Batun. Jenk. 312. pl. 97. 3 Jac. Alyit Yor'a cafe.**

Debt against the sheriff lies for money levied on a fieri facias; before the return of the writ, he might take advantage of the execution; 2 Salk. 579. pl. 63. Trin. 31 Car. 2. B. R. Cabram v. Wedly. Payment to the sheriff on a fieri facias is a good plea, but not so to the garage. 2 Let. 262. Trin. 29 Car. 2. B. R. Taylor v. Belon. If the sheriff on a fieri facias doth sell a lease or term of a house, whereas it must not put the person out of his possession, and the vender in, but the vender must bring his ejectment; per cur. 2 Show. 85. pl. 74. Hill. 31 & 32 Car. 2. B. R. The King v. Dean and Bird, &c. At law when the officers are once in a house on a fieri facias they may break open any chamber doors or trunks for doing their execution. Agreed per cur. 2 Show. 85. pl. 78. Hill. 31 & 32 Car. 2. B. R. The King v. Bird. Goods of the wife vested in trulutes on the marriage, but the husband to have the use of them for life, were fixed on an execution for the debt of the husband, and the assignement adjudged fraudulent as to the creditors or assignees, per cur. Act. 32. 376. pl. 221. Mich. 1601. Underwood v. Merdant.

Upon a fieri facias the sheriff may take any thing but wearing clothes; if the party has two gowns he may take one of them. Per Hey Ch. 3. Salk. 359. Eliz. 8 W. 3. 2 Black. 101. v. Buckland.

Two or three 'facias were delivered the same day. Hale Ch. J. inclined that the sheriff had election to prefer either, but ordered it to be made a case. See quare now the late statute. 


Execution may be left first, first is good, but the Sheriff in the first may take action against the sheriff, unless he bid the sheriff play execution, or to that purpofe. 1 Salk. 320. Smalven v. Buckingham. In Salk. is a N. B. that he who brought the first writ told the sheriff that he was not in hale, and so took out no warrant, nor left any fees; and this inclined the opinion of the court more strongly against him. 

**Carth. 419. S. C.** And after several debates the judges were of opinion for the plaintiff who had taken out his execution laft, to which they rather inclined, for that it appeared that the other creditor did not demand an execution of his writ. And by Hale Ch. J. the ven- encr of the goods in such case has good title to them, which cannot be defeated by a subsequent execution of that writ which was first delivered; but the party concerned in such writ is put to his action against the sheriff; for otherwise it would be dangerous to make such pactsches of sheriffs, and that might make writs of execution of no effect. 5 Med. 376. S. H. 

Hale Ch. J. took notice that the party paid to the sheriff, "You may let it lie, it requires no hafe," and therefore defires no warrant, nor leaves any fee, and to the face upon the second fieri facias, good, and not to be avoided. And though the second fieri facias had been delivered a fortnight after, yet it is not the Sheriff's execution shall be good, and the party's remedy is only against the sheriff. 

effate of several men is uncertain. And in that regard, a fourteenth seems to be a rate anciently laid upon every town, according to the land or circuit belonging to it: Whereof Camden in his Bell makes frequent mention, particularly pag. 168, of Wells in Somersbury, thus: Qui tempore, ut testost certant Angioris lingue, eptichus ip- sum opidum semet, qui pro quorquintae hitis geldavit. And pag. 172. of Bath, Geldatu pro viginti hidis quando febris geldatos. Thirdly, pag. 181. Old Sarum or Salis- bury, and all their inquest and writs, were taken out of Donegal-hook in the Exchequer. So that in old time this seems to be a yearly tribute in cer- tainty; whereas now, though the rate be certain, yet it is not levied but by parliament. Cowell, edit. 1727.

See Eves and Salutation.

AIL. A. A. B. 

Figures. In affaime in an inferior court, the time of the promise alleged was in figures, and upon error brought, judgment was reversed for this cause. Sid. 40. Poph. 13 Car. 2. R. Ducket v. Bend. Keb. 19. 5. C. by the name of Befol v. Bland.

It was moved to quash an indictment, because the year of the plea was not agreed in figures. But per Hal. Ch. J. the plea of the King is enough. Mor. 76. pl. 40. Mic. 23 Car. 2. Ann.'

In debt for rent, the sum demanded was in figures, and not in words; upon a writ of error brought, the court held it was a material exception, and reversed the judg- ment. Value of the cause, Urf. Hill. 25 Car. 3. St. 88. Ecl. v. Heywood.

Roman figures are good in pleading, but otherwise of English figures. 2 Lev. 102. Poph. 26 Car. 2. B. R. Hawkins v. Mill. —If an indictment feths forth the file of the day or year, in any figures but Roman, it is inof- fective.

In indeb. affum, pro spere & labore, it was excepted because the sum was in figures; sed non allocatur, for they were (XII) Latin figures, which is well enough; other- wise, if they had been (12) English figures; and it would have been otherwise, if they were in figures in an infe-rior court; and therefore it was adjudged for the plaintiff. This was in a writ of inquiry, Skir. 409. Hill. 5 W. & M. B. R. Hibbert v. Croftope.

Stat. 6 Geo. 2. 14. Allows the expressing numbers by figures in all writs, &c. pleadings, rules, orders and in- dictments. It is inexpedient that it should be commonly used in the said courts, notwithstanding any thing in the flap. 4 Geo. 2. 26. See Sinne Latin.

Flint or Filicr, (Flaminarius, from the Latin filum, a thread) is an officer in the Common Pleas (so called) because he file those writs whereupon he makes process. There are fourteen of them, covering the whole di- visions and counties; they make out all write and pro- ceesses upon original writs, as well as real in as personal, and mixt actions; and in actions merely personal, where the defendants are returned or summoned, there go out the differs infinite until appearance; if he be not there, then the case will return. If the plaintiff, if the plaintiff will; or after the third capias, the plaintiff may go to the exequtor of the thing, where his original is grounded, and have an exigent or proclamation made. Allo the filler makes all sorts of writs in view, in cases where the view is pray'd; and upon all repelions or repelions, and all proceedings, with the process of the filler's return, the and with her name. They enter all appearances and special bills upon any process made by them. They make the first fieri facias upon special bills; writs of habeas corpus, dierigens non vicinum with balliament and duces tecum, and all supersedeas upon special bill, or otherwise; writs of nonsuit or peremptory. The filler has the defendant's return, the and with her name. The defendant is detained with other actions; writs of adjournment of a term, in case of pestilence, war, or publick disturbance, and (until an order of that court made 14 Jac.) which limited the fillers to all matters Vol. II. N°. 74.
I grant. But now discovery 13. in Talis exceptio
Law fons potefl and
Sect. 25. 26. If anything, being in efu tempore fini,
the end to cut off all controversies. The fame West
in his 2 Par. Symbol. fect. 1. thus defines it. To be a covenant
made before justices, and entered of record. But Glawill more properly thus,
that fect. 8. cap. 1. Finis et amabilis confpiffus futurum, a covenant
to contain a grant or render back again,
in the concurrence of 
and the name
of the
of the

1. This is of so high a nature, that
heft 
this cap. 28, num. 7. thus. Fines idea
discr presents, quia impotiti funt canticoque et excepit peremptoria.
The author of the New Terms of the
Late defines it as a final agreement, had between per-
sons concerning any lands or rent, or other things whereof
any fault or writ is between them hanging in any court.
See the New Book of Entries, volbo Fines, and the 27
Ed. 1. § 1. cap. 1. This fine is of so high a nature,
that the fect. 6. cap. 7. num. 7. Fifth of it thus,
Item immediate perinit ad Regem guerla finsi futili in curia Domini Regis & non aliquid, & fett ratio quia mena patuit finem interpretare, nisi ipse Rex, in causas curiae fines finit. The Civilization would call this solemn contract,
Transferam in judicale de re immobile, because it hath all the
features of the present law. It is not in the original use, Wifh. Porat. tit. de Tranfage.
It appeareth by the writers of the Common law before re-
cited, that it is nothing but a composition or concord
acknowledged, and recorded before a competent judge, touchinge some hereditament, or thing immovable, that
is, land, and was settled between the parties to the same
concord: And that for the better credit of the tranfage,
being fuppofed to be made in the presence of the King,
because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-
sly the law disables to tranfage, on the faid concord: That
the whole property of the lease is to be declared before the
same concord, and that for the better credit of the same
concord, that the lease is to be declared in the presence of the
King, because it is levied in his court; and therefore doth bind
women covert being parties, and others, whom ordinar-

5. Even after a fine is from the fund divided into a fine executed, and a fine executory. A fine executory, is such a fine, as of its own force gives a pre-
prevision (at the least in law) unto the conuers, so
that he needeth no writ of habere facius feipsum for the
execution of the fame, but may enter of which fort is a
fine for cujus præterea de droit came conquit ad facis feipsum,
that is, upon acknowledgment that the thing mentioned
in the concord be jus ifius cognizantii ut iila quia idem habet
de dans cognizorius. Well, sect. 57. And the reason of this
feemeth to be, because this fine palett by way of rele-
ance of that thing, which the conuoure hath already (at
least in law) declared, and hath given in execution, as
far as their own force do not execute the poflcffion in the
conuores, as fines for conuense de droit tantum, fines for
dons, grant, release, confirmation, or render; for if such
fines were not made in the fecond or third day
after the writ of facias, or if the parties who are in poflcffion at the time of the fines levied, the
conuores mult neede fues writs of habere facius feipsum,
according to their several caues, for the obtaining of their
poftcfffions, except at the levying fuch executory fines,
the parties unto whom the effeate is by them limited, be,
in poftcfffion of the lands passed thereby, for if such
fines do enforce by way of extinguishment of right,
not altering the effeate of poftcfffion of the conuores, but
perhaps bettering it. Wifh, ubi supra, fect. 20. Touch-
ing the form of these fines, we consider, upon what writ
their force is, and fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
that no poftcfffion, or fuch a fine is after the concord to be made,
him, but likewise extinguishes the right of others who omit to make their claim in due time. 2 Bac. Abr. 511.

Fines seem originally to have been invented and allowed of for different ends and purposes, than they are now applied to; for they were at first no more than a friendly composition and determination of the matters in dispute, and did not require the presence of a judge; and this way of composing differences was generally admitted in those days, because the fuitors of the court, who were judges of all suits, were by these amicable compositions the sooner discharged from their attendance at the court; nor did the lord of the manor suffer by them, because on these agreements, the parties litigating paid him a fine for his ende counters, as they do to the King at this day, which was equivalent to an indemnity, which were paid him in adversary suits. 2 Bac. Abr. 520, 521.

1. The several sorts of fines; and of the several parts of a fine, and when they begin to operate.

2. Of what things a fine may be levied, and by what name.

3. Who may levy fines; and of taking cognizance by declination.

4. Statutes, with notes and adjudications upon them, concerning the manner of levying fines; exceptions to fines; non-claim of fines; who shall be bound by fines levied, and their operation in barring the issue in tail.

5. Of the operation of a fine in barring strangers, or those who have but an uncertain interest, as for a term of years, or for other assignable interest.

6. The remittis given to strangers by claim and entry for the preservation of their rights; and of erroneous fines, and the manner of reversing them.

1. The several kinds of fines; and of the several parts of a fine, when they begin to operate.

There are two sorts of fines, viz. one executed, and the other executory. Executed, that is, of the present estate enfeated unto, or is supposed in the conveyee; for such a fine is a fequester of record, as this fine came, or as fines, or for reliefs, or confirmation, or for forrengder; executory, as when no estate is vested in the conveyee, until it be executed by entry or admission, as fines for grant & render by the conveyee, which must be made upon a fine come eco, or for reliefs, or for an other fine which is executed; or otherwise the conveyee could not make any grant and render of that land, &c. which he had not. 2 Inst. 513. It is not called executed, because the conveyee is in possession; but because the fine is executed between the parties; so that the conveyee cannot re-enter, because the fine itself is supposed to be executed. A fine which is not called executory, because the fine does not suppose any execution, but the conveyee may execute it, either by entry or by the writ. 2 R. in Fines 4.

Of fines there are four kinds: 1. A fine for cognizance de droit come eco; 2. A fine for cognizance de droit come eco, que il ad de fordone, i.e. upon an acknowledgment of the right of the cognitor; as that which he had of the gift of the cognitor. It is a single fine, and admit the possession (at least in law) of the land, by virtue of a fequester or former gift of the cognitor, and works as the fine for executory, a fee simple fullng without the word heirs, and nothing being rendered back to the cognitor. This is the principal and surest fine, and is a fine executed, so that the cognitor may presently enter. Wood’s Inj. 240.

2. A fine for done, grant & render, which is a double fine, to a man, two fines, viz. the fine for cognizance come eco, &c. and a fine for forrengder, &c. and where the cognitor, after a relase and warranty made to him by the cognitor, doth grant and render back to the cognitor, the lands, &c. limiting oftentimes thereby to remainders to doffers, not named in the writ, if the party is in possession; this fine is executed, otherwise he must enter, or have the writ of habeas facias etiam, &c. Wood’s Inj. 240.

3. A fine for cognizance de droit tantum, which is commonly used to pass a revocation. It may be expressed in such fines that the particular estate is in another, whom the cognitor is willing should have the revocation. Sometimes it is used by tenant for life, to make a grant and relase to him in revocation. In a fine for cognizance de droit tantum, the cognitor hath a freehold in law in him before he enters. Wood’s Inj. 240.

4. A fine for forrengder, which is that the cognitor is lessee of the lands contained in the fine, and the cognitor hath no freehold therein, but it passeth by the fine. It is commonly used to grant away estates for life or years. And if the cognitores are not in possession, they must enter, or have a writ of habeas facias etiam, &c. Wood’s Inj. 240.

There are five sorts of fines, of which three are executed, viz. for cognizance de droit come eco, &c. for rel ease, and for forrengder; and two executory, viz. for cognizance de droit tantum, and for grant and render. Fines upon forrengder are, multitude expressly so, or amounting to a forrengder. A fine upon a forrengder is, where the fine granted is for life, or for another’s life, or tenant in tail after possibility, tenant in dower, or by the curtsey, by fine forrender their eftates to him in revocation; and the form of the fine is such in effect, as the fine for cognizance de droit tantum seems to be the most ancient; for the conveyance of the land in the place of the judgment, which was always executory in adversary suits, the demandant was obliged to follow the rules of the law, and sue out execution; but in time, when these fines became the common and best way of purchasing, the purchaser, to prevent the trouble of suing out execution, had often given him by livery in the country, and for his further assurance obliged the vendor, by covenant, to levy a fine; and thus the fine for cognizance de droit come eco, &c. came in use, which supposes a precedent gift, by which the conveyee was put into possession, and consequently there might be no execution of what he had already. Co. Read. en Fines, 45, 5.

All fines are either executed, as fines for cognizance de droit come eco, &c. fines for rel ease, and fines for forrengder; or executory, as fines for cognizance de droit tantum, and for grant & render. The fine for cognize de droit tantum seems to be the most ancient; for the conveyance of the land in the place of the judgment, which was always executory in adversary suits, the demandant was obliged to follow the rules of the law, and sue out execution; but in time, when these fines became the common and best way of purchasing, the purchaser, to prevent the trouble of suing out execution, had often given him by livery in the country, and for his further assurance obliged the vendor, by covenant, to levy a fine; and thus the fine for cognizance de droit come eco, &c. came in use, which supposes a precedent gift, by which the conveyee was put into possession, and consequently there might be no execution of what he had already. Co. Read. 4.

This fine come eco, &c. is most commonly used, being the forrengder for the purchaser; in which it is to be observed, that this fine and that de droit tantum convey a fee simple to the conveyee, without words of inheritance; for when the conveyor acknowledges the land to be the right of the conveyee, *his repugnant and contradictory to his own acknowledged, to claim any right or intereat to the land in reverson or remainder; besides, in every judgment a fee simple being recovered, and the conveyance coming in lieu of the judgment must be sufficiently import as much, unless the express acknowledgment of the parties qualify it. Co. Litt. 9, b. Co. Read. 4, 7.

Upon a fine for cognizance de droit come eco, &c. the conveyor can’t retaine a rent, because the conveyance supposing a precedent gift, he can’t charge the inheritance which he has given intirely away; and to the reddendum comes
comes too late when the fine has mentioned before an absolute precedent gift, without any such clause of ren-}ersion. {Br. tit. Fine, 30. 3 Rob. Atr. 18. 2} and for forfeiture of a rent comes see, &c., can't be leved to and their heirs; for the end of fines being not only to fettle the possifion for the present, but for ever, the admiflion of such a fine would not anwer the end; besides the uncertainty which of admitted, it might ferve and enjoy the land, the fine itself can't operate anfwering to the limitation; for the furrivor, by the privilege of jointancy, shall enjoy the whole, and for ever exclude the heirs of the other conuife; besides, the fine being equivalent to a judgment, ought to decide and fettle the right of the fee. {1 Roll. Atr. 19. Ca. Reading 5. 6.}

For the former reafon the judges will not, or at leaft ought not, to admit of a fine upon condition, becaufe such a fine does not positively determine and fettle the right of the fee, it being uncertain whether the conuifee will enjoy the land according to the fine, since that depends upon the performance or non-performance of the condition; but my Lord Coke tells us, that if fuch fines be admetted by the judges they are valid and fhall fand; the rule, quad fieri non debet fed factum valet, obtaining in this cafe; because fines being the privy agreement and concord, it were to trifle with the authority of the court to contra without previous ferve, to fuffer another party to recede from their contraft, after their solemn composition acknowledged on record, and received in the moft solemn manner by the judgment and declarion of a court of juftice. 5 Co. 38. b. 2 Roll. Atr. 18. Bro. tit. Finer. 5. Ca. Reading 5.

It makes a leafe for life, and afterwards grants the reveflion by fine to B, for life, the remainder in tail; in a quid juris clamatis againft the leffe, he would have rendered to the conuifee, reifying a rent during his life, but the court refused it; for had this fudder, with the reveflion of the rent, been granted to the tenant, it might have happened, that if the tenant would not continue according to the limitation of the fine; for if the grantee of the reveflion died before the tenant for life, the remain-der-man in tail fhould hold the land difcharged, and the tenant for life could not enjoy the rent as long as the fine gave it; but if in this cafe the tenant had surrendered to the grantee for his own life, with a reveflion of a rent, this might have been admitted, for this is no absolute fudder; and each party may enjoy what the fine gave him, according to the feveral limitations thereof. Ca. Reading 5.

If there be leffe for life, the remainder for life, and the leffe give a fine for conuance de droit to him in remain-der, this enures by way of fudder; becaufe by this fine he only acknowledges all the right he has in the land to belong to him in remainder; but if the leffe had leved a fine, &c. to him in remainder, it had been a fuerte of both their effeis, and be in reveflion might enter immediately; and the reaon of the difference in this, the fine for conuance de droit comes see, &c. always graps a fee-fimple, which palies by the precedent gift, as the fine suppoles; but the fine for conuance de droit tantum only conveya all his right, which is intended all he can lawfully pass away. 1 Cl. W. 5. 15. 16. &c. which is felled for one, as heir of the part of the mother, and he and his wife levey a fine to A. and B. with war-ranty, and A. and B. by the fame fine grant and ren-der to the husband and wife in tail, remainder to the heirs of the husband; though it was urged, that the feifin of the land was held by the fine, and that nothing was al-}lowed by the fine, yet refolved, that the conuifee was more than a bare infrumen, and that the effe was once in him; and the fine and render is a convey-ance at Common laown, and the render makes the conuifee a new purchaser, as much as a feofment and re-life-feifin.

The fift part of the fine is the original writ, and with-out this the fine is erroneous, and may be reveral for error in B. R. this being absolutely necefsary to bring the parties within the jurifdiction of the court; and though at this day the original is generally a writ of co-

venant, yet fines are taken on all writs in which lands are demifioned, or are to be charged, or which any matter relate to them; for the law having provided different com-medies for the several grievances of the subjeft, 'twas but reasonable in the judges to allow of these compositions, whatever method the injured perfon took to reco-ver his rights. Co. Reading 3. 10. Plow. 394. 2 Roll. Atr. 15. 16. 17. 18.

The practice now is for the conuifee to make the conuance, and acknowledge the fine, before any original fue out; and this has fo far obtained, that the judges have refolved such fines fhould fhnd, though the conuifee died before the writ of covenant was taken out; but in thofe cafes they are held to be void, as they are fuch couftant as of a term precedent to the conuance, for they are full neceffary to make the fine a perfect and complete conuance, though for the greater expedition they have allowed of this variation from the ancient courfe. 1 H. 7. 9. Hid. 330. Ten. 47.

If in a warrantia charta againft B, to warrant one acre, if he levies a fine of that acre and another, the fine operates to convey only all his right in that acre he is called to defend, for the other was not mentioned in the original. Ca. Reading 10. 2 Roll. Atr. 16.

Hence it is, that if the conuance be of the manor of Dale, sale; or if the conuance be of the third part, the ren-der can't be of the whole; because the court can deter-mine the right only of that about which the parties con-tended, and the conuifee demanded in his original; but if the conuifee acknowledges all his right, &c. to the demandant, for which conuance he grants and renders the land to the conuifee for life; or if he grants a common in the land, or fo many loads of wood off it, this is a good fine; because the determination is wholly of the thing in difpute, one party taking the property, and the other a profit arising from it, and comprehended in the conuance, of which the thing in difpute was brought. 2 Roll. Atr. 15. 16. 17. 18.

Therefore if the grant and render had been of a rent de novo, that had been good; because the rent iffuing out of the land must be implied in a demand of the land; and confequently the concord and agreement of the par-ties is received and allowed for that only which they list-ed. 2 Roll. Atr. 15. Ca. Reading 11. 1 Isl. 514. 2.

As nothing can pafs by the fine but what is expreffed or implied in the covenant, fo no one can take an imme-diate effet by it who is not mentioned in the writ of covenant, because none can have any benefit from the judgment, unless he is not judicially before it, and fues for it, yet a grant and render may be made to a stranger in remainder; but the reafon is, because the render being only a consideration for the conuance, a remainder limited to a stranger may be as much a confer-}eration to the conuifee, as if the whole effe had been given to him; but there muft be an immediate effet given back to the conuifee, because the render ex utermini implies that it must return to him. Ca. Reading 3. 2 Isl. 514. Bro. tit. Finer. 111.

When the parties are judicrially before the court by original, the conuifee for the conuifee appears with the preci-fion of a judgment, and the court sets forth the conuance which ought to be made by the tenant in the writ, after his appearance is recorded, then follows his conuance, which is no more than an acknowl-edgment, that the manor, or other lands, &c. contained in the writ, belong of right to the demandants, as land which he hath of the gift of the tenant, with a general releafe and warranty to the conuifee and his heirs. When this conuance was taken they went originally to the trea-}ury, but now by the 5 H. 4. they fip up with the cuffus brevium, who reciprocates it, that the nature providing, that all the parts of the land shall remain in the fae custody of the chiefe clerk of the C. B. before the chirographer has them out of court; the usufign of the aft being thereby to prevent the inconvienience which frequently happened by the imbeffion of fines, when they lay only in the hands of the treaureir and chirographer, either by the conuance
FIN

convenience or negligence. 5 H. 4. 4. 14. 5 Co. 39. 4. 2 Sid. 55.

The next and most material thing considerable in a fine is the King's silver; this is entred on the writ of covenant, and gives it the force and effect of a fine, and is granted to the King pro licentia concordandi, or specie de concordacione, in consideration of the same, and other fines, which became due on judgments and non suits; in adversary suits, this is always paid by him who takes the fee simple by the fine, and on the entry of it on the covenant, the form given is expressed, together with the plea, and between Hob. 357. 5. 6 a, d. this is to. 2 Inf. 511. 5 Co. 39.

It is likewise called the post-fine, in respect of the premier fine in the Hunaear, which is due to the King on the original, and is greater or less in proportion to that; for it is as much as the premier fine, and half as much more; as if the premier fine be 6. 8. 3, this is to. 2 Inf. 511.

From the entry of this the fine is obligatory, and begins to operate; and from thenceforth the fine shall stand, though either party die before the other parts are recorded. 5 Ves. 39. 14. 10. 5 Dyer 144.

But if the cononor dies before the King's silver is entered, the fine is voidable, and may be revertered by a writ of error; because this being given pro licentia concordandi, the agreement of the parties is not to be admitted as the judgment of the court till it be paid and entered, and consequently if the cononor dies last, of that he be done, the fine is erroneus, as a judgment given in an adversary suit after the death of one of the levitating parties; but this is to be understood with this distinction, that where it appears by the record itself, that the King's silver was paid before the death of the cononor, the fine is erroneous; but where after the cononor made the cononor died before the King's silver is paid, and after his death the silver was paid and entered on a writ of covenant returnable the term preceding his death, as if baron and fee make cononus before commissioners the 26th of March, the feme dies the day following, and upon a writ of covenant made returnable the Holary term preceding, the King's silver was entered as of that term, and the fine was adjudged to stand; for where there does not appear an error on the face of the record, the judges in favour to fines, which so much strengthen men's titles, and quicken their reflection, have always supported them, and would not suffer the entering the King's silver, after the parties death, to be examined, when it appeared by the record itself, that the fine was completed, as a fine of the term preceding the death of the cononor. 2 Inf. 511. 2 2 R. 133. 6.

The other parts of the fine are the foot and note of it; the foot of the fine runs thus, Hace et finalis concordia fosta apud Wifem, in curia domini regis, &c. and mentions the day, year, and place, and before what justices the cononus was made. 5 Co. 39. 3. Reading 3.

The note of the fine is no more than a docket taken by the chirographer, from which he transferres the indentures, which are delivered to the party to whom the cononus was made; and when this is done, the fine is said to be ingrossed. 5 Co. 39. 2 Inf. 468. F. N. B. 13.

A fine was thus, Hace et finalis concordia fosta in curia regis apud Wifem, a die Sancti Michaelis in tres festis manent annos decem Williemi Territ earum Thom. Trevur, &c. et profeas in castre Santati Trinitatis, 1 Annae concov. in recordali earum issum jusficiatis, so that the concordia of the foot and note, &c. must be done following the term, and the question was, of which term this should be said to be a complete fine; and it was held to be a fine of the term in which the conon was made, and that the concordia fosta in curia is the complete fine. 1 Salt. 341.

2. Of what things a fine may be levied, and by what name.

Regurally a fine may be levied of any thing, whereas a praecipe quod reddat or factit lieu, as the writ of cultums Vol. II. No. 74.

finvices; or whereas a praecipe quod possimtis, as to have common, a way, &c. or to be short, where praecipe quod tenat doth lie, as the writ of covenant to levy a fine, and the like. 2 Inf. 513.

But in ancient times fines were levied of other things, than will be at this day allowed; and yet those fines shall be held none now as available, as they were taken to be, when they were levied. 2 Inf. 513.

Tenant in tail of a rent or common levies a fine with proclamations; it is very clear that the fines shall be barred thereby; for Walmfry J. 2 Co. 156, 21 Eliz. C. R. in the case of Sagar v. Bainton, 25 Sc. 96, 2 Inf. 513.

Of a lease for years the fine is void as to any tenant; for a freehold must be in the cognizor, or cognizor: however it may be good between the parties by way of esplopp, so as to conclude them. Wood's Inf. 242.

Fines may be levied of money agreed to be laid out in a purchase of lands to be forfeit in tail, but a decree can bind such money, equally as a fine alone could bind the land in this cafe, if bought and settled. Per cur. Woot. Inf. 130. Mich. 1710. Brefyn v. Brefyn.

Of an annuity to a man and his heirs, no fine can be levied. Arst. 2. 5. 1. 2 Inf. 513.

A fine may be, and usually is, levied of shares in the New River Water. 2 Woot. Inf. 128. Pals. 1723.

Dryfutter v. Barlowmole. 

Fines may be levied of all things in being which are inheritable, whether ecclesiastical, and made temporal, or temporal; as of an advowson, rectorcy, portion of tithes, &c. of an honour, manor. barony, leet, meafage, dove-house, garden, orchard, land, meadow, woods, &c. and such fines may be levied on a thing personal. Avg. 3. in case of The King v. Lord Purbeck.

A fine may be, and usuallj is, levied of shares in the New River Water, 2 Woot. Inf. 128. Palseb. 1723.

Dryfutter v. Barlowmole.

Fines may be levied of all things in being which are inheritable, whether ecclesiastical, and made temporal, or temporal; as of an advowson, rectorcy, portion of tithes, &c. of an honour, manor, barony, leet, meafage, dove-house, garden, orchard, land, meadow, woods, &c. and such fines may be levied on a thing personal. Avg. 3. in case of The King v. Lord Purbeck.
towns and counties, as De maniero de D. cum pertinentiis; yet it seems best to express all the several towns into which it extended; as De maniero de S. cum pertinentiis in D. & E. Weft. Symb. f. 26. cites 19 Ed. 4. fo. 9. a. 43 Ed. 3. fo. 9. a. Draft. lib. 4. c. 31. fest. 3. Ed. 4. fol. 61. 9. a. 16. a. 17. b. 11 H. 7. fo. 22. b. 49. A. 
A cattle or an hundred may be parcel of a manor, and paying by the name of the manor, wherever they are parcel, 26 Ajf. 54. and one manor may be parcel of another, 2 Ed. 3. fol. 36. And a cattle may be demanded by its tenants. De capello de B. cum pertinentiis en Ed. 3. fo. 4. And an hundred may be demanded by itself, as De hundrede de S. 27 H. 6. fo. 2. Weft. Symb. fest. 26. 
A chapel or an hospital must be demanded by the name of a messuage. Weft. Symb. fest. 26. 2 Ed. Ajf. 2. 
A Mediatoriam is good, without adding ventricium or aquaticum; albeit the latter be more usual. Weft. Symb. fest. 26. cites 44 Ed. 3. 13. 
Of a reversion by the name of the land, or otherwise. Weft. Symb. fest. 26. cites 43 Ed. 3. 22. 
Land is to be demanded by the certain measure of the superlative quantity thereof, hide, carucata, bovata, virga, gan, rota terre, and in like manner, beo, suhnenha, berua, mara, juncaria, marjups & abatum, & buparia, may be demanded by the number of acres thereof. 16 Ajf. 9. Weft. Symb. fest. 26. 
Houle-bote, hay-bote, and plow-bote may be demanded by the name of sublesors: thus, De rationabilit sublesoris in bofis, viz. in decem acris bofii fipus A. in D. & E. Weft. Symb. fest. 26.

Pars fores, deliveries, advowsons, vicarages, or titles improper, pays not by the name de advocatiis ecclesie, but de rectaria ecclesie, de S. cum pertinentiis. But when it is only of a presentation, it must be de advocatiis ecclesie de S. and not cum pertinentiis. Weft. Symb. fest. 26. 

If an entire manor, or meillage, or other entire thing be divided or parted, and after a fine is to be levied of some of the parts of the thing so ferved, then must not the fine be de mediate, or quarter partes, or other part of the manor, meillage, or other thing; but such part must be demanded by the name of the whole thing. Weft. Symb. f. 26. 

So if a meillage and 20 acres of land be parted into two parts; the fine of the one part must be de uno mefficage & decem acris terra, &c. and not de mediate uno mefficagii, & 20 acrarum terra; for the things now divided, may be recorded in their several parts; or if 20 acres entirely, for such things are not by law to be divided in their several parts, tho' less in quantity than the whole was before division made thereof. If a thing be twice named in a writ of covenant, it hurteh not, as a manor and a hundred, parcel of the same manor. Weft. Symb. f. 26, cites 27 H. 8. 2. 

A fine was lewcked de duobus tenementis, and for that reason was revered; for the word tenement does not comprehend any certainty; for it takes in meillage, land, meadow, pature, &c. and whatsoever lies in tenure; and it will pass rent or common. L. 188. Trin. 31 Eliz. B. R. Seid v. Courtneys.

A thing is numbered, which is not a manor in truth, does not pass by the name of a manor in a fine or recovery; for they are grounded on original writs, which ought to be certain, and not to be taken by intendment; but otherwise of a grant, or feeftone; for there the intent of the parties shall help it. No 7. Johnson v. Heydon. 

A fine of land will not be a bar of rent; as lecife for life, remainder for life of rent; the first lecife purchaseth the land, and levies a fine of that; this shall not bind him in remainder of the rent; per Winch. J. 2 Brom. 155. in the case of Richell v. Tucker, cites Palmer's cafe, and Smith v. Stapleton's cafe. 

If tenant in tail of any office levies a fine of land belonging to the office, this shall bind his illeue; yet the land was not intailed, but the office; per Hobart Ch. J. 

2 Roll. R. 500. Hill. 22 f. 1p. in the case of Felisv. Sanders. 
A fine may be levied of a ftrene in the New River water, by the description of so much land aqua copert. 

3. Who may levy fines; and of taking consavage by de dimas. 
And here it must be first observed, that whatever legal defects may be in the conveyance, if the judge admits his fine, the final shall stand in all cases. And if an infant, tho' the judge omits a very necessary part of his duty in not rejecting such fines. Co. Reading 8. 
2 Infs. 515. 
The principal defects are either want of discretion and underbenefiting, as in infants, idiots and persons of new-fame memory, or want of power, as forensi prevalent. Co. Reading 8. 

As to fines levied by an infant, tho' strictly speaking all contracts made by infants are in their own nature void, because a contract is an act of the understanding, which, during their infancy, they are presumed to want; yet civil societies have so far supplied that defect, and taken care of them, as to allow them to contract for their benefit and advantage, with power to rescile from and vacate it when it may prove prejudicial to them; now the method to fet aside such a contract must be by means of equal and indifferent persons' consent, in the manner of the benediction; and therefore if an infant levies a fine, which is no more than his own agreement recorded as the judgment of the court, he must revere it by writ of error, and this must be brought during his minority, that the court of B. R. may by infepception determine the age of the infant; and therefore if the judges by adoptamia may in such cases inform themselves by witnesses, church-books, &c. 2 Bat. Abr. 526. Co. Lit. 380. b. Man 76. 2 Roll. Abr. 15. Brs. tit. Error. Brs. tit. Fines, 74. 79. 1 Infs. 482. 2 Bulst. 320. 12 Co. 122. 

If an infant brings a writ of error to reverse a fine for his nonage, and after infpecception and proof of infancy by witnesses does before the fine is reversed, his heir may reverse it; because the court having recorded the nonage of the conuorz, ought to vacate his contract when he appeared to be under a manifest disabilility at the time he entered the censure, 380. 1. and acknowledged a fine, and the conuorses omitting to have the fine ingrossed, till he came of age, in order to prevent the infant from bringing a writ of error, yet the court, upon view of the consuace produced by the infant, and upon his prayer to be infpected, and his age examined, recorded his nonage to give them the advantage of his writ of error, which he must otherwise lose, his nonage determining before the next term. Mor 74.

As to idiots and lunatics, it is necessary to distinguish between their acts done in pais, and those solemnly acknowledged on record; tho' the law is clear, that in neither cases are they admitted to discharge themselves, for the insecurity that may arise in contracts from counterfeit madness and folly, but their heirs and executors may avoid such acts in pais by pleading the disabilility; because if they can prove it, it must be presumed real, since nobody can be thought to counterfeit it, when he can expect no benefit from himself. 4 Co. 124. Co. Lit. 247. Brs. tit. Patis, 62. Cro. Elina. 359. 622. F. N.B. 202. 

But neither the lunatic himself, nor his heir, can vacate any act of his done in a court of record; and therefore if a person non competes acknowledges a fine, it shall stand against him and his heirs; for tho' the judge ought not to admit of a fine from a man under that disabilility, yet when it is once received, it shall never be revered, because the record and judgment of the court being the highest evidence in the law, presumes the competer, at that time, capable of contracting; and therefore the credit of it is not to be cast aside, nor the record avoided by any averment against the truth of it. 4 Co. 124. 2 Infs. 439. Brs. tit. Fines, 75. Co. Lit. 247. 

So it is in the case of a fine levied by an idiot, it shall stand against him and his heirs; for no averment of idiocy
FIN

can vacate the fine, nor will any office finding him an idea of a
natus be sufficient to reverse the fine, for that
while the credit in judgments in courts of record,
by trying them by other rules than themselves. 2 And.
Lit. 247.
And as fines ought not to be taken from lotfiacs and
idols, so neither from old dying men, or those that
left no heirs, if they be sick or infirm in their
age and sickness, that will be no sufficient cause to refuse
them. Wits. Fines. settl. 4.
As to fine coverts, from the intermarriage the law
looks upon the husband and wife but as one person, and
the judgments of but one will between them, which
is placed in the husband as the first and ablest to provide
for and govern the family, and therefore gives him
an absolute power over her chattels personal, to dispose
of as he pleases, without her consent; but as to her real estate,
the law hath thought fit, that no all of his shall prejudice her
or her heirs in it, unless he join with him by some matter
of record, and on examination testify his suffer to such
disposition. 10 Co. 42. b. 45. d. 2 Inf. 510. 1 Sid.
1. 1 Roll. Abr. 347.
But though books which say, that a fine shall not bind a
knights man or goleman, be exception^ and left not be understood as if it were in her power to reverse
the fine for want of her examination, but they are to be
understood in this sense, that the judge ought not to re-
ceive a fine from a covert without examining her, left it should not proceed from her own freedom and
consent and judgment of the two of them, which
is without any examination, tho' the judge has omitted a
very necessary part of his duty, yet the fine shall stand,
and neither the fine nor her heirs shall be admitted to
aver that she was not examined; for that was to leffen
the credit of the judgment of the courts of justice, which
is the highest evidence of the law. 2 Bac. Abr. 527.
The statute of 15 E. 2. called The Statute of Courts of
Erron, introduced the dedimus, which is a special commision,
granted out of Chancery, to certain perons therein
named, to take the conuniance of such peroms, as thoro'
age or sickness are not able to appear in court in perom.
2 Bac. Abr. 527.
By this statute, no body can be a commisioner but the
judges, and two or one of them, by the consent of the reft,
may receive the conuniance; and if there go but
one of them, he shall take with him an abbot, a prior,
or a knight, and so in the name of the four, and no more,
and left not be understood as if it were in her power to reverse
the fine for want of her examination, but they are to be
understood in this sense, that the judge ought not to re-
ceive a fine from a covert without examining her, left it should not proceed from her own freedom and
consent and judgment of the two of them, which
is without any examination, tho' the judge has omitted a
very necessary part of his duty, yet the fine shall stand,
and neither the fine nor her heirs shall be admitted to
aver that she was not examined; for that was to leffen
the credit of the judgment of the courts of justice, which
is the highest evidence of the law. 2 Bac. Abr. 527.
By this statute, no body can be a commisioner but the
judges, and two or one of them, by the consent of the reft,
may receive the conuniance; and if there go but
one of them, he shall take with him an abbot, a prior,
or a knight, and so in the name of the four, and no more,
and left not be understood as if it were in her power to reverse
the fine for want of her examination, but they are to be
understood in this sense, that the judge ought not to re-
ceive a fine from a covert without examining her, left it should not proceed from her own freedom and
consent and judgment of the two of them, which
is without any examination, tho' the judge has omitted a
very necessary part of his duty, yet the fine shall stand,
and neither the fine nor her heirs shall be admitted to
aver that she was not examined; for that was to leffen
the credit of the judgment of the courts of justice, which
is the highest evidence of the law. 2 Bac. Abr. 527.
5. Statutes, with notes and adjudications upon them, con-
cerning the manner of levying fines; exceptions to fines; non-
claim of fines; proclamations of fines who shall be bound by
fines levied, and their operation to bar the issue in tail,
Stat. de Finibus. 18 Ed. I. trat. 4. (intitled, The
manner of levying of fines: What things be requisite to make
them valid; who are to be bound by them; what is to
be done when the original is read in the presence of the parties before
the justices, a feigning shall faie, Sir justices, here to agree: The
justice shall faie, What will Sir R. give t and shall
name one of the parties. Then, when they are agreed
of the sum of the fine, one given to the King, the justice
shall faie, Cry the peace: Then the justices shall say, Ju-
much as peace is licent is thus unto yw H. S. and A. his wife,
that here be, acknowledge the maner of B. with the opportu-
nities

FIN

the substance of the dedimus, and how they have taken
the conuniance, and commanding them to certify it; and
if they omit not this, then an order, a plenary,
and attachment shall issue against them. F. N. B. 147.
If the commisioners die before the conuniance be cer-
tified, their executors must certify it upon certificari to
them directed, and upon their refusal, like procla
mis be as in the former case. Co. Reas. 3d. F. N. B. 147.
If a dedimus be awarded to take the conuniance of
several peroms, the commisioners may take the conumiance
from each of them, and at several times, for it may so
happen that they can't meet at one place at the same
time; and if the commisioners return the conumiance but
not to one of them, they may take the name of the third out of
the dedimus, and make the wriit of covenant agreeable
to it; for since the third does not join, it can be no
prejudice to him; and therefore it were unreasonable that
his obligation or refulfal should impeach the conumiance
of the other duly taken, and so prevent their amicable
composition of their differences. Co. Es. 576. 577.
A dedimus was awarded to take the conumiance of
a fine from baron and feme, and the feme refusing to join,
the conumiance of the husband was only returned; in this
case the court ordered a new dedimus to be awarded,
but if to be of the same date with the former and that the
return of the commisioners should be annexed thereto;
for the refusal of any of the comons can be no reason
to delay or hinder another to transfer his right.
C. Es. 576. 577.
The court of C. B. ordered the deed to be directed
upon an information against commisioners for the
levy of a conumiance of a fine of an infant. Micb. 33 Car. 2. C. B.
3 Law. 36. Hutchinson's case. Per North and Windham. J. There is a great trufp reposed in the commisioners, and
they are to inform themselves of the party's age, and a
voluntary ignorance will not excuse them. Mod. 246,
247. Pajeb. 29 Car. 2. C. B. in the cafe of Barrow v.
Parrot.
A dedimus potstfactum was directed to two, and one of
them executes it, the other cannot certify it; for the
execution of it ought to lie upon his own knowledge.
A del. pos. is directed to two, where two of lands in
several counties; if two take it in one county and certify,
and the other two take it in the other and they certify it,
one of their certificates are good. Gubh. 356. per
Houghton J. in the case above.
A dedimus potstfactum, to make a conumiance of a fine
is directed to J. S. knight, and he takes the conumiance, and
certifies it by the name of J. S. knight; whereas in
truth he is not a knight; this is not erroneous, nor no
affigeable for error that he is not a knight; for it is against
the record. Jusb. 280. pl. 3.
A dedimus potstfactum was directed to B. esquire, and
was return

nances, contained in the writs, to be the right of R., as that which be half of their gift; To have and to hold to him and to his heirs, of IV, and A., and the heirs of A., as in demesne, rents, sequesters, courts, pleas, reliefs, escheats, mills, advowsons of churches, and all other frees by the said levies, and free customs to the aforesaid mayor or corporation, rendering your service, and have the free lords of the fee, the service due and accustomed for all services. And the law will not suffer a final accord to be levied in the King's court without a writ original, and that at least before four justiciers in the bench, or in eyre, as it is in the old editions, who must be of full age, of good memory, and in presence of the King, who must be of full age, of good memory, and without any other persons, who may not be of full age, of good memory, and without any other persons, who may not attend thereunto, the fine shall not be levied. And the cause wherefore such final accord ought to be done is, because a fine is to have a bar, of no great force, and of no figure in itself, that it conclude not only such as be parties and privies thereto, and their heirs, but all other people of the world, of full age, out of prison, of good memory, and within the four days, the day of the fine levied; if they make not their claim of their action within a year and a day by the country.

The justice shall pay, What will Sir R. give?] In the old editions of the statutes it is printed, What faith Sir R.? which is not reconcileable with any meaning whatsoever. This gross inaccuracy was corrected in other editions, which altered it to, What will Sir R. give? But on farther consideration it is submitted to the reader's judgment whether the above translation, What will Sir R. give? is not nearer to the true sense. In the original French it is to be observed, that the pronoun relative qu.e is added, Que donner [instead of detre, as it is in all the editions, for 2 Inf. 513.] Sir R.? but if we render it Who will Sir R. give? Should be the pronoun personal qui. There is another circumstance in favour of this translation, which is that the verb donner, in grammatical order, refers to the justice who names the party, and not (as Lord Coke supposes) to the pleader or officer present; which if it is true, then Will Sir R.偿, that the question What will Sir Robert give? seems more natural to precede the next section; which supposes the sum given to be agreed on, in conference of that question: and it may be added, that this is the question now asked on acknowledging a fine at bar. Ruff. Stat. vol. 9. p. 1.

To be the right of R.] There is an error in the translation of this statute in all the editions of the statutes now extant; wherein the conclusions are made to acknowledge the manner of B. with the apportionments, to be the right of our Lord the King, in which is put, the bar or gift, The statute itself, and the conclusion of it, seems to acknowledge the manner, &c. to be the right of R. that is, of Sir Robert, the concluder. Id. 18.

Without a writ original?] If there be no original writ, yet the fine is not void, but voidable by writ of error. 2 Inf. 513.

Four justiciers] The number of justiciers here mentioned are not requisite at this day; but there must be above the number of one. And therefore a fine levied before Thoma Brian militis &c fisci fisci juriciliaris de commune banno was not good. 2 Inf. 514, 515. 4 H. 7. 74. enacted, That it shall be good, though levied in C. before two justiciers only.

And not elsewhere?] It was reolved, that a fine may be levied of lands in ancient demeine in the court of ancient demeine, notwithstanding this statute which says, that fines shall be levied in C. &c. or by the county for this statute only takes away the validity of fines levied in borough courts, which was the mischief intended to be prevented by this statute, and does not extend to courts of ancient demeine; for it would be unreasonable, that they should be barred of levying fines in C. (as they may be) by will of the county, and not by the county, in their courts of ancient demeine. And if it was resolved, that such fine levied in ancient demeine makes a discontinuance, and has all the effects of a fine levied in C. except that it is no bar, which is only


And if the fine do not attest thereunto? But if the fine be received, it is recorded, or is taken on the bar, the fine shall not be allowed to aver that the fine was not examined, nor affected. 2 Inf. 515.

Such as be parties] 2 Inf. 516. Parties are those that are parties to the original.

And privies] FIrst, this to be understood of privies in the sense of the heirs of the King, who are here named, but heirs by the custom, here comprehended under this word (privies) as Borough English, Gavelkind, or the like, which claim as heirs by custom, and is not intended of privies in estate, as joint-tenants, the donor and donee, litoris and lieffes, or the like. Also, this statute be not limited of privies in feudalism, as bishops, abbeys, and the like. — Privie signify those that are partners, or that have any interest in any action, or thing with another, or any relation to another. There are either privies in estate, as donor and donee, litoris and lieffes, joint-tenants, &c. or heirs in blood and a daughter, as the heir to the ancestor, or between coparceners; for by privies in blood, privies in blood inheritable are to be understood; privies in representation, as executors to testators, administrators to intertestates; privies in tenure, as lord and tenant, &c. all which may be reduced to two general heads, 216, cities R. 3. 216. But it is manifest all others are not to be understood here; but privies in estate and blood, and by representation. Privies therefore, being heirs to the parties, are bound or barred pretently for ever by a fine if they claim the same title, that their ancestors had, that levied the fine, whether under impeachment of the King, or by the law. So that all impediments (as within age, under coverture, non campus mentem, in prison, or beyond sea,) yet such issue in tail is barred; for such issue is out of the faving of the 4 H. 7. 24. Will's Stat. 424.

The words parties and privies are to be understood as to a fine, fined, as in the statute 18 Ed. 1. intended them, Jenk. 192. p. 97. See 2 J. 241, &c. In Ld. Denby's cafe, &c. He is privy in blood only, and not in estate also, is not within these privies, neither shall he be barred by the fine. As if lands be given to a man, and the heirs females of his body, and the heirs in blood of a daughter, and heirs in blood a fine, and dies without issue, this is no bar to the daughter; for through the be heir to his blood, yet is not heir to the estate, nor hath the need to make her conveyance to it by him; but if the father had levied it, it would have been otherwise. 3 vol. R. S. L. 216, cites Inf. 12. 2 Inf. 516.

By the words privies and strangers in the statute, if tenant in tail is party to the fine, and his issue claims per fe manum dani, yet he is privy; for he cannot convey himself as heir to the tail, but as of the body of his father, which is privy. Br. Fines, p. 109. So if land be given to husband and wife in special tail, the remainder to the right heirs of the husband in fee, and he alone levies a fine with proclamations of it, by this the issue in tail may be barred; for he cannot otherwise convey himself to the tail and decient, than as heir of the body of the father and mother. 3 vol. R. S. L. 216, cites D. 3. 251, and Br. Fines 100.

But all other people of the world] In these words are included as well tenant for years, tenant by statute merchant and staple, coheberts and customary holders, as tenants of freehold and inheritance, if they be out of possession or fee simple for their life, if he do not own or claim within five years after the fine and proclamations; unless such persons be aided by some of the impediments mentioned in the statute. By all the judges of England. Jenk. 192. p. 97. cites 19 H. 8. 6.

Brong
I. Being of full age.] By this act, if any stranger was within age, or in privity, or now before, or beyond the year, and therefore the fines levied the width thereof, and for ever excepted; so that after his full age, coming out of pri

inf, &c. he or his heirs need not make any claim. 2 Inst. 516. But this is altered by the 4 H. 2. 24. ibid. in marg. 24.

If they make not their claim] Though the words are, if they make not their claim, yet in some cases the right is not given to the heir: of that estate, and for ever preferred. As if defier be diffiered, and the second defier leav a fine; in this case, if the first defier enter within the year, this shall preserve the right of the diffier, because the first defier, by his entry, avoided the whole estate given by the fines, yet lawfully might hinder himself. 2 Inst. 516.

27 Edw. 1. c. 1. (Intituled, No exception to the fine that the demandant was seized. Fines shall be openly read.) f. vi.

Forasmuch as fines levied in our court ought and do make an end of all matters, and therefore are called fines, principally, where after waging of battail, or the great strife, in their cafes, ever they hold the laft and final place.

Sect. 2. And now by a certain time pasted, as well in the time of King Henry of famous memory, our grand

father, as in our time, the parties of such fines, and their heirs, and all persons that are to have the land, of our realm of ancient time used, were admitted to adual and defeat such fines, alleging that before the fine levied, and at the levying thereof, and fine, the demandants, or plaintiffs, or their ancestors, were always feized of the lands contained in the fines, and therefore, that such a fine was unlawfully levied, were many times unjustly defeated and adualled by jurors of the country falsely and maliciously procured.

Sect. 3. We therefore intending to provide a remedy in the premises in our parliament at Westminster, have or

chained that such exceptions, answers or inquisitions of the court, shall from henceforth in no wise be admis

sioned contrary to such recognizances or fines. And fur

ther, we will, that this statute shall as well extend to fines heretofore levied, as to them that shall be levied hereafter.

The mischief before this statute was, that when the constance de drito, &c. was made to him that had never any thing before, and the conuice granted, and ordered the same back again, at the same instant to the conuver for life, or in tail, with remainder over to one, who was always fee'd, and in possession of the land; privileges by colour that the same was in fact, or if that the same were in fact, law, permitted to avoid fines by the averment afoforad. 2 Inst. 254. Co. R. on fines 15.

So, where tenant in fee had accepted an eftate by fine from him, and had nothing for life, or in tail, so that by the law the conuice and his heirs are concluded, and excepted from the same, to the same extent of the year. The making of this statute; the said averment was received in avoidance of such fines, and for those two causes, and in affinuance of the ancient Common law of England, this statute was made. Co. R. on fines 15.

But it seems to me, by Lord Coke, that the first of the said two errors, or misprisions of the law, permitted and suffered before this statute was made, was very ab

ward, and manifestly contrary in itself; for the heir of the conuice endeavored, by such averment, to avoid the particular eftate re-taken by his ancestor by the render; because, he that rendered, had nothing, but, as I think, in endeavouring to gain the fee-simple, he left not only the fee-simple, but also the eftate for life, or other particular eftate, which also was rendered; for though the render was void, as then minus jufs allowed, yet the fine for conuices de drito come see, &c. was good, and the said fine being good (for the imperfect or insufficient render cannot impeach it) and the render being void, the reconuice shall retain the land, and the heir of the reconuice is utterly barred for ever; and therefore the words of this statute are true, viz. that such averments were contrary to law, and that either eftate ye fut before the making of this statute; the said averment was received in avoidance of such fines, and for those two causes, and in affirmance of the ancient Common law of England, this statute was made. Co. R. on fines 15.

Sect. 2. In the time of King Henry] Lord Coke in 2

Inf. 534. says, that this happened in the reign of H. 3. in the time of the tenure of tenants in tail, and of slaves by the grandees of this realm, and that it was used by them图案 of the grandees, that parties and privies might avoid fines by such averments, which averments in the reign of Ed. 1. were continued until the making of this act.

And their heirs] This is to be understood of such heir, who claims to an ancestor of that estate, and by whom the fine was levied. Arg. 3 Rep. 89, in the case of fines.

Though this statute, that the parties to the fines and their heirs shall not have averment against fines levied, &c. viz. that they, or their ancestors were feized, &c. yet our ancestors have adjudged, that against a fine levied by my father, I shall say, that he did it, at the time of the fine and after, I myself was feied, and so avoid the fine; for as I said before in this case, I am not heir to my father; for Harre dictur ab hereditate, and I do not claim this land by inheritance. Co. R. on Fines 15. this is not intended of an heir in blood only, but of the heir of the land of which the fine is levied, and not of the land which he has otherwise as heir. See 2 Inst. 523.

This statute is intended of estates in fee-simple only, where the heir claims only by the same ancestor; but, upon an effe, the heir may be claim by the gifts, per Brooke. Br. Fines in pl. 35.

Lawfully levied] A fine may be said to be lawfully lev

ied, though parties fines nihil habuerunt; for lawfully levied is, within the meaning of this act, the fine as duly levied, that is, in due form, that is, in due form, and a fine may be said to be levied in due form of law, only by way of exception. Arg. 3 Rep. 89, in the case of fines. These words lawfully levied, as to the external form of a fine, are to be taken as to a fine levied camer Edmunds Anderson (viz. the name of the Chief Justice & fines juris, where all the justice ought to be, per Windham J. and it is true to Periam and Anderson, Mich. 29 & 30 Eliz. Ls. 81, in the case of Zouch and Banfield. 34 Edw. 3. c. 16. (Intituled, Nonclaim of fines shall hereafter be no bar) Enacts, That the plea of nonclaim of fines shall be no bar hereafter. Before this statute these lawreavers having presented right ought to make claim, and their claim availed for all in remain

der, or reversion. For all but had one year by the Common law after the fine levied, and this mischief was a great grievance, as it makes the transactions remains to this day, viz. that claim must be made within a year and a day after judgment. If a fine be levied without proclamation, or without so many as the law requires, then this statute extends to such a fine. A feme covert had no privilege of nonclaim, as some have said; for the had a husband, that might make claim for her. Also, they in reversin or remainder expectant upon an estate of freedom were barred by the Common law, and yet they could make no claim; for it belonged to particular te

nants, and not to them; because their entry was not law

ful, which was given to the principal owners of making this statute; but these cases of coverture, and of them in remainder or reversion are now holpen, and their rights and titles saved by statute 4 H. 7. 24. as by the said act appears. Co. Lit. 262. a. b.

Stat. 1 H. 3. c. 7. (Intituled, Who shall be bound by a fine levied before the time of the Common Pleas; And proclamations made there of) Enacts, That fines shall be proclaimed four times, four several terms, and at the assizes, &c. And that a fine so proclaimed shall conclude all per

sons, both privy and strangers (except women covert, or such women covert, or such widows whose husbands were under

age, in privity, out of the realm, or not of full age,) if they pursue not their right, title, claim, or interest, by
by way of action, or lawful entry, within five years after the proclamation so made and certified as aforesaid.

Sect. 4. The right of strangers, which happens to come to them after the fine is ingrossed, is saved, so that they lawfully pursue their right or title within five years after it comes to them: And here an action against the person of the profiss is maintainable.

Sect. 6. If the parties, to whom such right or title comes, be over age, in prison, out of the land, or not of fame memory, they or their heirs have time to pursue their right or title within five years after such imperfections removed; fo also, have they in case they had right of title at the time of the fine levied.

Sect. 10. Saving to every perfon or perfon, not party nor privy to the faid fine, their exception to void the fame fine, by that, that thofe which were parties to the fine, nor any of them, nor no perfon or perfon to their title, nor any one of any of them, had nothing in the lands and tenements comprifed in the faid fine, at the time of the faid fine levied.

Sect. 11. And it is ordained by the faid authority, that every fine, that hereafter fhall be levied, in any of the King's courts, of any manors, lands, tenements, and other poftefions, after the manner, use, and form, that fines have been levied afore the making of this act, be of like force, effect and authority, as fines, fo levied, be or were afore the making of this act; this act, or any other act in this faid parliament made, or to be made notwithstanding.

This is an original, and not an explanatory statute, per Henr. 8. c. 123, page 380, in the King's personal statute-book, and familar to the English amble of this act, that fines ought to be of the greatest strength to avoid strife and debates, &c. and therefore this statute does not extend to any fines levied by cuvin. See 3 Rep. 77, b. Farmer's cafe. This statute extends only to fines, and not to nonclaim on a judgment in a writ of right. Co. Lit. 262.

So it extends not to land in ancient demesne; for the lord may avoid such fine by writ of deceit. Pl. C. 330, b. And it does not extend to Lancashire. Arg. 1 Del. R. 309. Holland v. Let.

The Lord Keeper's opinion was, that howsoever 4 H. 7. was, at the making thereof, as to barring, or not barring an eftate-tail, yet when 32 H. 8. comes, and declares upon 4 H. 7. Now all fines are good to bar eftate-tails. Skin. 97. Hill. 35 Car. 2. in the Earl of Darby's cafe.

This statute and the others in the same act, are in full force, and operate by way of law to the right, which answers Saul and Clerke's cafe. Fe. 210, 211. Salt. 432. Hill. 1 Ann. B. R. in the cafe of Hunt v. Burne.

Sect. 1. In three terms then next following] If one of the terms limited by this statute be adjourned, (because the statute runs, then next ensuing) all the proclamations before be void, till the statute 1 Mar. 7. Raphal. Fine. 12, because the time limited by the act ought to be pursued, and once attached in part ought to be continued, Pl. C. 371, b. Sect. 3. To be a final end] By these words it binds eftates-tail: per Pemberton Ch. J. Sin. 95. Hill. 35 Car. 2. B. R. in Earl of Darby's cafe.

Per all the judges but three, the issue of tenant in tail was barred by a fine levied by his ancestor, by virtue of the statute 4 H. 7. before the statute of 32 H. 8. Hill. 31 & 32 Car. 2. in Scott. Raem. 359. Murray v. Eynon.

The fines levied according to this statute are, ab initio, as strong againstakeins, as 32 H. 8. Hob. 332, Macquillan's cafe. And therefore if a woman be tenant in tail, having issue a fons and a daughter, and the fons (being the first issue of the tail) levies a fine, living the mother, and dies, and the survives him, this shall not bar the daughter, to whom the land entailed descends immediately from the mother; adjudged by three judges against one. Hob. 332. Mich. 19 Jac. Macquillan's cafe. But in cafe of collateral Issue it is otherwise. Hill. 333, S. C. Fe. 32. S. C.

Tenane
FIN

Tenant in tail, having issfe, levies a fine, and dies before all the proclamations are made, and afterwards (the issfe being beyond fee) the proclamations are all made, and then the issfe claims; and if it was resolved by all the judges, that the a right defend'd to the issfe, because the father died before all the proclamations and was within without proclamations, or proclamations without a fine, will not bar the issfe in tail, and tho' there was no fine with proclamations levied after the death of the father, yet, as he claims as heir by force of the estate-tail, he is barred by the word of the statute. 3 Rep. 84. Poph. 46. E. 17., the case of fine.

Neither this statute, nor the 18 Ed. 1. of fines, says, in express words, that fines with proclamations shall bar the estate; these statutes only say, that fines with proclamations shall be bars to all parties and privies, and to strangers, if the stranger do not bring his action, or make his claim within five years after such fines levied with proclamations; and the true intention of the 4 H. 7. was to take away the statute of Nonclaim, enacted the 34 Ed. 3. cap. 16, and not to bar the estate-tail any more than 18 Ed. 1. had done; as appears by the statute of 92 H. 8. 36, which ordains fines levied, ut fup. & nonclaim ut sup. to bar the tail. Tenk. 87. pl. 68.

But the thing being as general to all persons and heirs, notwithstanding none, infancy, &c. so is the condition general, to all heirs whatsoever they are, the words being, if they pay after five years proclamations, for otherwife the faying shall be for all heirs, and the (fe) shall be all of heirs within age, and then the (fe) is not so large as the faying; and so the heir within age is bound to the condition of the fift faying, as well as he is faved in the fentence.

Heir in tail and heir in fee are all one by this statute. 3 Le. 227. pl. 304. Anm. M. 31 El. C. B.

Tenant in tail levies a fine with proclamations, and the five years pass in his life-time, and he dies; and per five judges against three, he shall be barred by this fine, and the faying shall be for all heirs, and the (fe) shall be for all heirs. 3 Rep. 84. Poph. 46. E. 17., the case of fine.

2. P. Br. Tail, Dones, &c. pl. 2. cites 19 H. 8. 6. that, by the beft opinion the iffue shall be bound by the statute of 4 H. 7. c. 24. Brook fays, and to fee that this statute, and the new statute of 34 H. 8. 36. are of one and the fame effed, except that the one is an explication of the other, and by the one and the other, privies fhal be bound immediatly after proclamations which may be finifhed in four terms, quantum; and the five years is for strangers.

Sect. 4. To their heirs] Harbart Ch. J. faid, that it was adjudged in the cafe of Godfrey v. White, that the fine of the first taking, the day of his issue, or any other time; and the words, the iffue is heir to him; but he faid, that this word (heir) fhal be expounded as (his heir), and that fo they ufe to expound this statute which binds parties and privies, and that in fuch cafe the iffue is not prior to the younger; for by claims before Hen. Wynch 125. Hill. 25a. F. B. in the cafe of Hilliard v. Sanders. 2 Rell. 500. 501.

Such right, claim, and interef, &c. It was reolved, that these words extend to the interest of a liffe for years, tenant by statute-merchant, statute-fladle, legit, guardian by affection, by bounty, by lodging, heirs by bounty, by bounty, paid, and every other similar interef. Poch. 10 Jac. C. B. 5 Rep. 124. Suffrey's cafe, cites Pl G. 374. a.

Copolyb lands are within the words and meaning of this act. Poch. 10 Jac. 9 Rep. 105. Pocher's cafe.

A fine with proclamations and five years bars all cor- porals with common and any other like uses, and every servitude that shall have a new five years. Pl. G. 358. Trin. 20 Eliz. Craft v. Finchell.

So an officer having land pertaining to his office, as a parker, &c. Shall be barred by a fine levied by his dis-

feilor and five years passed; but not his successor, unless five years paffed in his time. Ibid.

It was reolved, that this act shall bar a woman of her dower by a fine levied by her husband with proclamations, if the does not bring her writ of dower within five years after the death of her husband, 15 Eliz. 20. in Can. cites Hill. 4 H. 8. Rep. 344. C. B. 5 Eliz. D. 224. Pl. C. 372. b. Rell. R. 306. arg. cites 15 El. D. Groves's cafe.

If the five years commence in the life of the ancestor, the heir, though of age, must claim within those five years, or he shall be barred; adjudged. Trin. 2 Eliz. Pl. C. 356. Stewell v. Zouch.

A. In feife for life, remainder in fee to B. A. levies a fine, B. shall have five years for the title, and the forfeiture, and after the death of A. he shall have other five years for the title to him accrued by the demand, and determination of the estate of A. D. 3. b. marg. Pl. cites 32 El. Davis's cafe.

 Tenant for 99 years, if he lives so long, leaves a fine, and dies; and it was resolved per cur. that he in revelation shall have five years after the death of the tenant to avoid the fine; and per Hambard; for there can be no difficulty, between a fine levied by tenant for life and for years, the reason being the same in both cases; and said that Lord Coke's opinion, 9 Rep. Pocher's cafe, was made to be a question. Trin. 24 Car. 2. B. R. 2 Lev. 55. Whaley v. Sh. Tankard. Rep. 14 S. Del. 54. S. C. 3Keb. 30. S. C. 2 Fenta. 334. in the cafe of Dingwall v. Greenwill. Ventris J. in his argument, cites both the cafe of Pocher, and this cafe of Whaley v. Tankard, and fays, that tho' he admits this cafe to be good law, yet he observes that it is a resolution carried beyond the words of the statute; for though he purport to be decided before, after it came, and fays, it is only a conflation by equity, and that he should not have gone so far, if not led by authority.

Sect. 7. And if the fame perjury] But if a stranger to the fine who is of good memory, becomes of not good memory, or is imprifed in the third year after the issue of the proclamation, and so continues till the five years are expired, and after he recovers his memory, or is out of prifon, he shall not be barred; for laches cannot be pretended in such cafe. But if in the third year the stranger to the fine goes beyond fee, or takes borro, and so continues till the five years are paffed, they shall be barred; for there are no proclamations made, which the other are not; per Brown and Sanders J. P. 366. a. in the cafe of Stewell v. Zouch.

Tho' the iffue in tail be beyond fee, yet inasmuch as he is prius and out of the savings of the 4 H. 7, he is bound by the statute notwithstanding the issue of the proclamation, but if the issue be after the proclamation, it is under coverture, or non coverture, or in prifon; resolved by all the justices, 3 Rep. 91. the fifty resolution in the cafe of fines. And the Reporter infers, that if infancy, coverture, non fana memoria, or imprifonment of the heir in tail, should give him power, in such cafe, to avoid the fine, no man could be afliured of the land conveyed to him by any fine, and denies what is said by the council. Pl. C. 43. in Smith and Stapleton's cafe. 3 Rep. 91. a. Pocher. 44 Eliz. in the cafe of fines.

But if the difjus dift, the fine enfent with a fon, and the defjus leaves a fine, and after the fon is born, now he is not excepted by the letter of the act, for the act excepts no infant, but such who at the time of the fine levied was within the age of 21 years; and none is within the age of 21 years, but only such who is in rerum natura, and the fon in this cafe was not born, nor in rerum natura at four months, as it would be, if the 31st, and tho' could be fay, that he was within the age of 21 years at the time of the fine levied; for his age is accounted from the time of his birth; and he was not born at this time, and fo he is out of the letter, but yet is within the intent, and shall be aided by the exception. Pl. C. 366. a. 366. b. Stewell v. Lord Zouch.

A. tenant in tail, remainder in tail to B. B. being beyond fee, and leaving a fon within age in England, A. levies a fine; B. never returned, but died, immediately after the fine, abroad; and it was agreed by the whole court, that the fon was not barred; for theo' the condition of
of the saving is, that the party purport his right within five years after his return, and this condition was never performed, because he never returned, yet there was no defect in his title to the land, he being entitled to the estate by the other vaying which relates to in-

put. 

att. 32 Ellis. Svo. 128. Sir Robert Cotten's cafe. 

Lit. 211. S. C. And 264. 

att. 3. Having on right, or title, or cause of action] So that a fine with proclamations binds such only as have title, and is not ratified, confirmed, or recovered, way, or the like, out of the land, so that they shall not be concluded of their rent, common, eftowers, way, or the like, they claim not within the five years. For the statute speaks only of binding the lands, and faves nothing of the profit appender out of the land. 


So of an authority to fell land, he, who has such authority, may fell after the five years after proclamations; for he has no interest in the land, but has power only to fell it. 

Br. Fins. pl. 173. 

att. 9. Concluded by the void fines for ever] If tenant in tail levy a fine, the fine in tail is privy and therefore barred of averring quod partes finis nabil habuerunt; ad- 

judged, per tot. car. 

Lit. 85. Mich. 29 & 30 Ellis. C. B. 


Mo. 250. S. C. 

iff in tail is privy; because if the fine be erroneous, there, by a view of error, which he could neither deny, he was not privy. 

And 171. S. C. 

arg. cites 19 H. 8. 6. 

Stat. 31 Ellis. c. 2. 

Enactts. That all fines with proclamations to be levied in the Common Pleas, shall be pronounced four times only, one in the term in which it is ingrossed, and one in every of the three terms holden next after the same ingrossing; and every fine so pronounced shall be of force, as if the same had been fourteen times pronounced to the statute hereafter made. 

If the conuene courts the heir has election to have the fine void of the proclamations, as well as according to the ancestor. For 'tis for his benefit, and the statute does not restrain it. And the reason of 8 Ellis. 254. why the proclamations were stayed after the conuene's death, was, because a formes was depending, and that was only in the di- 

dication of the court. 


B. R. Wrefkeley v. Hudson. 

The proclamations do not make the eftate, but enure to them made by the fine, and the bar according to the eftate; which passed before the fine. 

Pap. 63. in cale of Harry v. Farcy. 

The proclamations serve only to defiant, that it is a sufficient way to force the matter, 4 H. 7. for though the ifte having notice by the proclamations brings his formes accordingly, yet it shall not avail him. 

3 Rep. 91. 

Pap. 11. 

44 Ellis. in cafe of fines.

Where a fine, and five years past, are urged to bar a right, St, by non-claim within the statutes, he must shew the proclamations under fail; and the chirographer's 

mentioning that 'tis a fine with proclamations, is as usual, will not serve. 


A fine with proclamations when given in evidence, ought to have the proclamations indorsed on it; and 'tis not enough to say that it is fraudum formam flatum. Held on 


Trin. 32 Car. 2. B. R. Anol. 

32 H. 8. cap. 26. (Initiated, For the exposition of the statute of fines) ret. 1. Enacts. That all fines levied before the justices (viz. of the Common place) with proclamations, or with the statute, (viz. 4 H. 7. c. 23.) by persons of full age, of lands before the fine levied in any wise intituled to the persons levying the fine, or to any ancestor of the same person, shall be, after the fine lev- 

ing, ingrossed, and proclamations made, a bar against the persons and their heirs claiming the said lands, by force of such, and against all other persons claiming the same to the use of, or to the use of any heir of any of the bodies of them. 

att. 2. Provided, that this act shall not bar any per- 

sons, by reason of any fine levied by any woman after the death of her husband, contrary to the statute 11 H. 7. 

cap. 20. of lands of the inheritance or purchase of the husband, or his ancestors, assigned to any woman in dower, for term of life, or in tail. 

Selts. 3. If the fine be void of the proclamations, it doth not extend to any fine levied of lands, the owners whereof, by any ex- 

press words in any act of parliament made since the 4 H. 7. are restrained from making any alienations. 

att. 4. Provided, that this act shall not extend to any fine to be levied by any person of any lands, before the levying of the proclamations; to prevent a fines being levied by the same, or to their ancestors, in tail, by letters patent, or by acts of parliament, the reverson whereof, at the time of the fines levied, being in our Sovereign Lord, his heirs or successors. 

This statute governs properly a statute, nor do fines receive any strength or virtue by it; but it is only a con- 

tradiction of 4 H. 7, and whereas this statute continues 4 H. 7. to extend to fines levied by tenant in tail, the eftate- 

tail shall be adjudged in law, to be bound by 4 H. 7. 

and not by this statute, which is rather a judgment upon 

4 H. 7. than any new statute. 

Per Pervum J. 


Bamfield. 

att. 1. By perform of full age before the fine levied] W. 

devised lands to f. when he should come to the age of 25 

years 7. after 21, and before 25 years, leaves a fine with 

proclamations, and though he was not barred by force of the 

statute, at that time, yet by force of the words (before the fine levied in any wise intituled a eftate-tail in future is com- 

prehended) but no judgment was entered. 

Per War- 

borton J. 1. Rep. 50. in Lumper's cafe, Cites Hill. 29 


Pafffield in the conuene is not requisite to the fine's be- 

ing a bar of an eftate-tail. 

By the words of the statute, a fine doth bar the intail in many cafes, where the conuene cannot give the land, because he has it not. 

Per Hobart 

Ch. 1. Hob. 258. Mich. 16 Jac. in the cafe of Dan- 

combe v. Henry. 

Tenan in tail disjoints and disfraths the disjoints, and leaves a fine, with proclamations to A. for conuene de droit come coe, &c. and takes back an eftate in fee by 

render, in the same fine. The disjoints, before all the proclamations are made, claims, and after the proclamations paid, &c. and then after he was dead, the tail dies feised; and by all the juftices of C. B. 

the heir is not remitted to the said lands; and this was by virtue of this statute, which bars tenant in tail, and his heirs by the said fine. 


Trin. 4 Ellis. Anol. 

A. before this statute gave lands in tail, remainder to the 

King in fee; tenants in tail had issue three daughters; one 

of the daughters, in Queen Elizabeth's time, leaves a fine of 

her part with proclamations, and they are bad during her 

life, and the dies without issue; and it was adjudged, that 

this fine by force of this statute barred the daugh- 

ters, and that by the statute after he was dead, the tail dies seised; and by all the juftices of C. B. 

the heir is not remitted to the said lands; and this was by virtue of this statute, which bars tenant in tail, and his heirs by the said fine. 


Trin. 4 Ellis. Anol.
If tenant in tail levies a fine, and dies before the pro-
clamations are past, though a right really defends to the
issue, becaufe it was not bar to the
fine, yet after the proclamations the intail is barred; for
the proclamations diuffering the fines which bar the intail
from hfe to Common law, which only difcontinue
it; and by the express words of 32 H. 8. all fines levied
with proclamations of any lands intailed to the perfon fo
leving the fine, be bar to any of the issue of his intail,
immediately after the proclamation made be adjudged a suf-
cient bar against the faid perfon and his heirs, claiming
only by force of the fad intail. 3 Co. 86. Plow. 437;
2 And. 177. Mer. 628.

It was adjudged, that where A. was tenant for
life, remainder to B. in tail, and B. levied a fine, and
died before all the proclamations were past, his fife be-
ing out of the paff; that after the proclamations were
past, though the fife, immediately upon his return in
the kingdom, made his claim to the remainder, yet it
avoided him nothing, but the fine was a final bar to him.

3 Co. 87. cafe of fünder, in which that
law is the fame in cafe of actions brought, as
of an entry made to prefer the intail; for if tenant in
tail leve a fine, and dies before all the proclamations are
past, and the fife in tail brings a fufenen; the conufe may
be levied the fine with proclamations, though they were
made pepend the writ. 3 Co. 95. Plow. 437.

And the law is the fame in cafe of actions brought, as
of an entry made to prefer the intail; for if tenant in
tail leve a fine, and dies before all the proclamations are
past, and the fife in tail brings a fufenen; the conufe may
be levied the fine with proclamations, though they were
made pepend the writ. 3 Co. 95. Plow. 437.

And this has been carried fO far, that though a particu-
lar tenant, who is a ftranger to the tenant in tail,
should enter before the pro-clamations were past, to pre-
fer his own right, yet the intail is barred; as if A. re-
nant for life, remainder to B. in tail, remainder to C.
in fee, and B. defiles A. and lev es a fine, but before
the proclamations are past, the tenant for life enters,
and avoids the fine as to himself and C. though in this cafe,
neither the eate of A. nor C. is affected by the fine,
yet after the proclamations made, the intail is barred from
the proclamations made, not any act of the intail of the
fife prefer it. C. Eliz. 610. Pofb. 66. 66.

As tenant in tail may convey his whole eate by the
fine, so he may convey any letfer eate out of it, which
shall likewise give the fife after his death; as if there be
A. tenant for life, remainder to B. in tail, and B. agrees
to make a leafe for years to J. S. upon writ of covenant
brought by B. againft j. S. he may levy a fine come en,
& to. B. and may render them to J. S. for the
term agreed on, with refervation of a rent; and this
lease hall continue in force against the fife, because when
J. S. conveys by the fine, though he really has no right,
the tenant intail when he takes the fine, and the fife
shall retain in his hand, and he is a ftranger to any of
the heir wife than that he took a fee-femple; and consequently
it appearing by the fine that he was tenant in fee-femple, he
has thence a power to make a leafe to bind his fife. Plow.
430. Brs. tit. Fines 150.

But it is for the tenant for life, the remainder in tail,
and the tenant for life lefts a fine come en, & to. to
the tenant in tail, who grants and renders a rent-charge out
of the land to the conufe, this fine shall not bind the fife,
because the rent was newly created by tenant in tail,
and not intailed to him, or any of his predecessors,
and the intail of the lands being, no inconvenience of the
done can affect the lands which rest in the hands of
his. 1 And. 6. 3 Co. 89. Dyer 213. Plow. 435.

If there be A. tenant in tail, the remainder to B.
in tail, the remainder to the right heirs of the tenant in
tail, and the tenant in tail bargains and sells the lands to
J. S. and his heirs, and then levies a fine to him;
FIN

this is a bar to the illue in tail, but no displacing or discontinuance of the remainder in tail, because the bargain and sale conveyed no more than what the tenant in tail could lawfully give, which was the whole defeasible estate during the time he lived, and no estate of freehold passed by the fine, that being before conveyed by the bargain and sale; but yet the fine had this effect, though subsequent to the bargain and sale, to convey the whole estate to the bargainee, who before had but a defeasible estate during the life of tenant in tail; because whereas over a fine is levied to a person to whom the lands were intailed, and whom the illue must mention in his formeden, such fine cuts off the illue, and bars the illue. 10 Co. 96. 1 Burfr. 162. 5 C.

5. Of the operation of a fine in barring strangers, or those who have but an uncertain interest, as a term for years, or barely an equitable interest.

If tenant in tail be defiessed, and the defiessor levies a fine, the defiessor has five years to make his claim by the first faving, because he is the fuff who has a right at the time of the fine levied; and if he omits to make his claim in that time, the illue is bound for ever. 3 Co. 87. 3 C. Rü. 896. Co. Lit. 372. Though the flatues 4 Hen. 7. and 32 Hen. 8. have made the operation of fines stronger against parties and privies than they were at Common law, yet in them the time the illue is bound, though it be as to remainder or reversion; yet have they enlarged the privilege that strangers had at Common law to avoid them, for upon these flatues they have five years from the fine to make their claim, where they have a present right at the time of the fine levied; and where it accrues after the fine, they have five years from the time of such accruer; whereas by the Common law in both these cases a stranger had only a year from the entry of the fiver, at which time the land palled. 2 Bac. Abr. 532.

If tenant in tail bargains and fells his lands, a diffentiation is made; the bargainee or bargaining party has five years after the time of the fine to claim, at the time of the fine levied; and if he does not claim, the illue is bound for ever. 3 Co. 87. 6 C. Rü. 896. 2 E. Rü. 7.

If a mortgagee be defiessed, and five years pafs after the proclamations, the mortgagee is hereby barred, but if the mortgagee pays or tenders his money, he has five years to prosecute his right by the second faving in the act, because his title did not accrue till the payment of the money. 3 Plow. 3.

If an infant defiessor be defiessed, or makes a feoffment, and the feoffee or defiessor levies a fine, and five years pafs, the first defiessor is barred of his right by the first faving in the act, because he has a present right, which he ought to pursue immediately by action or entry; but the infant still has five years from his full age to avoid the fine, because no laches is to be imputed to him from the time he arrives at his full age. 2 Bac. Abr. 532.

A. fled of Black-Arete in fee is defiessed by B. who levies a fine for a present right, which is the time of the fine, and the life of A. three years after the fine levied, A. dies, and his right descends to C. his grandson, at his heir, who at the time of the descent of such right was an infant; and the question was, whether A. and C. having suffered five years after the fine levied to pass during his and A.'s time of life, his right, and the title of C., should be barred, or should have other five years upon his arrival at full age to make his claim in; and it was adjudged, that he should not, but that he was barred, and that by virtue of the first faving in the 4 H. 7. which saves to every person and their heirs, the others to parties to the fine, such right, claim and interest as they have in lands and tenements whereof a fine is levied, so that they pursue such right by way of action or lawful entry within five years. Now A. having a right to Black-Arete at the time the fine was levied, confequently he and his heirs must be comprehend in this faving, but then they cannot take the benefit of such comprehension unless they pursuue their right by way of action or lawful entry within the said faving, which they apparently neglected to do, since neither A. nor his grandson made any claim or entry, or brought any action for recovery of their right within the five years; and therefore such right must be barred and extinguished; and C. in this case shall have no privilege of infancy, because the flatue extends that only in cases where the right first attached in the infancy, and therefore shall have five years after his infancy to make his claim; but here the right was first in A. at the time of the fine, and the flatue allows but five years to pursue the right from the time it accrues, which was not done in this case. 35 Co. 372. 372.

But if A. be tenant in tail, the remainder to B. in fee, and A. levies a fine with proclamations, and then B. dies, his heir within age, and then A. dies without issue, and five years pass without any action brought by the heir, yet he shall either, during his minority, recover the land notwithstanding the five years levied, because the right first accrued to him, B. having no right to the land by the remainder, till the estate-tail was spent, which did not happen in his life; or the heir of B. may defer making his claim till he comes of age, and then by the express words of the act he shall have five years to recover his right.

It is a rule, that an interest is not barred by a fine that is not devolved and turned to a right; for if the person who has the right continues in possession at the time of the fine levied, he is under no necessity to make his claim, and cannot be put to his action or entry, which are the only remedies the act gives to avoid fines and secure one's interest, because he being in possession, and not disturbed by the fine, has already all those remedies it can give him, and therefore it would be fruitless and unnecessary to pursue them; as if a man levies a fine of land out of which I have a rent, common, or the like, the fine and five years nonclaim shall not affect me, because I am still in possession of my rent or common, and it were in vain to endeavour to recover what I still enjoy. 2 Inf. 517. 9 Co. 106. 8. C. Rü. 60. 5 Co. 124. 1 Vent. 81. 3. 2. 1. 3.

A. leaves to B. for years, to commence after a former lease in eft; the first lease is determined, and before any entry thereinto, the fuff or parties and messuages are not thereby vacated; if B. levies a fine, and five years pass without any claim, B. is barred of this interest; for by the general clause, the fine concludes all privies and strangers, and the first faving includes the leflee in respect of the word intereft, which a term for years may properly be called. 5 Co. 124. 5 C. Rü. 535. 3. 3.

But if B. who had the future interest, had died before the determination of the first lease, and upon the expiration thereof the leflee had entered and levied a fine; and after the first five years administration was granted, the administrator should be allowed five years to make his claim; for none had a right or title of entry before, and it accrued to him by the administration after the fine, and consequently he shall be allowed five years from the accruing of his right; but in the former case the leflee had a right of entry at the time of the fine levied, and therefore could have but five years from that time; but if the first fine fine levied during the time the administrator was in possession, the second lease shall have five years after the first lease is determined, because his right then first accrued. 1. Leon. 69. 2 Leon. 157. 3 C. Rü. 61. 5 Co. 124. 3.

As if a man sells lands to the use of himself for life, and that if he should make a jointure to his wife, and a lease for life, and then after the life be committed, and then the trustee should find fault to such uses; he made a lease accordingly; and then he and his wife levied a fine; the lease is not barred, though five years should pass without entry or claim, because he having but a future interest, it was not displaced or devolved by the fine; consequently, the title descends to the heir of the first death which was not touch'd by the fine; besides, this being an intereft termini, the leflee had no right till after the death of the leflee, consequently must have five years from
from the accruer of his right to prefer it. 1 Hard. 410.

A coypholder may be barred by a fine and nonclaim, because it is an interest within the statute; so executors, that have land till debts and legacies are paid, may be barred by a fine and five years nonclaim, because they likewise have an interest within the words of the statute. 4 Vent. 4. 4th. 17. 1

If there be tenant by eject, flauta-merchant or fliple, and a fine levied of those lands, and five years pafs without any claim, they are bound by the fine, because they have each of them an interest within the words and intention of the statutes, and thereby shall be bound if they do not pursue their rights within five years. 2 Inst. 517. 5 Ca. 124. 4. Plow. 374. So it is if an inquisition upon an eject be found, and then a fine be levied of the lands, and five years pafs without any claim, the interest of the tenant is barred, because after the inquisition found, the party may himself have a tenant under him, and therefore may have a ejectment or trespass, and therefore their interest may be displaced, and consequently their right barred. 1 Med. 217.

But if a man have a judgment for a debt at Common law or in Chancery, before the land be extended, aliens by fine, and five years have past, he may still have a "fres facius and an eject"; so it is of a conuife of a statute before execution fixed; for thou the judgment and execution be incumbrances that are chargeable upon the estate, yet before execution fixed, the conuife, &c., has no right to the land, for his release of all right, and the land will not hinder him from suing out execution, and consequently they cannot be barred by a fine, unless they omit to make their claim in five years after the extent, for then their right accrueth. 1 Med. 127. So if a man have a decree in Chancery to charge lands, and the tenant die after the decree, and five years pafs, yet the plaintiff may have execution, because till the decree be executed, he has no right to the land, and therefore is not obliged to make any entry or claim to prefer it till his title accrues. 1 Chan. Cas. 268.

If leffe for years be oufled, and he in reversion diffeled, and the difleffor levies a fine, this and five years nonclaim shall bar both, because the leffe for years may have his ejectment, and the leffe for his aife. 9 Ca. 105. But if leffe for life be diffeled, the reverfioner shall have five years after the death of the particular tenant, before he be no right to receive the finehold. 9 Ca. 105 b. Co. Lit. 250. Plow. 374.

If leffe for life or years makes a feoffment and levies a fine, and five years pafs without entry or claim by the reverfioner, and then the leffe dies, the reverfioner has five years to prefer his right, because he has two different rights, this and the leasehold. 8 Ca. 270; 26. 12. 5 Co. 156. But if tenant in tail die, there is no entry or claim, and then he levies a fine with proclamations, and dies without fines, and five years pafs without any entry or claim, the remainder-man is barred, because upon the death of tenant in tail without issue, his title commenced, and shall be allowed but five years from thence to prefer it. 1 Co. 156.

If there be tenant for life, the remainder to B. in tail, and the leffe to A. for a fine, B. being ouf the realm; if B. dies beyond sea, the life in C. is in tail to avoid the fine when he pleases for that clause of the 4 H. 7, which gives perrons out of the realm, iants, &c. and their heirs, five years after their impediments removed, to pursue their right, cannot be extended to this case, because B. became a tenant in tail into the realm to make his claim, and the clause limits five years to him and his heirs after his return, which now is become impossible. 2 Inst. 519.

A copholder of a dean and chapter levied a fine with proclamations, and five years past without any claim by him that was tenant in tail, in the time of his death yet, the succeeding dean was not bound by the fine; because if that were allowed, the statute of 1 & 2 Eliz. would be of little use to restrain alienations; for then by combination between the dean and tenant, all lands belonging to the chapter might be aliened. 1 Vent. 317.

If leffe for years affigns his term in trust for himself, and afterwards purches he inhabitation, and occupies the land, and then levies a fine, and five years pafs without any claim by the affignee, the term is lost, for neither the "cyfle que trufe", nor the termor, have any remedy; nor the cyfle que trufe, because by the fine he has acknowledged the land to be his by the termor, the claim; and it was unreasonable to allow him any premisions after to felon a confession to the contrary; nor the termor, because he having a right at the time of the fine levied, and omitting to make his claim within five years, is barred by the express words of the statute; so it is if the fine in fee-simple makes lease for a hundred years to attend the inhabitation in trust for himself, and still continues in possession, and makes a lease for fifty years, and levies a fine for conuance de droit to confirm it, and five years pafs without any claim by the first leffe, his interest is barred by the fine; for the second lease, and the fine developed the first term out of the lease, and consequently if there be no claim by him in five years, his interest must be barred. Co. Car. 110. 1 Lev. 270. 1 Sid. 478. 1 Vent. 8. 1 Chan. Rep. 51, 65.

But if a man purchases the fee-simple of Black Acre, of which there is a long lease in being, and the conveyance is made by fine, and the purchaser to protect the inhabitation has an assignment of the term in trust for himself, though the termor makes no claim in five years; yet the termor continues, because the statute of fines being made for the security of the purchasers, they would weaken their interest, if fines destroyed such leaves against the intention of all parties, 1 Sid. 460. 1 Vent. 82. 1 Lev. 272.

Thus if a man mortgages his land, and, as is usual, still continues in possession, and levies a fine, and five years pafs, yet the mortgagee is not barred; for though the mortgagee be in reality out of possession; yet when that is done by the consent of both parties, and the nature of the contract requires it should be so while the interest is paid, it is against the original design of the contract, that any act of the mortgageor, except the payment of the money should deprive the mortgagee of his security, and is no less than a fraud, which the law will not countenance. 1 Lev. 272; 2 Lev. 272. So if the mortgagee is in possession, and levies a fine, and the five years pafs, yet upon payment of the money he may enter. 1 Fern. 132, and there said to be a new way of foreclosing the equity of redemption; but this is in a most equivocal case.

Thus it hath been adjudged, where a man was leffe for years of one part of a manor, and tenant at will of another, rendering rent, and the leffe makes a lease for life, and then levies a fine to the tenant for life, but still continues in possession, and pays the rent; this fine shall not bar the life in the manor, but is visibly a fraud and trick in the first leffe; which he shall readily furnish to the court; and the leffe had no reason to make his claim while the rent was duly paid him. 3 Ca. 77.

It is agreed on all lands, that a fine and non-claim will bar a trust, because the cyfle que trufe has an equitable interest, and therefore ought to pursue it by proper remedies.
FIN

remedies to secure it; yet this must be understood with
the following restrictions. 1 Chanc. Cases 266. 2 Chanc.
Cases 215.
1. Where the purchaser has notice of the trust, tho' the
truftee conveys to him by fine, and five years paß
without any claim by the caufi que trufi, yet the trust is
not barred, because where the purchaser has notice, he
fees the title of the vendor, and therefore, if he has to
convey from any other, and when he takes the land from him,
shall be prefumed to hold it in the fame plight, and that
the vendor could not make him a better title than he had
himſelf; and when the purchaser takes it upon these
terms, the trust is undisbarred, and caufi que Trufi's in-
terest no way affeélled by the fine. If, though the truʃee
should convey by fine to a pur-
\*chafier, who had no notice, and the-ey, and five
years non-claim, the caufi que trufi should be barred, yet if the
trufsee fhould convey to the truftee, the bar from the
reconveyance ceafes, and the trust as to him reſumes
again; for he that was originally invofflved with a trust
shall never be alowed to plead his own corts act in
his own justification; for that were to allow a man to plead
his crime in his own defence, and exceafe of his treachery.
2 Chanc. Cafes 124, 5, 6. 1 Vern. 60, S. C.
If lands are devided to truʃees till debts paid, and
then to an infant and his heirs, and fons; and 'f a stranger, enters
on the lands, and leaves a fine, and five years non-claim
paʃs, and the infant, when of age, brings an eʃejmain; but he is barred, because the truʃee ought to have entered;
yet equity will relieve, and not fuffer an infant to be
barred by the laches of his truʃee, nor by a fine and a bar of
the trust eʃte during his infancy, and the infant in this
case shall recover the mean profits. 2 Vern. 368.
Remainder in tali limited to the ifuoe, not bârable by
the father's fine. 1 Lord Raym. 33.
A limitation in a will to C. and his heirs, to the ufe
of him and his heirs, in trust, and bay debts, and after in
trust for D. and the heirs of his body, and in default of
heirs of the body of D. remainder to C. and his heirs:
The recovery of D. barred the remainder to C., as be-
ing a remainder of a trust, for a remainder of a legal ef-
tee cannot be barred by the recovery of a caufi que trufi
7. By a marriage ifettlement, gives his wife a power to dispose of 100 L. by will to fuch perfon as the
fialth appoint, to be paid to the wife within one
year after his death, and in default of fuch payment, J.
M. is impowered to make a lease of a fewe of parcels of lands to
raife this fum; the wife makes a conveyance of the lands, but
leaves it while living; the heirs of the husband mortgaged the eʃteate to E. who then had no notice of this power:
 Afterwards, on B.'s purchaʃing the eʃteate, the heirs of the husband levy a fine to him, and convey the equity of redemption as a collateral
security, who then had notice of the power; five
years incurred after levying of the fine, and no claim
made on the part of the appointee of the 100 L. but they now bring their bill to be paid this fum. Lord Chan-
celloş Hardwicke held, that the plaintiffs were titulado to the
100 L. and intereft from the end of one year after the death
of Anne Brillkes the wife of T. B. Atkysh's Rep. 473.
A bare naked power is not barred by any of the fla-
tes of fines, otherwiʃe as to an eʃteʃment interim. At-
kysh's Rep. 476.
6. The remedies given to strangers by claim and entry for
the preference of their rights, and of erroneous fines, and
the manner of recovering them.
If a man has only a right of a action, and his entry
be taken away, there is a claim or eʃteʃment on the land
will not bar his right, or avoid the fine; be-
cause though he has a right to the land, yet fince he
has not purfued it in the manner the law has pre-
scribed, 'tis as ineʃteʃal as if he had been quited. 2 Bac.
Abr. 536.
A man that has a right of entry may empower ano-
other to enter for him, and such entry is fufficient to
avoid a fine; for what another does by my command
or direction, is looked upon to be my own aʃt. Mort
550.
But where a man enters in my name, and with out my
direction; this does not avoid the fine, or preferve
any right, because the statute prefers my right only in
cafe I purfue it by entry, &c. In another case, it makes no difference, without my direc-
tion, is not an aʃt, and confequently cannot avoid the fine; yet in this
cafe, if a stranger enters without my direction, and I agree to, and approve of the entry within five years, this is sufficient to avoid the fine, because my lub-
quent action and preference is equivalent to a pre-
tent. 3 Chanc. 156.
2. Title by fine is defective, and therefore the aʃt of another
by my direciton is my own. Poph. 108. Co. Lit. 245.
Leafe for life levies a fine come esse, &c. and he in re-
verfion, five years after his death, brought his eʃejmain, and
a stranger by his direciton delivered a declaration in
eʃejmain to the tenant in possession; yet this was ad-
judged no entry to avoid the fine. 1 Mod. 10, 1 Squard.
319. 1 Vent. 42.
If an action be brought to recover lands, of which a
fine was levied, and the demandant difconti nue this, is no
claim to avoid the fine, because the diʃconvenience
threws the burden of the demandant to preferve his right.
Dalton 116, 107, 1 Vent. 45.
By the 4 & 5 Ann. (the aʃt for the amendment of the
law) c. 16. f. 16. it is declared, that no claim or entry, to be of or upon any lands, shall be of any force or effect
to avoid any fine levied, or to be levied with proclama-
tions, &c. This act, and the batty of another
will be commenced within one year next after the making
such entry or claim, and protruded with eʃteʃ.
Devise to A. and B. for their lives, equally to be di-
vided, and after their deceases to the heirs male of
their bodies, equally to be divided; and of either to them die
without issue, then to the survivor and his heirs male,
A. and B. make partition, and B. leveys a fine and
füffers a recovery, and dies without issue. The entry of
A. is taken away, and no title accrues by furviviorship.
Stran. 13.
There must be an actual entry to avoid a fine, and the
demise cannot be laid on a day before the entry. Stran.
1086.
As to erroneous fines, and the manner of reverfing
them, it must be obferved in the first place, that no perfon
can bring a writ of error to reverse a fine, or any judg-
ment, that is not intitled to the land, &c. of which the
fine was levied; and if this be the case, the court will not turn up
the present tenant, unlefs the demandant can make out
a clear title, poʃeflion always carrying with it the pre-
sumption of a good title till the right owner appears; be-
fides, where the plaintift in the writ of error can't make out a
title, he can receive no damage by the fine, which the
writ of error always supposes to be done, tho' it
should be erroneous; and therefore it is not less than tri-
>fing with the courts of juʃice, to seek relief when he
can't make appear he has received any injury. 1 Rol1.
Abr. 747. 150 3 Lev. 36.
But if there be several parties to an erroneous fine, they
shall be liable to the party that is to enjoy the land, tho'
they themselves can have nothing. 1 Rol1. Abr. 747. 4
Dyer 89.
Another rule to be obferved is, that nothing can be
affigned for error that contradicts the record; for the
records of the courts of juʃice, being the only greater
credit, can't be quitteded but by matters of equal no-
ternity with themselves; whereas tho' the matter affigned
for error should be proved by witneʃles of the belt credit,
yet the judges would not admit of it. 1 Rol1. Abr. 757.
And hence it is, that in a writ of error to reverse a fine,
the plaintift can't affign that the cause proceeded before
the rule of the aditus potestatem, because that contradicts
the record of the conveyance taken by the commissioners,
which evidently shews that the conuor was then alive,
because they took his conveyance after they were armed
with the conveyance and the aditus inuenit. Dyer 89. 8,
1 Rol1. Abr. 757. 4 Cert. E1. 469.
4 But
FIN

But the plaintiff in error may say, that after the con- nuance taken, and before the certificate thereof returned, the con numerator died; because this is consistent with the re- cord, it is authorized. &c.

If a conuance upon fine be made in court, the plain- tiiff in error can't assign for error, that the conuizer died before the return of the writ of covenant, for it would directly contradict the record, because the conuance in court is never made till the writ of covenant be returned; the parties till then being not judicially before the court. 

Cra. Eliz. 468.

If the conuance be taken before commissioners in pais, the plaintiff can't assign for error, that the con numerator died before the return of the writ of covenant, for the delinum made in court to Sir R. M. he being after the conuance made a knight, who returned the delinum with his name and title; and this was assigned for error, that the person that took the conuance was not the same that was empowered to take it; but it was not allowed, because it contradicts the record, which is that the delinum was directed to Sir R. M. and that Sir R. M. and virtue thereof took the conuance. Tel. 33. 1 Roll. Abr. 757. Cra. Jac. 11. 12.

If a delinum be awarded to two, and one only takes the conuance of the fine, this may be assigned for error; because where one of the commissioners only certifies the conuance, the assignment does not contradict the record; but in this cause, if the fine had afterwards been drawn up as a fine acknowledged in court, there the erroneous conuance taken upon the delinum shall not be assigned for error, because it can be taken as a fine acknowledged in court only, and no averment of a conuance or fine, or referred to the proceedings in the court, to disprove the record. 

Cra. Eliz. 240. Tel. 34.

If a fine is acknowledged before commissioners in the country in the vacation, and the conuizer dies before the term; though no writ of covenant was made out, or King's service entered, the court will permit the conuizer to enter the fine, as of the term preceding. Lord Raym. 850.

If one of my name levies a fine of my land, I may avoid this fine by throwing the special matter; as to say, that there are two of my name, one of Sals, and the other of Salts, and the other's heir to be the heir of the survivor; this fine was taken in the country by virtue of a delinum patfatum to Sir Herbert Parrot, his father, and an ignorant carpenter; after which the wife died without issue, and now her heir at law prayed the relief of the court; upon examination it did appear, that Sir A. had an order of the woman, wherein the wife was willing to levy the fine, and asked her husband and her, whether the were of age or not, and both answered that she was; and now her heir moved, that this fine might be set aside, and a fine imposed upon the commissioners for the same, but the court taking a fine of mine under age; but all the court agreed they could not meddle with the fine; but if the wife had been alive, and still under age, they might bring her in by habatus corpus, and inspect her, and set aside the fine upon motion; for perhaps the hus- band would not bring or proceeding in the writ of error; and the court were of opinion, that it was the duty of commissioners to inform themselves of the parties age, and that a voluntary ignorance would not Vol. II. No. 75. execute them; and that if a commissioner to take a fine do execute it corruptly, he may be fined by the court; for in relation to the fine (which is the proper benefic of the court,) he must be a person of some age, as a competent, &c. But here it did not appear, that Sir Herbert Parrot knew that she was under age, and therefore the court would not fine him. 2 Vent. 30. 1 Mod. 246. S. C. 12 Co. 121. 1 Rel. Rep. 113. 114. S. C. 12 Co. 123. 12 Co. 124.

A husband having inveigled his wife to levy a fine of her land to him when the lay on her death-bed, pretending, as was suggested, he was to have it for his life; and a delinum was taken in the country to take the fine, and the cap- tion was taken the very day he died; and because the fine would be lost if the party be dying before the King's fivier was paid, the court directed him to be trans- ferred in the 1611, and made to bear date ten days back- ward, and all the other parts of the fine were rated like- wise, and made to correspond with it, and the King's sivier was paid, and so all appeared on the record to have been done before the death of the woman; only on a bill brought in the court of Chancery to have the fine set aside, or to have a reconveyance, it was held by the court, that though Chancery ought to relieve as much against a fine obtained by fraud or prudence, as any other kind of conveyance, yet that such relief was not by decreeing a suavati of the same as other things; for any error in the fine, or irregularity, or ill prudence in the commissioners, it was a matter properly cognizable in that court where the fine was levied, and for which that court may suavate the fine; but there being no proof of fraud or practice in this cafe, the bill was dismissed. 

Abidie, Cafes in Equity 258.

Husband and wife, the wife being but sixteen years of age, levied a fine, which was taken by virtue of a delinum, and they being brought into the court of C. B. by complaint of the remainder-man, a suavati was entered of the fine made by the woman, and the court directed the re- mainder-man to prosecute an information against him who took the caption of the fine. 3 Leu. 36.

The manner of reverting fines differs from the method observed in reverting other judgments; for in all other cases, where the fuit is adversary, the record itself is removed; but in case of a fine the transcript itself is removed; but for where the fuit is adversary, the record itself is transmitted, that it may be a precedent in like cases; but fines are only a more solemn acknowledgment or contract of the parties; and therefore are no memorials of the law, and need only be informed as other judgments, if the former, the contract stands as it was; if the latter, the judgments of B. R. may send for the record itself, and reverse it, or they may send a writ to the treasurer and cham- berlain to take it off the file; besides, should the record itself be removed, as is usual, it could not be ingrafted for want of a choreographer in B. R. and for this reason Lord Coke says, a fine levied in B. R. is voidable by writ of error. 1 Rel. Atr. 753. F. N. B. 10. b. 2. Bend. 51. Dyer 89. 1 Rel. Atr. 753. Co. Read. 12. 1 Salk. 337.

If a suitant brings a writ of return to reverse a fine that he has taken, this fine he may reverse for his non-age, and his non-age, after insipicition, is re- corded by the court; but before the fine reverfed he lev- ies another fine to another, this second fine shall hinder him from revering the fift; because the second having entirely barried him of any right to the land, must also de- fend himself; and where he has a new suits which would rebarre to him the land. 1 Rel. Atr. 788.

But if tenant in tail levies an erroneous fine with pro- clamation, and then levies a seconed fice, which is also erroneous, and dies; if the issue in tail brings a writ of return to reverse the second fine, he must be holden to the default, and plead in bar the second; for though there be error in the fivier, yet till that appears judicially to the court, it must be looked upon as a ficy duly levied, and consequently bar to the plaintiff, because while the second stands in force he can't have the land; but if in this case the plaintiff brings a writ of error to reverse the second fine, and the defendant pleads in bar the first fine, the plain- tiff may reply upon the first writ of error, that the fe- cond
cord fine was erroneous; and upon the second writ, that the first fine was erroneous, and so be relieved against both; for here the examination of both fines comes judicially before the court, and if there appears any error, the court will set them aside, and not suffer them to stand in the way of the plaintiff's right. 1 Rol. Abr. 758.

But in a writ of error to reverse a fine, the defendant cannot plead the same fine, now endeavoured to be reversed, and five years in bar of the writ of error, no more than in a writ of error to reverse an outlawry, caveat which may be pleaded in bar of the writ of error, quia non voce excepto eius rei, causas 7ctur d. 7el. 461. 1 Vent. 352. 2 Sid. 94, 93. 2 Jon. 181. Cro. Jac. 333. 1 Rol. Rep. 36. 2 Bult. 244. 2 Inf. 418.

If there be a tenant for life, remainder to an infant in fee, and they two join in a fine, the infant may bring a writ of error and reverse the fine as to himself, but it shall stand good as to the tenant for life; for the divisibility of the infant shall not render the contract of the tenant for life, who was of full age, ineffectual. 1 Leon. 115, 319. 1 St. 18, 182.

If one that is sheriff of a county levies a fine, and the writ of covenant is directed to the coroner, this is no error, but the proper method to prevent partiality. Cro. Cit. 415. 1 Rol. Abr. 797.

A writ of covenant to levy a fine ran thus, Præc. A. grant to B., tenant in fee, the land, tenements, gardens, and the deminus postfatum was purportant to the writ of covenant, but the præc', which was drawn up with the concord, was de duobus texitfis pro duobus texitfis; but this was no error, because where the concord was purportant to the deminus and the writ of covenant, the præc' which concerns to be a copy of the writ of covenant on paper, is more than is needful, and therefore no material error. Cro. Jac. 77. 1 Rol. Abr. 794.

If the commissioners upon a deminus return thus, The execution of this commission appears in a certain panel to this commission annexed, whereas the usual form is in a certain schedule; yet this is no error to avoid the fine, for whatever return certifies the cause to be duly taken by the commissioners, is sufficient; and therefore if the commissioners certify the cause under their seals, without any words, it is well enough; so if the return had been made thus, certares postet in hoc amore, Cro. Jac. 77. 1 Rol. Abr. 794.

If a fine be levied, but the proclamations thence are not duly or regularly made, the writ of error shall reverse only the proclamations; for where the proclamations are not all of them, or not duly made, 'tis altogether the same as if they had never been made, and then the fine remains good at Common law to work a defeasance. Dyr. 216, 182, Hobbs' Abr. 938.

The court will not reverse a fine without a faire facies returned against the tenant; for the conuises are but nominal perons; and this was not to be done with a procl, and the law perhaps does not strictly define it, yet the course of the court does. 1 Ball. 339.

Fines may be avoided where they are obtained by fraud, covin or deceit, tho' there be no error in the procl; and that may be done either by writ of deceit or averment, setting forth the fraud or covin. Cro. Edw. 471.

Thus if a fine be levied of land in ancient demesne, the lord shall have a writ of deceit against the conuise and the tenant, and by that avoid the fine. F. N. B. 98 p. After 6.

If a fine be levied to secrete uces to deserve a purchaser, and the conuise pleads the fine in bar, the purchaser may aver the fraud in avoidance of the fine, by 27 Eliz. cap. 4. and such averment is not contrary to the record, because it admits the fine, but sets it aside for the covin and fraud in obtaining it. 3 Co. 80 a. Plow. 49 b.

So if a fine be levied upon an uterius contras, it may be avoided by averment, by 13 Eliz. cap. 8. because such fine being levied for ends the law has prohibited, the law will not encourage any evasion out of the act, nor suffer such uxurious contracts to be supported by the solemn act of the courts of justice against the intention of the act. 3 Co. 80.

A fine was reversed for the death of the conuise before the return of the writ of covenant. Lord Raym. 872.

A fine may be reversed as to part of the land; but cannot be reversed in toto as to one man, and land good as to another. Lord Raym. 179.

Nonclaim on a fine, no bar of deceit to reverse the fine. 1 Lord Raym. 179.

For more reading on this subject, see 2 Bosc. Abr. 12 Vin. Abr. 1 Wood's Const. tit. Fines; and see Recovery.

A fine of lands, for signature de droit, come see. &c.

1. A writ of covenant, or præcipe.

GEORE the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the faith, and of justice, &c. To the sheriff of Norfolk, greeting, Command A. B. esquire, and Cecilia his wife, and J. B. esquire, that justly and without delay they perform to D. E. esquire, the covenant made between them of two messuages, two gardens, three hundred acres of land, one hundred acres of meadow, three acres of pasture, and fifty acres of wood, with the appurtenances, in Dale; and unless they shall do so, and if the said D. shall give you security of prosecuting his claim, then suffer you by good commissioners the said A. Cecilia, and J. that they appear before our justices at Wellminton, the day of in the year of our reign.

Sheriff's return. Pledge of John Doe, for assignation of D. E. esquire, to the Lord the King.

2. The licence to agree.

Norfolk, j D E. esquire, gives to the Lord the King to wit, ten marks, for licence to agree with A. B. esquire, and Cecilia his wife, and J. B. esquire, of a plot of covenant of two messuages, two gardens, three hundred acres of land, one hundred acres of meadow, two hundred acres of pasture, and fifty acres of wood, with the appurtenances, in Dale.

3. The concord.

A ND the agreement is made, to wit, that the aforesaid A. Cecilia and J. have acknowledged the aforesaid tenements, with the appurtenances, to be the right of the said D. E. David, at whose the said David hath by the gift of the aforesaid A. Cecilia and J. and that they have remitted and quitted claim, from them and their heirs, to the aforesaid D. and his heirs, the aforesaid tenements, with the appurtenances, against all men for ever. Also, that the said D. and his heirs, the aforesaid tenements, with the appurtenances, quit-claim, warrant, fine, and agreement, the said D. hath given the said A. Cecilia and J. two hundred pounds sterling.

4. The note or abstrack.

Norfolk, j Between D. E. esquire, complainant, and to wit, 1 A. B. esquire, and Cecilia his wife, and J. B. esquire, defendants, of two messuages, two gardens, three hundred acres of land, one hundred acres of meadow, two hundred acres of pasture, and fifty acres of wood, with the appurtenances, in Dale, you have purchased a plot of covenant was remitted between them; to wit, that the said A. Cecilia and J. have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said D. as these which
FIN

which the said D. hath of the gift of the aforesaid A. Cecilia and J. and tobe they have renounced and quitclaim, from them and their heirs, to the aforesaid D. and his heirs for ever. And further, the same A. Cecilia and J. have granted for themselves and their heirs, that they will warrant to the aforesaid D. and his heirs, the aforesaid tenements, with the appurtenances, against all men for ever. And for this recognition, remise, quitclaim, warranty, fines, and agreement, the said D. hath given to the said A. Cecilia and J. two hundred pounds sterling.

5. The foot, chirograph, or indentures of the fine.

Norfolk, }

THIS is the final agreement, made in the court of the Lord the King at Westminster, from the day of Saint Michael in one month, in the second year of the reign of Lord George the Third, by the grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, before the Right Honorable Charles Lord Camden, Lord Chief Justice and 

Justices, and other faithful-subjects of the Lord the King then there present, between D. E. Esquire, complainant, and B. Esquire, and Cecilia his wife, and J. B. Esquire, defendants, of two messuages, two gardens, three hundred acres of land, one hundred acres of meadow, two hundred acres of pasture, and fifty acres of wood, with the appurtenances, in Dale, wherein there is a plan of several commandments handed them in the same capital, that the aforesaid A. Cecilia, and J. have acknowledged the aforesaid tenements, with the appurtenances, to be the right of the said David, as those which the said D. hath of the gift of the said A. Cecilia, and J. and tobe they have renoused and quitclaim, from them and their heirs, to the aforesaid D. and his heirs for ever. And further, the same A. Cecilia, and J. have granted, for themselves and their heirs, that they will warrant to the aforesaid D. and his heirs, the aforesaid tenements, with the appurtenances, against all men for ever. And for this recognition, remise, quitclaim, warranty, fines, and agreement, the said David hath given to the said A. Cecilia, and J. two hundred pounds sterling.

6. Proclamations, endorsed upon the fine, according to the statutes.

THE first proclamation was made the day of ---- in the term of Saint Michael in the year of the King within written.

The second proclamation was made the day of ---- in the term of Saint Hilary in the year of the King within written.

The third proclamation was made the day of ---- in the term of Easter in the year of the King within written.

The fourth proclamation was made the day of ---- in the term of the Holy Trinity in the year of the King within written.

Fine annulando levato de tenementibus quos suis de antiquo dominico, Is a writ to the justices for the disavowal of a fine, levied of land held in ancient demeine to the prejudice of the lord. Reg. Orig. for.

Fine capitando pro terris, Is a writ lying for one that, upon conviction by a jury, having his lands and goods taken into the King's hands, and his body committed to prison, obtained bail for a sum of money, &c. to be discharged from imprisonment, and his lands and goods to be re-delivered unto him. Reg. Orig. fol. 142.

Fine foite, (from the French affective fin, signifying sometimes craitly, sometimes artificial or exact, and the substantive fins, in Latin viti.) Signifies an absolute necessity or compulsion D. and his heirs, when a man is constrained to do that which he can no way avoid, we say, he doth it de fine foite, and in this sense it is used, "Old Nat. Breu. fol. 78. and in the statute 35 Hen. 8. c. 12. and in Perkins, Dow. 51. In Mancell and Woodland's cafe, Blood. st. 94. And in Eyton's cafe, cited in Eyton's cafe, Ca. 6 Rep. fol. 111. Gouf. edit. 1772.

Fine Irlando de tenementibus tenentes de Rege in repicte, Is a writ directed to the justices of the Common Pleas, whereby to license them to admit of a friendly sale of lands held in capite. Reg. Orig. fol. 167.

Fine lucrare, To compound, or make satisfaction for a crime. 'Tis mentioned in Leg. H. 1. c. 53. in Alis. Par. p. 586. and in Wallingf. p. 180.

Fine non rapienda pro potestate plantanda, Is a writ to inhibit the execution of a writ to take fines for fair pleading. Reg. Orig. fol. 222.

Fines for alienation were fines paid to the King by his tenants in chief, for licence to allow their lands, according to the flat. 1 Ed. 3. c. 12. But see where they are taken away, 12 Car. 2. c. 24. s. 1, 6.

Fines for offences. Fine, in this sense, is amended, pecuniary punishment, or recompence for an offence committed against the King and his laws, or against the Lord of a manor: In which case a man is said fines for vocere de transferendo cum rege, &c. Reg. Jud. l. 25. 2 Cowell.

It seems that originally all punishments were corporal; but that after the use of money, when the profits of the courts arose from the money paid out of the Civil causes, and the fines and confiscations in criminal ones, the commutation of punishments was allowed of, and the corporal punishment, which was only in terrava, changed into the pecuniary, whereby they found their own advantage. This begat the distinction between the greater and the lesser offences; for in the crimina motus there was at least a fine to the King, which was levied by a capitator; but upon the lesser offences there was only an amercement, which was assessed, and for which a disfringus, or action of debt only lay. 2 Boc. Abr. 502.

1. Who have sufficient authority to fine and amerce, and for what offences.

2. In what actions or proceedings there ought to be a fine or amercement.

3. Who, in respect of their persons, are not to be fined or amerced; and where a fine ought to be awarded, and not an amercement.

4. Of mitigating or aggravating fines; of moderating or offering amercements; and of the manner of recovering fines or amercements.

1. Who have sufficient authority to fine and amerce, and for what offences.

Regularly all courts of record may fine and imprison an offender, if the nature of the offence be such as deserves such punishment. 8 Co. 29. Dall. 400. But no court, unless of record, can fine or imprison. 11 Co. 43. b. Gatt. 381. S. P. adjudged. Co. Lit. 117. And all courts of Common law, that have power given them to fine and imprison, are thereby made courts of record. 1 Sal. 200.

The sheriffs in his turn may impose a fine on all such as are guilty of any contempt in the face of the court, and may also impose what reasonable fine he shall think fitting upon a suitor refusing to be sworn, or upon a bailiff refusing to make a parcel, or upon a sheriff neglecting to make his premiss, or upon one of the jury refusing to present the articles wherein they are charged, or upon a person duly charged constable refusing to be sworn. 2 Jon. 142. 8 Co. 38.

Also the sheriffs, by recognizance bind any perfon to the peace who shall make an affray in his presence, fitting the court, or may commit him to ward, either for want of Jurisdictions, or by way of punishment, without demanding any Jurisdictions of him; in which case he may afterwards impose a fine according to his

If the sheriff in his torn, and _see_ the coinage of a court-leet, have discretion, or may give an order for its takeoff, as a fine or for ament for contempt for the court; as for a suit's refusing to be sworn, &c. and the coinage of a court-leet may either aim at fine or fine an offender, upon an imputation for an offence not capital, within his jurisdic-

tion, without any form of process, of trial; espesial-

ly if the crime were a very way enormous, as an affray accompanied with wounding. Keep. 66. Kitchen 43. 51. It is said, that some courts may impose fine or other, as the confables at the petty sessions. 11 Co. 44. 1 Rol. Rep. 74. 11 Co. 43. b.

Also some courts cannot fine or impose, but amerce, as the county, hundred, &c. 11 Co. 43. b.

But some courts can neither fine, impose, nor amerce; as ecclesiastical courts held before the ordinary, archdeacon, &c. or their commissaries, and such who proceed according to the Canon or Civil law. 11 Co. 44.

Every court of record may join the people to keep silence under a pain, and impose reasonable fines, not only on such as shall be convicted before them of any crime on a formal profession, but also on all such as shall be guilty of any contempt in the face of the court, or in the manner, or in the face of the judge, or obstinately refusing to do their duty as officers of the court. 11 H. 6. 17. 1. Rol. Abr. 219. 8 Co. 38. 11 Co. 43. 3. Er. £. 581. 1 Sid. 145.

If any of the jury give their verdict to the court, before they are required of their verdict, they may be fined. 42 aff. 150.

If time out of mind a confessable hath yearly been elected, and presented by the jury at a leet, and _all_ by them is elected and preferred confesable, and being in court, and by the coinage required to take his oath accordingly, re- fusal and departer in contempt of the court, the coinage may impose a fine on him. 8 Co. 38. b. Griffin's cafe.

So if a tithingman refuse to make a prentiment in a leet, the coinage may impose a reasonable fine on him. 8 Co. 38. b.

So if one of the jury in a leet departer without giving his verdict, he shall be fined by the coinage. 8 Co. 38. b.

If one is present when a murder is done, and does not his left to apprehend to apprehend the murderer, he shall be fined and imprisoned. 3 I. 75. 5

So if two are fighting, or others looking on, who do not endeavour to part them, if one is killed, the lookers on may be indicted and fined to the King. Nay 50.

If at a justice-leet, held within a forefl, a man makes a fine, this is not properly a rent, but be fined. 4 I. 297.

If a dead body in prison, or other place, wherein an inquete ought to be taken, be interred, or suffered to lie so long, that it purifies before the coroner hath viewed it, the gaoler or township shall be amerced. 1 Rol. 278. 2 Hawk. P. C. 38.

If any hawks may be committed, or dangerous wound given, whether with or without malice, or even by misadventure, or self-defence, in any town, or in the lanes or fields thereof, in the day-time, and the offenser escappe, the town shall be amerced; if out of a town, the hundred shall be amerced. 3 I. 75. 4 I. 103. 5 I. 252. 2 Len. 207. 2 I. 315. 5 I. 510.

Also since the flate of Winchelsea, cap. 5, ordains, that walled towns shall be kept but from fun-setting to fun-setting; if the fault happen in any such town by night or by day, and the offenser escappe, the town shall be amerced. 6 Co. 47. 7. 11 H. 6. 65.

If, by the coinage law, hue and cry is made for a trefpas in venison, the township or village within the foref, which does not follow the hue and cry, shall be amerced at the justice-leet. 4 I. 294.

If the departer ought to pay a rent to the leet, _see_ the note hereon. 3 I. 75. 53. If he not pay it, but a sum in gross, and if they do not pay it, they may be amerced, for this is due and payable at the leet. 13 H. 4. 9. 1 Rol. Abr. 212.

A man shall not be amerced in a leet for a trefpas to the lord himself, for he shall not be his own judge. 12 H. 4. 8. b. 1 Lom. 242. 6.

If a man arrerr in London, coming to the Common Pleas, to answer a writ at the suit of the fame man, because he ought to have his privilege, the plain-
tiff, if he be fined for the contempt to the court. 6 H. 55. 1 Rol. Abr. 218. 5. C. 8 Co. 60. 5. C. cited.

So if the plaintiff, in a suit in banes, be arrested at the suit of the defendant in London, before the return of the writ in banes, this is a contempt to the court; and for this he shall be fined and imprisoned. 11 H. 6. 22. 1 Rol. Abr. 218. 5. C. Where one under countenance of law is guilty of a double vexation; as if he be in b. and pending this, uses in London for the fame cause, he shall be fined. 8 Co. 60. a. Galf. 30. pl. 5.

2. In what actions or proceedings there ought to be a fine or an amercement.

It seems, that regularly there was a fine or amercement in all actions; for if the plaintiff or defendant did not prevail, it was thought reasonable that he should be pa-

ned a fine or amercement. Hence, if in either of the actions or proceedings, there is judgment against him, _see_ the fines under misericordia, &c. 8 Co. 39. F. N. B. 75.

Hence when the plaintiff take out a writ, the sheriff, before the return of it, is obliged to take pledges of pro-

uction, which, when fines and amercements were con-

sidered liable, the plaintiff shall not be amerced, bear-

able for those amercements; but being now so very in-

considerable, that they are never levied, they are only formal pledges entered, _see_ John Doe and Richard Roe. 1 Sid. 227. See tit. 351.

In all actions, where the judgment is against the defendant, it was to be entered with a _missicordia_, or a _capitation_; and herein the difference is, that if it be an action of debt, or founded on a contract, the entry is _ide in misericordia_, without assailing any sum in certain; which was afterwards charged by the coroners in the proper county; but if it were in an action of trefpas, the court fine the fine, and levied it by a _capitation_. 8 Co. 60. 1 Rol. Abr. 212, 219. 3. Er. £. 344. 4. J. 255.

And therefore in all actions quare vi et armis, as refcorr, trefpas, &c. the defendant shall be fined. 8 Co. 59. 1 Rol. Abr. 212.

So in a writ of reparation in the Common Pleas, if judgment be given against the defendant, he shall be fined and imprisoned; but in a writ of reparation in the county-court, if the defendant be convicted, he shall be amerced. 6 Co. 61. a. 60. 11 Co. 43. F. N. B. 79. 33. 219. 6 Co. 60. 1 Rol. Abr. 212. 219. 3. Er. £. 344. 4. J. 255.

In a real action, so in an attaint against him who recovered in the first action, if the plaintiff recovers, the defendant shall be amerced. 1 Rol. Abr. 212.

If a man recovers in an affile, and dies, and his wife is endowed, in an attaint against the wife, if he recovers, the wife shall be amerced. 40 Aff. 21. 1 Rol. Abr. 212.

In an action upon the statute of Marlbebridge, for driving a dillshep into another county; the defendant shall be ransomed, (which admits that he shall be fined.) 30 Aff. 39. 1 Rol. Abr. 212.

In an affile of rent, if the tenant be found guilty of a dillshep with force, because of a refuse done by him without vi et armis, he shall be fined, tho' this be not within the statute. 33 H. 6. 206. 1 Rol. Abr. 219. 219.

In all judicial writs, if the plaintiff be barred, nonsuit, or his right is not maintained, the plaintiff shall be amerced, because the process is founded upon a record. 8 Co. 61. a.

But as fines and amercements in those actions, by not being levied, became matter of form, it was thought hard, that for any irregularity herein, a judgment should be arrested; and therefore by the 16 & 17 Car. 3. cap. 8. it is enacted, 43 That no judgment after verdict, con-

fusion by covvet armis, or relict verifiication, shall

be
FIN

be reverted for want of a misericordia, or a capiatur, or because one is put for the other.

And by the 5 & 6. 3d. cap. 12. reciting, that divers faults and actions of the plural, ejaculations, affluents and false impromptu, are brought by party against party in the respective courts of law at Westminster; and upon judgments entered against the defendant or defendants, in suits or actions, the respective courts forefind or ex officio issue out process against the crown, and a fine to the crown, for a breach of the peace thereby committed, which is not acknowledged, but is usually compounded for a small sum of money, by some officer in each of the said courts, but never extorted into the Exchequer; which officers, or some of them, do very oftentimes when the amount of the fine is small, but the damage; and therefore it is enacted, "That no writ or writs, commonly called Capias pro fine, in any of the said suits or actions, in any of the said courts, shall be found out, or prosecuted against any of the said defendant or defendants; or any further process thereupon, but the same fines, and all that that clause and shall hereby be remitted and discharged for ever; yet nevertheless the plaintiff or plaintiffs, in every such action, shall (upon finding judgment therein, over and above the usual fees for finding thereof) pay to the proper officer, who signeth the same, the sum of five shillings and fourpence, instead of the said fine, and all the fees due for or concerning the said fine, to be distributed in such manner as fines and fees of this kind have usually been, and not otherwise; which said officer and officers shall make an increase to the plaintiff or plaintiffs of the like amount to such fines, to be taxed against the said defendant or defendants." But though this statute takes away the capiatur fine, yet it is said to be the practice of the county of Common Pleas, to make a special entry of the judgment in this manner, "nihil de fine quia remittitur per statutum, in the cause the fine was remitted, and in which case the entry was nihil de fine quia paterndatum." 1 Salk. 54. Comb. 387.

But it was ruled on debate in the King's Bench, that this statute having taken away the fine, there was no judgment of capiatur to be entered against the defendant, nor any thing in lieu thereof, but that the clause was to tally be left to be out of the judgment, for that it was not like the case of a pardon, which does not alter the law, but only excuses the party. Carth. 390. Linley v. Sir Talbot Clerk. 1 Salk. 54. Comb. 387. S. C.

And as in the tenant comes in the first day, and renders the land, he shall not be amerced. Co. Lit. 126. 5 Co. Eliz. 65. Nisi prius. 564. 8 Co. 61.

So in statute for a box of charters by the heir, upon the delivery of his father; if the defendant comes the first day, and says, that he hath been always ready to tend the land, and yet is, if the plaintiff does not traverse this, the defendant shall not be amerced. 38 Ed. 3. 25. 1 Roll. 212.

In a case in winn, if the tenant vouches, and the vouchee comes the first day of the summons and tenders, yet he shall be amerced; for when the tender is not at the first day of the original, an amercement is due to the King. 14 Ed. 3. 16. 1 Roll. 212.

In an account, if the defendant comes the first day, and tenders the money, and the plaintiff accepts it, none of them shall be amerced. 2 R. 2. 45. 1 Roll. 212.

So in an account, as receiver of 10 l. if the defendant pleads Never his receiver, and this found against him, by which he is adjudged to account; and after he comes and tenders the 10 l. and makes oath, that after the time that the money was delivered to him, he could not find anywhere, in the falsification of the said fine, and all that shall hereby be remitted and discharged for ever, neither he nor the plaintiff shall be amerced. 40 Ed. 3. 40. 1 Roll. 212.

In dowry, if the tenant, after he is effoned, renders dower, and avers, that he hath always been ready, &c. the tenant shall not be amerced. 22 Ed. 4. 2. 1 Roll. 212.

FIN

In a writ of dower, if the tenant vouches the heir of the baron, and the vouchee demands the heir; and upon this the vouchee enters into warranty, as he who has nothing by default of the tenant, if the tenant says, that he hath slights by deponent; upon which judgment is given, and the defendant shall recover against the tenant, &c. the vouchee shall be in misericordia, tho' he doth counter-pled the warranty. 16 Ed. 3. 14. 1 Roll. 212. 23. If in an action of debt the defendant comes the first day, and appears by attorney, and makes defence, &c. &c. and the attorney pleads non sum inventus, the defendant shall be amerced; for he ought to have acknowledged the action the first day, and not to have made any defence. 1 Roll. 212.

So if in debt the defendant comes the first day, and imputes till the next term, and then judgment is given upon non sum inventus, the defendant shall be amerced. 1 Roll. 213.

If the plaintiff be nonsuit, or if a writ abates by the act of the plaintiff or defendant, or for matter of form, the plaintiff, or defendant shall be amerced. Co. Lit. 127. 5 Co. 61. 1 Roll. 219.

In an action brought by two, if the writ abates by the death of one of them, the other shall not be amerced, because it is by the act of God, without the default of the party. Co. Lit. 127. 5 Co. 61. 1 Roll. 213.

So if two join in a personal action, and one is nonsuit, which in law is the nonsuit of the other, yet the other shall not be amerced, because this is not his fault. 47. 5 Co. 61.

If one demandant or plaintiff be nonsuit in such action, wherein summons and severance lies, and the other proceeds therein, he that is nonsuit shall not be amerced. 8 Co. 61. a.

It seems to be a general rule, that if part is found for the defendant, and the plaintiff and party against him, he shall be amerced. 8 Co. 61. a.

As if in action of covenant, for several covenants broke, if the plaintiff be barred for one, he shall be amerced for this, though he recovers for the other. 1 Roll. 216. 1 Roll. Rep. 411. S. C.

So in an action, upon the case, upon a promise to do two things, &c. to pay so much for certain land sold, and if the vendees sells it again for more than he is to, to pay so much more; and the defendant pleads in bar a release, which is adjudged no bar for part (sollicitus) and a bar for the first sum; he shall be in misericordia for this sum of which he is barred, though it be an entire promise; and he could not have an action but upon being within the term for he might have acknowledged himself satisfied of that which he had released. 14 Ed. 3. 16. 1 Roll. 411.

If the plaintiff declares, that he was possed of an hoy, floating at anchor in the river Thames, loaded with goods, and that the defendant falsified, being master of a ship running in the river, to negligently governed his said thou, that he in pradip's navigation of the plaintiff violenter rucket, & illum fretet & submersit, and upon Not guilty pleaded the jury find, that quad neglientem gubernationem navis prael. defend. per quod in navigaum quarenti violenter rucket, & illum fretet & submersiti, the defendant is guilty, & quad refedium passimfert, that he is Not guilty; the plaintiff shall not be amerced, there is no refedium, and the first part of the verdict comprehends all the injury complained of in the declaration. Hard. 350.

In an action of wains in dominius & gardines, if upon the writ of the defendant be found guilty in dominius, and Not guilty in gardines, the plaintiff shall be in misericordia for the gardening. 1 Ed. 3. 2. Co. 453. S. C.

In trepass for the battery of his servant, and the taking of his timber, if the defendant be found guilty of the taking of the timber, and not guilty of the battery of the servant, the plaintiff shall be amerced for this. 26
If a femme covert gives a groundless appeal of the death of her husband, known by her to be alive, the suit shall be fined. 

3d S. J. 275. 

In an affize against baron and feme, if the feme be received upon the default of the baron, and pleads in bar, and the baron as an outlaw, and the defendant takes issue upon the bar, and this is found for the defendant, the tenant shall not be imprisoned, for this confession of an outlaw, because the issue is a femme covert. 

If a baron of parliament be found a difforder with force in an affize, the judgment against him shall be good capiator. 1 Roll. Abr. 220.

FIN

If in debt upon an obligation against a baron of parliament, if the defendant pleads non est factum, and the issue is found against him, the judgment against him shall be good capiatur. 1 Roll. Abr. 220. 21

As to the cases where a fine ought to be awarded, and not an amercement, we have already taken notice of the difference made between offences; and that for the delicta majora, such as breaches of the peace, contempts, or disturbances committed in facie curiae, the court may fine and imprison; but that in real actions or actions of debt, the defendant is only to be amerced. 8 Co. 39. 

H. 15. 

If in the cases where a fine ought to be awarded, and not an amercement, we have already taken notice of the difference made between offences; and that for the delicta majora, such as breaches of the peace, contempts, or disturbances committed in facie curiae, the court may fine and imprison; but that in real actions or actions of debt, the defendant is only to be amerced. 8 Co. 39. 

H. 15. 

If a man shall be fined and imprisoned for all contempt committed to any court of record, against the commandment of the King’s writ under the Great seal, as in a quare clausum factum, or sequestration of the court, attachment upon a prohibition, &c. 8 Co. 60. 

When but the defendant or plaintiff, tenant or defendant se retraitet, or reactret in contemptum curiae; yet this is no contempt against the commandment of the King by writ, and therefore he shall not be fined in such case, but amerced only. 8 Co. 58. 

J. 275. 

If in the cases where a fine ought to be awarded, and not an amercement, we have already taken notice of the difference made between offences; and that for the delicta majora, such as breaches of the peace, contempts, or disturbances committed in facie curiae, the court may fine and imprison; but that in real actions or actions of debt, the defendant is only to be amerced. 8 Co. 39. 

H. 15. 

If a man denies a recovery or other record to which he has a right, the defendant shall not be fined; for it is not his act, but the act of the court; and he does not deny the record absolutely, but non pastur tale recordam. 8 Co. 60. 

If an affize, if the tenant be attainted of a deceitful with force, he shall be imprisoned. 1 Roll. Abr. 222.

J. 275.

If a man denies a recovery or other record to which he has a right, the defendant shall not be fined; for it is not his act, but the act of the court; and he does not deny the record absolutely, but non pastur tale recordam. 8 Co. 60. 

If in the cases where a fine ought to be awarded, and not an amercement, we have already taken notice of the difference made between offences; and that for the delicta majora, such as breaches of the peace, contempts, or disturbances committed in facie curiae, the court may fine and imprison; but that in real actions or actions of debt, the defendant is only to be amerced. 8 Co. 39. 

H. 15. 

If in the cases where a fine ought to be awarded, and not an amercement, we have already taken notice of the difference made between offences; and that for the delicta majora, such as breaches of the peace, contempts, or disturbances committed in facie curiae, the court may fine and imprison; but that in real actions or actions of debt, the defendant is only to be amerced. 8 Co. 39. 

H. 15.
If a man denies his own deed, and this is found against him by verdict, he shall be imprisoned for his falsity and trouble to the jury. 1 Rull. Abr. 220, 224. 2 Sull. 230, S.P.

But if a man, where his own deed is pleaded against him, pleads non est factum, and after at the nisi prius, or before verdict, refitali verifications cognositis this to be his deed, he shall not be imprisoned, but only amerced. See Co. 60, 1 Rull. Abr. 224. Kelv. 43. 2 Rull. Rep. 45. Noy 4. Cry. 64. Dyer 67, Rom. 202. 1 Med. 73. 2 Sandw. 189. 2 Keb. 678, 688, 694, 734.

If a man pleads a deed of the plaintiff or his ancestor, made to the ancestor of the defendant who pleads it, and this is found against him, he shall not be imprisoned for his falsity, because he could not know, whether this was his deed or not, being made to his ancestor. 28 Aff. 10. 1 Rull. Abr. 224.

In trepafs contra pacem, for tầmbling his com; if it be found that the cattel of the defendant escaped, but not contra pacem, and ترامled the com; yet the defendant shall be imprisoned, for he ought to keep his cattel at his peril. 27 Aff. 56. 1 Rull. Abr. 223, S.C.

In an action upon the cafe, upon an affinuity, if the defendant be found guilty, the judgment shall not be qual caputpr, but qua(l fit in misericordia. 1 Rull. Abr. 223.

In a writ of deceit against the party who recovered in a real action, and the sheriff, if it be found that no fummon was made, he that recovered before shall be imprisoned. 1 Rull. Abr. 223. 8 Co. 59, S.P.

In all cafes, where a thing is restrained by any statute, the judgment may be fined and imprisoned. 8 Co. 60. 4 Cry. 631.

As in an action upon the statute of Marlebridge for driving a differtis out of the county, the defendant being found guilty shall be imprisoned. 30 Aff. 38. 1 Rull. Abr. 223.

So in an action of debt upon the statute of 1 & 2 Ph. & Ma. of differtis, upon which the defendant shall forfeit to the party grievous, for driving the differtis out of the hundred & treble damages; if the defendant be found guilty, the judgment shall be qual caputpr. 1 Rull. Abr. 223.

In an action of debt upon the statute of usury, for treble the sum lent, for taking more than 8 l. per cent. if the defendant be found guilty, the judgment shall be qual caputpr, because he took it contrary to the provision of the statute. 1 Rull. Abr. 223.

But if the defendant be found guilty, the judgment shall be qual fit in misericordia, and not qual caputpr: because this is but a debt judgment in recopmeence of this; and the usuriar is the usual course. 2 Rull. Abr. 223. 1 Sid. 233.

So in an action for a robbery founded upon the statute of Winchefer, if the defendants are found guilty, the judgment shall be qual fit in misericordia; because this action is not founded upon any male-faceness, but upon a non-faceness only. Cry. 3050.

In an action for a fals affiant and battery; if the battery was done before a general pardon, by which the fine is pardoned, yet the judgment shall be entered qual caputpr; for the court need not take conunence thereof without demand. Cry. Car. 37.

4. Of mitigating or aggravating fines of moderating or offering amencements; and of the manner of recovering fines or amencements.

Where a person is convicted of a criminal offence, and for which he ought to be fined, the measure thereof is left to the discretion of the judges, who proportioneth forthe fine so as to make it adequate to the offence, from the consideration of the baenefs and enormity, and dangerous tendency of it, the malice, deliberation and wilfulness, with which it was committed, the age, quality, and degree of the offenders, Cry. 2 Hand. P.C. 445.

If a proctor accepts costs froin the defendant, he cannot, by the rules of the court, aggravate his fine, because in such cases, having no right to demand costs, if he take them at all, he must take them by way of satisfactor, of the wrong a, which is unreasonable for him to harras the defendant. 1 Salt. 55.

But as to those costs given by 5 & 6 W. 3. M. on the removing a caufe by certiorari, the proctor is not restrained from aggravating the fine to be fet on the defendant, because he has a right to such costs by the express words of the statute. 2 Hand. P.C. 292. cont. 1 Salt. 55.

A fine is under the power of the court during the term in which it is set, and may be mitigated as shall be thought proper; but after the term it admits of no alteration. Co. Litt. 260, Cry. Car. 251. Report 376.

If a person is indicted and found guilty of a great offence, and a writ goes to the sheriff to abate it; if the party refuses to abate it at his own charge, the court will raise the fine accordingly; feuit, if the offence may be easily removed, as pulling down a wall, &c. Comb. 10.

Upon a motion to a punisher, that fine for a confession of the indictment, which was for an assault; Holt Ch. J. took a difference, where a man confesses an indictment, and where he is found guilty, in the first case, a man may produce affidavits to prove for assault upon the proctor, in mitigation of the fine; otherwise the defendant is found guilty; for the entry upon a confession is only not suing containere cum Domino Regis, & petit se in gratiam curiae. 1 Salt. 55.

If an excessive fine is imposed at the seffions, it may be mitigated at the King's Bench. 1 Feli. 336.

The court may impose an excessive fine, but cannot award any corporal punishment against the defendant until he be actually present in court. 1 Salt. 56, 400, Comb. 36, 77.

Before the statutes of Magna Charta, and Wifhum. 1. cap. 6. the lords used to fet such excessive and grievous amencements on the offenders, that the continuance of such amencements they used to feize the whole pro-fit of the tenement which they had granted; To prevent this oppression, and to take away all fines and amencements at the will and pleasure of the lord and his ftrawed, and likewise all excessive fines and amencements, if they were never to certain, the statutes appnuit, that every amencement should be affed; so that the court or homar do award an amencement, yet it is to be affed by the affearos, who are so called, because they affear or bring in the quantity of the amencement. 8 Co. 39. 1 Inf. 27.

These amencements are to be with a falsus concomenentia, and were always held too grievous and excessive, if they deprived the offender of the means of his livelihood; as if he were a fockman, and the amencement extended to take away the beale of his plough; if he were a military man, and it extended to take away his arms; if he was a merchant, and it extended to take away his merchandise, if he were a vilein, if it took away his cart or wainage; for the words of Magna Charta are, A freeman shall not be amerced for a small fault; and for a great fault, after the greatest thereof, seasoning to him his comenentium; and any other that was liable to the same, and every other that was liable to the same, should be likewise amerced, saving his wainage, if he fell into our mercy, 2 Inf. 27, 28. 8 Co. 39.

But a fine may be fet without amercement, for the statute of Magna Charta does not extend to such cafes, where a court of rofface may imprisone, and 200 a fine is fet by way of mercy, as a ranom and purgation of the offence; for the statute was defigned in mercy to the offenders, and not to hinder them from mercy, and fo did not extend to offences that might be punished by imprison. 8 Co. 39. 1 Inf. 27, 28. 11 Co. 43. Kelv. 65. 11 Cry. 581. Dall. Sheriff 400.

If at a court-baron, according to the custom there used, a by-law is made, and the penalty of 20l. laid upon every offender, and at another court a tenant is presented for a breach thereof, by which the said penalty is forfeited;
Forfeited; this cannot be affected. *Mor. 75.* pl. 205. 3 *Leom.* 7, 8. *Plut.* 159. S. C. adjudged.

On the pretermission of a nuisance in a turn or let, the failure or willow may either amerce the party, and also order him to remove it by such a day, under a certain payment, or order him to remove it under such a pain, without amercing him at all; the party having notice of such order shall forfeit the pain, on a pretermission at another court, that he hath not removed the nuisance, without any farther proceeding; and every pain so forfeited may be recovered in like manner as a fine or amercement by diffret, or action of debt; neither shall it be affected to lef surfhan at first sect. 1 *Leom.* 203. *Rich.* 51, 52. 1 *Rel. Abr.* 46. *Cra.* 382. 2 *Rel. Abr.* 136. 1 *Rel. Rep.* 201. *Allen.* 3 *Leom.* 7, 8. 5 *Med.* 130. 1 *Salk.* 175. The award of the amercement is the act of the court, but the taxing or reducing it to a certainty must be done by certain officers called afferors, chosen and sworn for that purpose; and therefore if an amercement be imposed in a court-leet, and asheriff by the jury, and not by sworn afferors for that purpose, it is a void amerce- ment, and the heir of the court cannot maintain his action for it. 8 *Cas.* 40. b. 3 *Leom.* 67.

Although by the express words of Magna Charta, *Comites & baronos non amerciement nisi per partes,* &c. yet long usage hath prevailed against it, for the amercement of the nobility is reduced to a certainty, viz. a Duke 10, a Earl 20, a Barony 30, &c. 2 *Inf.* 26. 6 *Co.* 54. 8 *Cas.* 40. a. S. C. In an affife, if the plaintiff does not appear, nor any for him, yet three of the affife may be sworn to affect the amercement, and shall do it. 28 *Af.* 26. 1 *Rel. Abr.* 24. In a breach, if the defendant, as bailiff, &c. juries, for that the plaintiff was pretended, &c. and sets forth, that the amercement was affected by two afferors, he ought to have their names. *Keh.* 66.

By the Common law, the King or Lord may, at their election, derrain, for having a diction of debt for a fine or amercement. *Cra.* 581. *Sawill.* 93. 2 *Rob.* 151. *Salk.* 533, 606. 2 *H.* 4, 24. b. 10 *H.* 6, 7. *Reyn.* 68.

But every averory or declaration of this kind ought expressely to shew, that the offence was committed within the jurisdiction of the court, which, if it were not, all the proceedings were coram non judice, and a court shall not be presumed to have a jurisdiction where it doth not appear to have one. *Hob.* 139. *Rob.* 151. *Salk.* 533. Ca. *Ent.* 572.

Also it is advisable to alledge, that the offence was committed within the jurisdiction, as well as pretended, and to shew the names of the afferors in setting forth a pre- ferment or afferment, and also to shew that proper notice was given of holding the court. But for this, vide *Hawk.* P. C. 59, 60.

Of common right, a diffret is incident to every fine and amercement, in a turn or let for offences of right within the jurisdiction thereof; but if the offence were only the neglect of a duty created by custom, and of a private nature, it is clear, that there must be a custome to warrant a diffret, and perhaps such custome is also necessary, though the duty be of a publick nature. 2 *Hawk.* P. C. 59, 60.

Also the afferor or lord may for such fines or amerce- ments derrain the goods of the offender, even in the highway, or in land not holden of the lord, unless such land be in the possession of the crown. 1 *Rel. Ab.* 670. 2 *Rob.* 151. *Salk.* 533.

But such fines and amercements being for a personal offence, no stranger's beasts can lawfully be derrained for them, tho' they have been levant and couchant upon the lands of the offender. *Owen.* 146. *Noy.* 20.

If such court is in the King's hands, the diffrets may be derrained; but if it were kept for a reasonable time, as the space of sixteen days: and it seems the better opinion, that where any such court is in the hands of a common person, if the goods were derrained for an offence of a publick nature, they may be

FIR


No bailiff can lawfully derrain for such fine or amercement, without a special warranty for doing so, which must be set forth by him in an avowry or juratification of such a diffret. *Cra.* 60. *Salk.* 748. *Mor.* 574. pl. 789. 607. pl. 389. 2 *Rob.* 745. 1 *Salk.* 108. See 2 *Bac.* 40. c. tit. Fines and Amercements.

**Finite.** To fine, or pay a fine upon composition.

-Inquisition of exemption, sine non fractione pro re mori- rianti, & fines cipitator ad opus dominus regis. Roger Hoveden, pag. 783. *Fiature* is also the same with *fium* in *Brampson.* pag. 1105. *Quando Rex Satius cum domino regis finivit,* &c. and in *Holmst.* pag. 783.

**Finite, Duxies,* so called, because void unlimited morte. *Fingae de gold and silver, Are those that purify and separate those metals from other couriers, by fire and water. *Anna.* 4 *Hen.* 7. cap. 2. They are also in the same place called partners, sometimes departed.

**Finibus,** Is mentioned in the laws of *Henv.* 1. cap. 3. and is the same with *fingulis.* From the *Sax.* first, imuni- cation, and *suid.*

**Fliola** for *Pliola,* A viol, or little bottle. *Mat.* Par. 1. 146. In *aurata fliola cum vinorum collectione acceptis* time venena.

**Fitarum.** See *Fite.*

**Fid.Item,** A going into the army, or taking up arms. *Hob.* 6. *Sax.* first, exercitus, and *fite,* *iter.* 'Tis one of the offences which properly belongs to the King's determination, *qui barbogitum, i. e. a contribution towards building a castle; brightagma, i. e. towards building a bridge; vol fridere faiprideriti, i. e. not gone into the army. Leg. *H.* 1. cap. 10.

**Fidrurngula,** A preparation to go into the army; which was another offence immediately under the cognizance of the King. *Ibid.*

**Fidrurngula,** Furniture for the army. See *Fis.*

**Fidrurs.** See *Ferdorat.*

**Fidrurs, Fidrurs.** See *Fidruls.*

**Fidruls,** A mulct or penalty imposed on military tenants for their default in not appearing in arms, or coming to an expedition. *Mitli* *divitatru multula.* *Lil.* canuti, par. 2. ca. 22. See *Fidruls.*

**Fidrurs,** A bastard or bastardy, a bastard mulct on military men, or men worthy to take up arms, or mulcted, or enrolled to appear upon any occasional expedition. *Cowell,* edit. 1727.

**Fidrurs,** Houses in London to be built with party-walls, &c. 10 *Car.* 2. c. 3. *fiz.* 5. 22 *Car.* 2. c. 11. f. 6. Directions for preventing fires in London, *6 Ann.* c. 34. 7 *An.* c. 22. 1 *Cen.* 2. c. 28.


For other matters, see *Hen.* 146. *Burnings.*

**Firebera,** Quod fine dilatasse luvuros & reparare faca, signa & fiares fefer mortal montis altissimis in quilibet hundredo, *qua quod tota patria, per illa signa, quasque que mellei fuent, praeambulis potiss.* &c. Ordinatio pro vigillis observandis in terrenis superficie. *Yarmouth.* Temp. *Ed.* 2. Perhaps from the *Sax.* *fire cep,* a beacon, or a high tower by the sea-side, wherein were continual lights, either to direct sailors in the night, or give warning of the enemy. *Cowell,* edit. 1727.

**Firat-aeta.** Signification an allowance of wood or ello- vers. *Hob.* 6. 1 *Salk.* 151. Preventing the use of the re- nants: Which by the Common law any man may take out of the lands granted to him. *Cowell,* edit. 1727. See *Napoleoni.*

**Firemoral,** Our devout old ancestors had a way of purging, or acquitt ing themselves from any charge or accusation by an appeal as it were to God himself, and therefore called it *Dei judicium,* or *God's ereral.*

This was commonly of two forms, *fire-eraral,* and *wa- eral.* This *fire-ereral,* which was the privilege only of freemen, and the better fort of people, was two fold, either
either fifh. By fleeing bare-foot and blind-fold over nine plough-shares red-hot, laid in length at equal distance, which if the defendant puffed unburnt, he was judged innocent, but if he was, he was considered guilty. Or hardly, by taking a piece of red-hot iron in the hand, usually of one pound weight, which was called simples-ordred, or of two pounds, which was duplæ, or of three pounds weight, which was triple ordinalium. Cowell, edit. 1727. See Matt. xxvii. 28.

**Firmatatio.** Firming or holding to firm. The firmary's or farmer's right to the lands and tenements let to him ad firmam.—Communis firmarium—f firmam solutum per commode firmam, or firmarie right, fit firmarii brevis vel cameræ firme tenentur, 1566. falsa firmarium. Statuta Cluni, Paulinum, MS. fol. 49. b. Hence antiqua firma was the old custumary rent. And affirmatus was formed out, or let for such a certain firm or rent. Cowell, edit. 1727. See Rent's Gloriary in Ad firmam donum.

**Firmarium.** Firmamentum tempus, doe-feasance, as opposed to buck-feasance.—Et siendum est, quand temps punctuus nisi be computato in tertium, et actuationem functa certa; et firmam firmationem inter se firmam firmationem, firmam partum. S. Matthew, 3. Mark, 25. 31 H. 3. Cowell, edit. 1727. **Firmaturo.** A supplying with food: Sæcillius homin farifhanniti firmationis accipit per fuam juss' vires negam. Leg. Ex. c. 34. i. e. accused of giving victuals to fugitives. Cowell, edit. 1727. **Firmis.** A fortification or wall built-for: Et nimirum fessinam, Camulons adfirmata habuit victuari. Du Fureh.

**Firmum.** Food, victuals, or farmery given by the lord to entertain his labouring tenants.—Quilibet dekeh firmatur, idoneum fermen hum ad firmam, et duet bellum firmato ad trading, etc. fagna victuaria. Carlii. Abbat. Glafterton. MS. fol. 39. a. Rabier perhaps rent paid in customary services.

**Firmura.** Will. de Cruife gave to the monks of Byth a certain mill nom libum firmura of the dam of it.—Reg. de Durham, 16. This translation holds free firmage, but that is still a hard word. I think it intends free liberty to move and repair the mill-dam, and to carry away the soil, &c. Cowell, edit. 1727. **First-fruits and tithes.** First-fruits (Anames, primi- vitiae) are the profits of every spiritual living for one year, given in the first time that the place was free firmage, but that is still a hard word. I think it intends free liberty to move and repair the mill-dam, and to carry away the soil, &c. Cowell, edit. 1727. **First-fruits (Anames, primi- vitiae) were the value of every spiritual living by the year; which the pope, and from time to time the pope, took and retained, the pope.** Cowell, edit. 1727. But what Pope first imposed first-fruits historians do not agree. 4 G. 190. In the 34 Ed. 1. at a parliament held at Carlisle, great complaints were made at the intollerable oppression of churches and monasteries by William Self, the Pope (Mystia) and the legate of the pope, and principally concerning first-fruits; at which parliament the King, by the asent of his barons, denied the payment of first-fruits of spiritual promotions within England, which were founded by his progenitors, and the nobles, and others of the realm, for the service of God, armes, and hospitality. And to this effect he wrote to the pope; and thereupon the pope relinquished his demand of first-fruits of abbey, in which parliament the first-fruits for two years were granted to the King. 12 G. 45. In the 40 Ed. 3. at the same parliament, amongst other grievances from the counsels of Rome, that the pope's collector that year (a thing never before done) had taken the first-fruits of every benefice where he had made provision or celeration—whereas he was used to take first-fruits only of benefices vacant in the court of Rome. Dege p. 2. e. 15. In truth, this tribute or revenue of first-fruits was gradually, by little and little, imposed by the bishop of Rome, on such vacant benefices as himself conferred and bestowed; and this was so often complained of as a very great grievance, that the king, in the year 1535, after the obtaining the Fifth, who was made pope in the year 1325, forbid the receiving thereof, and ordered the same to be laid

**Firmatulam.** A button; sometimes firmabulum: As capum choralum dilutiorum, & firmabulum quid valtr vulgaris dicutur. Matt. Parif. Vol. II. No. 76.
The statutes which make the lands of receivers answerable, extend to the under-collectors of first-fruits and tenths, 14 El. c. 7.

First-fruits and tenths granted to the corporation for augmenting poor livings, 2 & 3 Ann. c. 11, 1 Geo. 1. c. 10.

Corporation may purchase lands or goods, 2 & 3 Ann. c. 11, sect. 4.

One pound only to be taken for the funeral payments of first-fruits, 2 & 3 Ann. c. 11, sect. 6.

Small livings discharged of first-fruits, &c. 5 Ann. c. 24, 6 Ann. c. 27.

Four years allowed to bishops for payment of their first-fruits, 6 Ann. c. 27, sect. 5.

Bishops to certify the value of livings, 1 Geo. 1. c. 5, sect. 1.

Rules of the corporation to be approved under the King's sign manual, 1 Geo. 1. c. 10, sect. 3.

Augmented churches to be perpetual benefits, 1 Geo. 1. c. 10, sect. 4.

The estates given may be exchanged, 1 Geo. 1. c. 10, sect. 13.

A collector of the tenures established, and bishops exempted, 1 Geo. 1. c. 10, sect. 13.

First-fruits and other payments out of any ecclesiastical benefices, 2 Geo. 2, c. 52, sect. 38.

For more learning on this subject, see 12 Vin. Abr. Gibb. Co. and Born's E. l. r. First-fruits and tenths, &c.

Fish and fishing. Any man may erect a fish-pond without licence; because it is a matter of profit, and for the increase of victuals. 2 Lev. 199.

1. Statutes against fishing in ponds, and other private fisheries.

2. Statutes concerning the same, and preserving the breed of fish.

3. Local and other acts relating to fish, and fisheries.

4. Statutes against fishing in ponds, and other private fisheries.

Stat. 3 Ed. 1. c. 20. If any trespassers in ponds be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass; and they shall have three years imprisonment, and after shall make fine at the King's pleasure (if they have whereof) and then shall find good surety, and after they shall not commit the like trespass: And if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the King shall have the suit. 3 Ed. 1. c. 20.

Trespassers in ponds.] Are those who endeavour to take fish therein. 2 Lev. 200.

Stat. 3 Eliz. c. 21. sect. 2, 6. If any person shall unlawfully break, cut, or defile any head or dam of a fish-pond, or shall maliciously and willfully fish therein, with intent to take or kill fish; he shall be convicted at the suit of the King, or of the party, at the affrays or feilions, be imprisoned three months, and pay treble damages; and after the three months expired, shall find sureties for his good behaviour for seven years, or remain in prison till he be doth. 5 Eliz. c. 21. sect. 2, 6.

Stat. 22 & 23 Cor. 2. c. 25. sect. 7. If any person shall use any net, angle, hair, noose, troll, or spcar; or shall lay any wears, pots, fish-hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in any river, fleue, pond, more, or other water, without the consent of the lord or owner of the water; and be thereof convicted by confession, or oaths of one witnes, before one juicell, in one month after the offence; every such offender in taking or killing fish, shall pay any sum not exceeding treble damages, and 5s. to the overers for the use of the poor, by diffrefer; and for want of dffrrers, to be committed to the house.
houl of correction not exceeding one month, unless he enter into bond for one hundred to the poor, or to the parent or guardian, or to the per

§ 2. And the justices may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, trolleys, poits, fift-books, nets, or other engines, wherewith such off-

§ 3. And in case any perfon or persons shall, after the said first day of June, take, kill, or destroy, or at

§ 4. Provided nevertheless, that it shall and may be lawful to and for such owner or owners of the fishery of such river or stream of water, or of such pond, pool, moat, or other water, wherein any such offence or offences last mentioned shall be committed as aforesaid, to sue and proseute for, and recover the said sum of five pounds, by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster; and in such action or suit, no effe, warrant, of law, or more than one impeachment shall be allowed; provided that such action or suit be brought, or commenced, within six calendar months next after such offence or offences shall have been committed.

§ 5. Provided always, and be it further enacted by the authority aforesaid, that nothing in this said Act shall extend, or be construed to extend to subjed or make liable any perfon or persons to the penalties of this Act, who shall fish, take, or kill, and carry away any fift, or fish, or fishern, or other water, wherein any such offence or offences aforesaid be committed, be convicted of such offence or offences as aforesaid; the perfon or persons so convicted shall be transported for seven years.

§ 8. And, for the more easy and speedy apprehen

ding and convicting of such perfon or persons as shall be guilty of any of the offences before-mentioned, Be it fur

§ 2. In that case any perfon or persons shall, at any time after the said first day of June, commit or be guilty of any such offence or offences as are herein before mentioned, shall surrender himself to any one of his Majesty's justices of the peace in and for the county wherein such offence or offences were committed; or, being apprehended and taken, or in custody for such offence or offences, or on any other account, shall voluntarily make a full confession thereof, and a true dif-

2. Statutes concerning the fife, and preserving the breed of fift.
shall be in defence for taking salmon from the nativity of our Lady unto Saint Martin's day. And that like- 
wife young salmon shall not be taken by nets, nor by other engines at Still-Pool, from the midft of April unto the nativity of St. John Baptist; and in the places where fresh waters be, there shall be affigned overfeers of this flay, to whom all salmon, &c. shall oftimes fee and in- 
quire of the offenders: And for the fift treafpafs they fhall be punished by burning of their nets and engines: 
And for the second time, they fhall have imprisonment for a quarter of a year: And for the third treafpafs, they fhall be imprisoned a whole year: And as their trea-
fpafs be feverely, fo fhall the punishment." 

Before the making of this act, fiftember, for a little 
lucce did very much harm, by defroying the increafe of salmon by fhilling for them in unfeafonable times, be-
tween the beginning of September, and the midft of No-
ember; and likewife for young falamons, or falmon 
peals, between the midft of April, and towards the end 
of June: Against both which provifion is made by this 
act. 2 Inf. 478. 

Shall be in diffe-row] That is, by this act it is prohited that 
fwallow, or young falamon, fhall be taken between the 
times mentioned in this act, nor other engines, by 
the nativity of our Lady] Which is on the eighth 
Yay of September. 2 Inf. 478. 

St. Martin's day] Which is on the eleventh day of 
November. And note, that the day of St. Martin, and 
the feast of St. Martin, is all one; and the feast in legal 
understanding, begins and endeth with the day. 2 
Inf. 478. 

Unto the nativity of St. John Baptist] This is not 
taken literally for the nativity of St. John Baptist; for 
that is long fince past; but it is taken according to the inten-
tion of the makers, until the day or feast of his nativit-
y in Inf. 478. 

And for the fift treafpafs, they fhall be punished by burning of 
their nets] This ought to be by indignation at the fuit of 
the King, and the punishment cannot be inflicted up-
on the dilinquent before, upon due convifion, fenatus 
conuentum legem & confuetudinum Angliæ, judgement be

be taken from the midft of April, till the 24th of June, 
upon pain in (lat. Wifin. 2. cap. 47. And none shall 
put in the Thomas, Harmer, Oakes, Trent, nor other waters, 
and none of the waters in the county of Lancafter shall be put in defende, 
as to the taking of falamons, from Michaelmas day to the 
Parish of Barrow; and of the taking of fish in other 
waters, there fhall be affigned and sworn confervators of this 
flayte, as in the flayte of Wifin, and they fhall 
puffh the offenders after the pain contained in the said 
flayte. 

Stat. 17 Rich. 2. cap. 9. The juftices of peace of all 
the counties fhall be confervators of the flaytes, Wifin. 
2. cap. 47. and 13 Ric. 2. cap. 19. and they fhall fur-
yey all the wares in fuch rivers, that they be not too 
ftar, for the deftruction of fry, but of a reasonable 
widens, after the old affile ufed. And the juftices which 
fhall find default against the flaytes shall make true pu-
fishment; and fhall put under-confervators under them, 
which fhall be sworn to like furveying, and punishment 
without any favour thereof to be fhewed. And the fame 
juftices in their feifions fhall inquire, as well of their 
office, as at the information of the under-confervators, of 
all treafpafs against the flaytes aforesaid; and they fhall 
affire them which be thereof indicted to come before them; and if they be convict, they fhall have 
imprisonment, and make fine after the dilination of the 
juftices. And if the fame fhall be at the information of 
any of the under-confervators, they fhall have half the 
fine. And the mayor or warden of London fhall 
have the confervation of the flaytes aforesaid in the 
Thomas, from the bridge of Stanes to London, and from 

thence over the fame waters, in the Medway, as far as is 
granted to the citizens. 

Stat. 2 Hen. 6. cap. 15. The flading of nets and en-
gines called trynks, and all other nets fiftened day 
and night to pofts, boats, and anchors, over the Thames, 
and other rivers, and they being wholly defended; and every perfon 
that fhall have them, shall forfeit to the King. All, pro-
vided that it fhall be lawful to the poftifees of trynks, 
if they be of affile, to fift with them in all feafonable 
times, drawing them by hand, as other nets, faving to 
every of the King's people their right in fifting. 

Stat. 1 Eliz. cap. 17. fett. 1. No perfon fhall kill any 
fhawn or fry of eels, falamon, pikc, pickerel, or other 
fish, in any floodgate, pipe, tail of mill, wear, or in 
any ftraits, freams, brooks, rivers falt or frefh, or kill any falamons or trouts not in fefon, being keep or 
sheder falamons or trouts. 

Stat. 2. No perfon fhall kill any pike or pickerel, not 
being in length ten inches fifth and more, nor any falamon 
in length fourteen inches, nor any trout not in length 
8 inches, nor any barbel not in length 12 inches. 

Stat. 3. No perfon fhall fift, or take fift with nets, 
trame, keep, wore, creel, or other device, but only 
with a net of a single fift, or of any benefice other. fhall 
be two inches and a half broaf, angling excepted. 

Stat. 4. In all places where fmefts, loches, minnies, 
bulleiffs, gudgeons, or eels, have been ufed to be taken, 
fhall be lawful only for the taking of fmefts, &c. to 
ufe fuch nets, lepes, and other devices as have been ufed, 
that fuch perfon using fuch nets, &c. do not take or 
destroy any other fhift with the faid nets contrary to this 
flayte. 

Stat. 5. If any perfon offend contrary to the points 
aforesaid, fuch perfon fhall forfeit 20s. and the fift to 
taken, and all the unnatural nets and inftimants 
wherewith fuch offences fhall be done. 

Stat. 6. The Lord Admiral and the Mayor of London, 
and all other perrons which have confervation of any 
rivers or waters, fhall have power to inquire of all of-
fences committed contrary to this act, by the oath of 
twelve men or more, and to hear and determine the fame 
ofences. 

Stat. 7. Forfeitures by reafon of fuch conviction fhall 
be to the ufe of every of the perrons, being no body po-
litick or corporate, nor head of any body politick or cor-
porate, before whom fuch conviction fhall be had; and to 
the ufe of every body politick and corporate, as have 
had any forfeiture for any offence committed in their 
confervancies, upon conviction had before the head of 
any fuch body politick or corporate. 

Stat. 8. The lord of every leet fhall have power to 
 inquire of offences contrary to this flayte, by the oath 
of the 12 men, of any offences contrary to this flayte; all forfei-
tures above limited fhall be unto the lord of the leet, 
and fhall be levied as amerciaments for affidys committed 
in fuch leet. 

Stat. 10. If the steward of the leet do not charge 
the jury to inquire of offences done within the leet, contrary 
to this flayte, the fward fhall forfeit 40s. one moiety of 
which forfeiture fhall be to the Queen, and the other 
motey to him that will fue for the fame. And if any 
jury, charged to inquire of offences committed within 
the precinct of that leet, do willingly conceal and make de-
fault in prefenment; it fhall be lawful to the fward or 
bailiff to impanel one other jury, and to inquire of fuch 
concealment; and upon every default found and pre-
ented, the jurors which fo did conceal, fhall forfeit 20s. 
to the lord of the leet, to be levied as aforesaid. 

Stat. 11. If any party offend in fishing or taking of fift 
or fhawn, be not presented at the leet within one year 
after the offence committed, the juftices of peace in their 
feifions, juftices of oyer and terminer, and juftices of 
affile, fhall have power to inquire thereof, and to hear and 
determine the offences contrary to this flayte. 

Stat. 12. Saving to all perrons all right and freedom, 
and the benefits of fishing, and all the felfions, 
ftakes, and other rights and confération, 
&c. This act to endure to the next parliament. 

Made perpetual. 3 Car. 1. cap. 4. 

Stat.
The chancellor, &c., shall regulate the sale of stock fish, &c., 31 El. 3. c. 2. c. 3.

Regulations of the fishery at Blackney haven, 31 Ed. 3. c. 2. &c.

None but fishermen to buy nets, &c., in Norfarki, 31 Ed. 3. cap. 2. &c.

The fishmongers of London shall not buy fish far from the city, to sell again, except eels and pikes, 6 Rich. 2. c. 1. repealed 7 R. 2. c. 11.

Foreign merchants at liberty to sell fish by wholesale or retail, 14 H. 6. c. 6.

The king may give the sale of the fry of fish in Oxford haven, prohibited, 4 H. 7. c. 21.

Buying of salt-fish and stock-fish, at the sea-fide to sell again, prohibited, 25 H. 8. c. 4. repealed 33 H. 8. c. 7.

Dealing fish out of ponds to be punished with three months imprisonment, 31 H. S. c. 2. feft. 2.

Buying fish upon the sea to sell within the realm, excepturgeon, porpoise, and seal, prohibited, 33 H. 8. c. 2.

The Admiralty shall not exact any thing of those that refer to Ireland or Newfoundland, 2 & 3 Ed. 6. c. 6.

Sea-fish may be taken and exported freely, 5 El. c. 5. 13 El. c. 11. 12 Car. c. 2. c. 4. feft. 5.

No herrings not well salted to be bought of any strangers, 5 El. c. 5. feft. 6.

Fishermen not to be pressured as mariners within the authority of the justices of the peace, 5 El. c. 5. feft. 43.

Ships prohibited to anchor in the way of common fishing, 5 El. c. 11.

Foreign-taken fish not to be dired for sale in England, 13 El. c. 11. f. 6.

Fish not to be imported by strangers to be dired, 13 El. c. 11. f. 6.

Englishmen prohibited to import salt-fish, 23 El. c. 7. repealed 39 El. c. 10.

Permitted to carry fish from one foreign port to another, 27 El. c. 15.

Lawful nets prohibited in Oxford haven, 27 El. c. 21.

Fifh may be exported in ships with crofs falls, 39 El. c. 10.

What cufoms aliens are to pay, 39 El. c. 10. feft. 4.

The penalty of importing or selling unfeafonable fift, 39 El. c. 10. f. 5.

Ordinances to restrain the taking or selling of fish, void, 39 El. c. 10. feft. 6. repealed, except as to fift-fish and herrings, 43 El. c. 9. feft. 32.

Coafien and fishermen not to be restrained from buying salt-fift, 43 El. c. 9. feft. 31.

Fishermen in Somerilhen, Devon and Cornwall, may go upon the ground near the sea to confedit their fiftery, 1 Foc. c. 1. c. 23.

If fee for the fame fift shall recover damages, &c., 1 Foc. c. 1. feft. 18.

Wears shall not be credited on the coast or in a harbour, or within five miles of the mouth of a haven, 3 Foc. c. 1. c. 12.

Taking the fary of fift prohibited, 3 Foc. c. 1. c. 12.

Salt-fift, oil, and bubber, caught or imported by foreigners, shall pay double aliens cufoms, 12 Car. c. 2. c. 18. feft. 5.

Proviso for ships exporting fift, 13 & 14 Car. c. 2. c. 11. feft. 36.

Adventurers in the Royal fishing trade not liable to bankruptcy, 13 & 14 Car. c. 2. feft. 4.

P,ayments for the pitchard fishery in Devon and Cornwall, 13 & 14 Car. c. 2. feft. 28.

Idle perufons assembling about boats, &c., to pay 5. or be fet in the flocks, 13 & 14 Car. c. 2. feft. 5.

No freth hering, cod, haddock, coal or gull, to be imported but in English ships, 15 Car. c. 2. c. 7. feft. 16.

Duties on foreign salt-fift imported, 15 Car. c. 2. c. 7. feft. 17.

No ship fhall fail on a fishing voyage to Ireland or Wffompany, before the tenth of March, 15 Car. c. 2. c. 16.

Penalty for defroying fiores in Newfoundland or Greenland, 15 Car. c. 2. c. 16. feft. 3.

No toll to be taken in Newfoundland, 15 Car. c. 2. c. 16.

For preferring the fift in the Severn, 30 Car. c. 2. c. 9.

Stock fift and live eels may be imported by any, 32 Car. c. 2. c. 7.

Drawbacks on salt fift exported, 5 W. M. c. 7. feft. 10. 9 & 10 W. 3. c. 44. 3.

Billing gate made a free market for fift, 10 & 11 W. 3. c. 24.

The filmener of London not to buy more than their trade requires, 10 & 11 W. 3. c. 24. feft. 11.

Affife of bofheroers, 10 & 11 W. 3. c. 24. feft. 12.

Fift not to be imported in foreign bottoms, 10 & 11 W. 3. c. 2. feft. 12.


Regulations of the Newfoundland fiftery, 10 & 11 W. 3. c. 25.

Felonies in Newfoundland may be tried in England, 10 & 11 W. 3. c. 25. feft. 13.

Drawbacks and allowances on salt fift exported, 1 Ann. fl. c. 21.


For preferring the fiftery in the Severn, 4 Ann. c. 15.

Power given to the company of the fishermen of the Thames to make by-laws, 9 Ann. cap. 26.

None but fishermen, &c., to fell at Billing gate, 9 Ann. c. 26. feft. 3.

The market hours at Billing gate appointed, 9 Ann. c. 26. feft. 5.

Salt allowed duty free for falting fift in the North Sea and at Ireland, 12 Ann. fl. c. 2.

Foreign taken fift, (except turbots and lobsters) not to be imported, 1 Gor. c. 1. feft. 10. under penalty of 100 l. &c., 2 Gor. c. 2. c. 33.

The afife of falmon fift, 1 Gor. c. 1. c. 18. feft. 7.

Assife of nets, 1 Gor. c. 1. c. 18. feft. 4.

Salt
Salt to be celled duty free for curing fish, 5 Geo. 1. c. 18.

Allotments out of the salt duty for fish exported, 5 Geo. 1. c. 18. sect. 6.


The times of accounting for salt, delivered duty free, for curing, aftermentioned, 8 Geo. 1. c. 4. sect. 6.

Allotments for salt lost in port, 8 Geo. 1. c. 2. sect. 11.

Bounty on fish exported, now payable, 3 Geo. 2. c. 20. sect. 5.

The exemption in 13 & 14 Geo. 2. c. 11. sect. 36. confined to fish taken by subjects, 9 Geo. 2. c. 33. sect. 3.

Fish market in Westminster established, 22 Geo. 2. c. 49. 29 Geo. 2. c. 39.

Penalties for contracting for fish to be sold by retail, before it is brought to market, 22 Geo. 2. c. 49. sect. 9.

Fishermen, &c. to sell their whole cargo within eight days after their arrival on the coast, 22 Geo. 2. c. 49. sect. 12.

Fifths with a book may be sold though under five, 22 Geo. 2. c. 49. sect. 21. repeated 29 Geo. 2. c. 39. sect. 6.

Establishment of the British white herring fishery, 23 Geo. 2. c. 24. 26 Geo. 2. c. 9. 28 Geo. 2. c. 14.

'Thirty shillings per ton bounty for decked vessels, 23 Geo. 2. c. 22. sect. 11.

Ons reflecting the nominal days appointed for the rendezvous of buffets, &c. to be conformable to the new calendar, 26 Geo. 2. c. 9. sect. 2.

Vessels to return with as many hands as required at the rendezvous, 26 Geo. 2. c. 9. sect. 3.

Society may let their buffets, 28 Geo. 2. c. 14. sect. 5.

One hundred pound penalty on obliterating the fishery in Scotland, 29 Geo. 2. c. 2. sect. 23.

British salt may be taken duty free for curing fish in Scotland for exportation, 29 Geo. 2. c. 23. sect. 5.

Foreign salt may be imported for curing fish in Scotland, paying only excises on importation, 29 Geo. 2. c. 23. sect. 6.

Duties on fish cured in Scotland for home consumption, and bounties on exportation, 29 Geo. 2. c. 23. sect. 6, &c.

Penalties on fishing vessels employed for the supply of London and Westminster, breaking bulk, or selling their fish before they arrive in the river, or not ensuring their arrival, and selling their fish within eight days, 29 Geo. 2. c. 39.

Twelve days allowed for the sale of lobsters, 29 Geo. 2. c. 39. sect. 2.

Conditions of fishing vessels appointed, 29 Geo. 2. c. 39. sect. 7.

Fees to the King's fishers on the arrival of fishing vessels at Gravesend, 29 Geo. 2. c. 39. sect. 6.

Penalty on selling fish within 100 yards of the fish-market at Westminster without a licence, 29 Geo. 2. c. 39. sect. 9.

The court of mayor and aldermen of London to make regulations for the fishermen in the Thames and the Medway, 30 Geo. 2. c. 21.

Further bounties on vessels employed in the white herring fishery, 3 Geo. 2. c. 30.

Vessels may be employed in the intervals of the fishery, 30 Geo. 2. c. 30. sect. 5.

One hundred pound penalty on obliterating those employed in the herring fishery, in the free use of ports, thores, &c. 30 Geo. 2. c. 30. sect. 7.

Fishing vessels to pay harbour and pier duties. Ibid. sect. 15.

Regulation of the sale of fish in London, 33 Geo. 2. c. 27.

Account of fish brought to the Nere, and punishment of destroying it, 33 Geo. 2. c. 27. sect. 4.

Regulations to reduce the exorbitant price of fish, 2 Geo. 3. c. 17.

Fishing, right of, and property of fish. It has been held, that where the lord of the manor hath the fish on both sides the river, 'tis a good evidence that he hath the right of fishing, and it puts the proof upon him who

claims liberty piscarium; but where a river ebb and flows, and is an arm of the sea, there 'tis common to all, and he who claims a privilege to himself must prove it; for aught thought for brought there, the defendant may justify that the place where is Braschmum maris, in quo uniusjusque jubilus domini regis habet & habere debet libaram piscaram: in the Severn, the soil belongs to the owners of the land on each side; and the pool of the river Thames, is in the King, & the butting is common to all. But if the owner of the soil of a private river, hath separatis piscariis; and he that hath libera piscaria, hath a property in the fish, and may bring a pelluciad action for them; but communis piscaria is like the case of all other commons. 2 Salk. 527.

One that has a close pond in which there are fish, may call them his by an indenitie, but he cannot call them his bona & castalia, if they be not in trunks. 2 Geo. 183.

Flshermen. See Fish and fishing.

Fishing nets. Old ones for making of paper may be imported duty free, 11 Geo. 1. c. 7. sect. 10.

Fishing. Dr. Skinner, in his Etymologiae, says, 'To an engine to take fish; but it seems rather to signify the dam or weir in a river, where these engines are laid and used. For garth in the North is still used for a backside or homestead. Cowell, editt. 1727. 2 Hen. 8. c. 18.

Fluitula. The pipe which was put into the cup out of which the communicants sucked the wine. Disput et eccle si tructi, olitoria, fluitula. &c. fluitula, fluitula & ornamentos variis. Flor. Wign. Anno 1587.

Fluitute. But more rightly fluitnrnis, from the Saxon fisce, pisces, and write, write; so that it is a five line upon one side fighting and breaking the peace, Cowell, editt. 1727.

Fitcheret. Was a famous lawyer in the days of King Henry the Eighth, and was Chief Justice of the Common Pleas; be wrote two books of great reputation, one de dominio in the Common lawes, another intitled, De Natura Brachii. Cowell, editt. 1727.

Farrus. A fletk, a fletch, an arrow. Fr. flèche—Regimundus de Grey tenet Manerium de Waterhalle in Cam. Buckingham per servitium inueniendi unum bumanum papam unam equam fines prist. xx. & unam arcum sine cura, & unam flassium &c. c. 17 Edw. 3. c. 29.


Flata. The same with Flaro.

Fleale. To fish with Flaro.


Fleale, sbattered arrow, or Reddow arrow, a fleart arrows. Radulfus de Fisherio tenet in Brasilce com. Linc. per servitium videndi per annum sibi fictas & free assimil baccas faberiam Dominii Regis—9 Ed. 1, otherwise called squita ficta. Willismus de Gresley tenet Manerium de Drake low, in com. Derb. & reddit unam arcum sine cura, & unam pearsram di Lulsh, & auumis fictas fictatas. Ibid. c. 14. cap. 4 Ed. 1727.

Fleice or Flightwise. (Six. Flote, fuge, & write, write) Signifies in our ancient laws a discharge or freedom from amercements, when one, having been an outlawed fugitive, comes to the peace of our Lord the King, &c. to be there accorded, or with licence. Thus Rog. vill. But quere, Whether it do not rather signify a mild or few fet upon a fugitive, to be restored to the King's peace? Cowell, editt. 1727.

Fleet. (Six. Ploes, i.e. a place where the water ebb and flows, a running water.) A famous prison in London, in Fleet-street, &c. the river upon whose side it standeth. Camb. Brit. pag. 317. Unto this none are usually committed, but for contempt of the King and his laws, or upon absolute command of the King, or some of his courts. Or hurtly, Upon debt, when
when men are unable, or unwilling, to satisfy their creditors. Cowell.

Permit confounding themselves debtors to the King when their estates are not low, how remunerable to the Fleet, 1 Ric. 2. c. 12.

The warden, under what penalty, not to suffer any prisonor in execution to go at large, 1 Ric. c. 12.

Prisoners in the Fleet how to be proceeded against, 13 Car. 2. fl. 2. c. 2. s. 2. 8 & 9 W. 4. s. c. 27; fec. 17. When present prisoners are to pay, 8 & 9 W. 4. c. 3. s. 27; fec. 14.

The King by letters patent may appoint a warden during the life of Thomas Bambridge, 2 Geo. 2. c. 32. sect. 5.

Flextitch. To be filled up, and the inheritance of it vested in the city of London, 6 Geo. 2. c. 22.

Flem and Fleet; Saxon flama, an outlaw, and fleet, a house. In a plea of feu warrants, Abbot de Burgo dicit quod clamant annam et vojage et medium tempus per hae verbis flem et fleet. Trin. 7 Ed. 3. Cowell, edit. 1727.

Flametate, (from the Saxon, flama, a fugitive or outlaw, and fleet, to kill or slay.) By virtue of this word were claimed bona smentum, as appears upon a qua warranto. Temp. Ed. 3. See Keating's f. rep. 145. d.

Flemencrysthe, (Rectius femencristhe, L. Ine, c. 70, cap. 5; William of Malmesbury, hist. H. i. c. 10, 12.) Signifying the receiving or relieving a fugitive, or outlaw, Cowell, edit. 1727.

Flemencrete and Flemencrysthe, Are said to be the clants of fugitives, Mith. 10 Hen. 4. Herff. 59. Cervantes, hist. leg. 59. Cowell, edit. 1727.

Flemencristhe, Signifies the liberty to change the cast or amerciaments of your man, a fugitive, Raffael's Expotio of Words. Flota writes it two different ways, viz. Fimencrysthe and flemencrysthe, and interprets it, Habere casta fugitivorum, lib. 1. cap. 47. See Flem and Flemencristhe.


Flata, A flota, a fleete, or place where the tide or flood comes up, Cowell, edit. 1727.

Flogfrotch. A payment or muclc exacted from him who deducted the money: From the Saxon, flact, fugger, and flog is a fugger, page 69, Cowell, edit. 1727.

Flog. See Flogtreute.

Flutitchtrete, alias flititchtrete, (from the Saxon, fist, contention or strife.) Significat multum de contentione, rixas & jurgia impotiss, & cui habe a prince concordant, poest in curia fuerit egnor de naufragis transfugisque; ubi etiam indigentiam in curia regis, a distinguis suis exigeri et fletimo reitteri. Thus Spelman. Fisitute, i. e. Quod prior tenet placit in curia sua de contentionibus & conviciss hominum fuerum, & habere inde amerciamet. Ex Reg. Prurat. de Coleford.

Floydwath, The mark which the sea, at flowing water and high tide, makes on the shore. Accordant a ceux ordonnances les marins ont use leur autorite en les havres avant dis temps, cfibis per chafe raitz omile le mer & far le mer, non entre le Rodmark & low water mark. Anderton's Report, f. 189. Conflable's cat.

Flogets, A kind of cloth so called, brought from Florence hithe; some was called Aratas, Darnise, Combrick, Callowes, from the places where it was made. It is mentioned in flat. 1 Ric. c. 3. s. 8.

Flouget, A current piece of English gold. By in- ducement of the Mint 11 Ed. 3, every pound weight of ed standard gold was to be coined into fifty Florentes to be current at six flollings apiece, which all made in tole fifteen pounds, or into a proportionable number of half Florentes, or quarter Florentes.

Flogetas, A swimming at the top, which we properly called floating, are such things as swim on the top of the sea, or other great rivers; the word is used sometimes in the comminations of water bailiffs.


Flotham, Is when a ship is funk, or otherwise peri- fithed, and the goods float on the sea. 5 Rep. 106. a. b. Flotham, ifjevum, jefiam, and other words are mentioned together; jefam is when a ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and the ship notwithstanding perisheth; and legam is when the goods are cast into the sea are so heavy that they sink to the bottom, and therefore the mariners tie to them a buoy, or one of their other things with which they will fill in that they may find them again. 5 Rep. 106. b.

The King shall have fistas, jefiam, and jagen, when the ship is lost, and the owners of the goods are known, but not otherwise. F. N. B. 122. Where the proprietors of the goods may be known, they have a year and a day to claim fistas, jefiam, &c., by virtue of this word. See Three.

Foragum. The farm with houselets or fire-botes.


Fodder, or Father of lead, A weight of lead containing eight pigs, every pig twenty-three shillings and a half. In the book of rates a fodder of lead is said to be two thousand seven hundred and two shillings and over; and the ships, it is 22 hundred and a half; among the plumbers at London it is 19 hundred and a half. Cowell, edit. 1727.

Fodder, (Sax. fod, i.e. alimentum,) Any kind of meat for horses or other cattle; in some places hay and straw mingled together is accounted fodder. See Flog. But among the farmers, it is understood, that the Prince hath, to be provided of corn, and other meat for his horses, by his subjects, in his wars or other expeditions. Heimann de verbe Frudal. See Father.

Foddercium, Provision, or fodder, or forage, to be paid by custom to the King's parvores. — Johannes abbatis Eadmanici & D. Stephanius, prior & centum, floutant — quod ex culttibus servitum convenerant, exceptus redditi- rior qui dicitur fidum & cebertorium, &c. habet admini- num ad hundredes. De funda jut quod regulam. Vel habebit telo habere debet dominus abbati, &c. Ex Cart. S. Edmond. Ms. f. 102.


Fegas, I lagrese, Fig. or fig; rank grass not eaten in bigg. Leg. Forflar, Scot. sect. cap. 15.

Folatland, Was Terra Vulgi, The land of the vulgar people, who had no estate under law, but held the fame under such rents and services as were accustomed or agreed, at the will of the king and the Shire, and it was therefore not put in writing, but accounted a regalium ruficum & ignobilis. See Spelman of Feals, cap. 5.

Folment, or Folmount. Saxon folmentum, that is, convinentus populi, compounded of folk, populus, and geme- nation, commune, signifies (as Lamard hath in his Ex- pliation of Saxon) the service, or revenue of the counties or courts; one now called the county courts, the other The forstiff, or forst. This word is still in use in the city of London, and demotes Celebrin ex via civitatum conventum. Stow's Survey of London. But Ammonwood lay in his Forstiff- lawes, folde is the court holden in London, wherein all the folk and people of the city did complain of the mayor and aldermen, for misgovernment within the city. Smoker in his Saxon Dictionary says, It is a general assembly of the people, to consider and order matters of the common- wealth. Omne preces regnii & militae & liber homines witterst.
...unioinis suis reguli Britanniae: facere debet in plena folcum molestia, dominus Rici, coram episcopo reguli. In Leg. Edw. Concl. c. 35. Et omnia sui sit in bialet, multumque, i.e., speaking amic., Nox in folcum toquae negre in aliqua justicia tuae civitatis. Charta H. 1. pro Londono. Do Canve. As to the folcem, or folcgut, Sir H. Spaldam took further instance in another parliament or convention of the bishops, Thores, aldermen and freemen, upon every May-day yearly; where the laymen were sworn to defend one another, and where they swore fealty to the King, and to preserve the laws of the kingdom, and then to consult of common safety, peace and war, and publick weal. But Dr. Bracton, where the laws of our Saxon kings, infers that the folcem was an inferior court, before the King's reeve, or steward; held rather every month to do full-right, or to compose smaller squabbles, from whence appeal should lie to the superior courts of justice. See Dr. Bradly's Glossary, p. 48. When this great assembly is made in a city, it may be called a burchamet, when in the county a burchancet. Cum abidit vero impulsionem & tumultum contra regnum vel contra annum regni, &c. emergerit, faltat debet. paulatim comparati, quod Anglice accostat, commoveo names & universitas, quod Anglice distinct folcemote, is Anglice distincte popularum, in quibus totam universam debeat & illi praebere debet indemnae & coram regni vel coram communis. Conf. Leg. Alfred. cap. 35. de Alferiamn. Folcbarum, A liberty to fold sheep. See F Corbaru. Folcar. To be of some decenary: Es quis ad manum ad gladium tenuere nulli, fac tua testamenti universitas, in ensis successu priscis folgavit. Leg. Alfred, c. 33. Folcar, Menial servants. In formigrophia debet esse unus qui terram tenat & damnum, qui dicantur. hec sunt, Anglice, house-keepers, & etiam aliis qui aliis deicientium, qui dicantur folcures, quos usque debere quisque repelleret fortasse, sicut enim in antiquo pagius sit de cœa. comitaton indicate priscis fuit cumulationis. Bract. lib. 3. trad. cap. 10. Et omnes ab eo, de Saxon folcures, famuli. Folcures, or Folcures, (from Saxon folc and, i.e. to follow,) Are properly followers; but Dracton, lib. 3. trad. cap. 10. says, it signifies Ets qui aliis deicientium. See LL. H. 1. cap. 9. Servants or domesticks. For. See Facet. Forcet. See Forcet. Fortis. See Fine. Forage, (Fr. fourrage,) Fodder for cattle. Cowell, ed. 1147. Forsagn, Straw when the corn is threshed out. Cowell, ed. 1727. Fosagnum, A farrow, a fullong. Cowell, ed. 1727. Fosbæl, A fore-ball, or bolt, lying forward or near the highway. Petrus Blusforji Comin. Hifi. Croyland, Pag. 116. Fobhare, or Fobhar, Is to bar or recover for ever. For. 16. 2. cap. 2. and 6 H. 6. cap. 4. Fosbathus, Fosbatos: This is when the aggrevor is slim, Ets fit exctretus firearms cubitus, & in futur faciendum legem forbae, num est, ut qui fortis battirer fut contra suus primis hereinforis: So where the aggrevor is killed, he is said, de vita forfacius, viv. Et tunc ante judicium in arbo jurizet qua quod eum de vita forfacius interficiere. Cowell, ed. 1727. Fosbathus of armour, (Forbato,) Si quis forbator orque, ad armam, fuscet, ad pergandum, &c. LL. Aurelii Ms. cap. 22. Force (Fio.) In our common law, is most usuallly applied in an ill part, signifying unlawful violence. Wolf thus defines it, Symb. part 2. tit. Indictments, sect. 65. Force is an offence by which violence is used to pernicious or injurious end, where also it may be, whether the force be simple or compound; simple force is that which is so committed, that it hath no other crime adjoined to it; as if one by force do enter into another man's possession, without doing any other unlawful act; A mixt or compound force is that when,Communis populorum & gentium communitis, quia fuerit damnum universitas, & sic fuerit debeat impediere, &c. &c. &c. if of itself only is criminal: As if any by force do enter into another man's possession, and kill a man, or ravish a woman there, &c. he further divideth it into true force,
of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.

By the 8 Hen. 6, cap. 9, it is enacted, "That from henceforth where any doth make any forcible entry in lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made, within the same county where such entry is made, to the justices of the peace, or to one of them, by the said graver, that the said justices or justice so warned within a convenient time shall cause, or one of them shall cause the said statute to be duly executed, and that at the costs of the party so grieved."

By the said statute it is further enacted, "That such persons making such entries be punished, or else omitted part of a justice of peace; neither doth it give the justice any power to restore the party to his possession, or to inflict any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute.

2. Bac. Abr. 556.
even where he has a right, though not for peaceably
taining a poiffession by force, especially if he has held it
for three years in quiet. R. N. B. 249. Br. tit. Force,
5. 11. 29. 

But the 21 Eliz. cap. 11. The provis in the above fla-
ture is farther enforced and explained, by which it is
declared and enacted, "That no refitution upon any
indictment of forcible entry, or holding with force, be
made to any perfon, if the perfon so indicted hath had
the benefic © of the land in quiet poiffession for the space
of three whole years together, next before the day of such
indictment so found, and his effuate therein not ended,
which the party indicted may allege for flay of reftitu-
 tion; and reftitution to flay till that be tried, if the
other party desire the refpite, which the party
allegation to be tried against the fame perfon so indicted,
is to pay the coats and damages to the other party, as
shall be aflidified by the judges or juftices before whom
the fame shall be tried; the fame coats and damages to be re-
covered and levied, as is usual for coats and damages con-
tained in judgements upon other actions."

And by the 21 Jac. 1. cap. 15. it is enacted, "That
such judges, juftices or juftice of the peace, as by rea-
on of any act or acts of parliament then in force, were
authorized and enabled upon inquiry, to give reftitution
of poiffession unto tenants, of any effuate of freehold of
the tenant, and his servants, which tenant, or his
enemies, wast entered upon with force, or from them with-holden by force, shall by
reason of that act have the like and the fame authority and ability from thenceforth (upon indictment of such
forcible entries, or forcible with-holding before them
duly found,) to give like reftitution of poiffession unto
tenants, tenants by copy of court toll, guardians by knight-serve, tenants by elegy, flatute
merchant and flaple, of lands or tenements by them so
holden, which shall be entered upon by force, or holden
by them from force." A forcible entry must regularly be with a strong hand,
with unlawful weapons, or with menace of life or limb.

If a man enters peaceably into a houfe, but turns
the party out of poiffession by force, or by threats frights
him out of poiffession, this is a forcible entry. Dall.
209. 1 Hawk. P. C. 145. 146.

But threatening to
feil his goods, or defraye his cattle, if he will not quit
his poiffession, will not make him forcible. Br. tit.
Dursty, 2, 16. 1 Hyl. 252.

If a houfe be bolted, it is a forcible entry to break it open, but
it is not fo to draw a latch, and enter into the houfe;
and if a man, whose entry is lawful, shall intice the other
out of the houfe, and enter, the door being open, or
only latched, his entry is justifiable. 2 Rel. Rep. 2. 2
Hyl. 235. Cram. 70. a. It is said in Nay 135, that
there can be no entering if the door be latched but 1
Hawk. P. C. 145. says, that such an incon siderable
circumstance as this, which commonly passes between
neighbour and neighbours, will never bring a man with
in the meaning of these flatutes; and it hath been
holden, that an entry into a houfe through a window,
or by opening a door with a key, is not forcible. Lamb.
143. 1 Hawk. P. C. 145. 2 Rel. Rep. 2.

If one find a man out of his houfe, and forcibly
withhold him from returning to it, and fend perfons to
take peaceable poiffession thereof in the parties abfence, this,
by some opinions, says Hawkings, is no forcible entry, insofar as he did not violence to the houfe, but only to
the person. 1 Hyl. 252. But he hath been held by a contrary
opinion, for though the force be not actually done upon
the land, nor in the very act of entry, yet fince it is
used with an immediate intent to make such entry, and
the manner of doing it only prevents the oppofition,
it can be forcible, even without force, which whether it
be upon or off the land feems equally within the flatuie.
1 Hawk. P. C. 145.

If a man enters to deftrain for rent in arrear with
force, this is a forcible entry; because though he do
donot claim the land itself, yet he claims a right and title out
of it, which by thofe flatutes he is forbid to exert by

restitution awarded.  

It is therefore a general rule, that an indictment cannot warrant a restitution, unless it find that the entry was forcible, but yet such forcib] is sufficiently flown by a necessary implication.

An indictment on the S H. 6. for entering and forcibly expelling my farmer, and disturbing him, is good, without flushing what estate he had; for the forcible dethance being the main point of the indictment, it is sufficient to set forth it in substance.

But in this case the want of flushing that the farmer was oufled, would have been an incursual fault. Ynto 103.

Also an indictment on 21 Jas. 1. cap. 15. must shew, that the party injured was defticed of such an estate as will bring him within that fiction before it is not sufficient for it to shew, that he was possifed, or that he was possessed of a certain term, without adding, for years; for in the first case it may be intended, that he was tenant at will, and in the second, that he was possessed for term of life; in neither of which cases he is within the statute; but it is said to be sufficient, to set a posッション within the statute in the reciting part of an indictment as thus, good cum T. S. was posfessed for a certain term of years, &c. 1 Vent. 306. 1 Sid. 102. 1 Abr. 73. 2 Reb. 709. Salk. 260.

A repugnancy in setting forth the offence in an indictment on these statutes is an incursual fault; as where it is alleged, that the defendants posщик in, & the j. aduec & bidem of & arms deficient, or that the party injured therefor; for it cannot be intended, that the words as of the indictment, to have had the freehold, for it implies that he always continued in possession; and if it is, it is impossible he could be defticed at all; but some fay, that this may be reconciled, by intend ing that he re-entered after the deftice, and before the indictment; but it seems clear, that if the words aduec extrarett be added, such a repugnancy cannot be helped by any intend ment, and that no restitution can be awarded on such indictment, whether those words be added or not, because the party groved appears by the indictment to have had the freehold at the time it was found. Exp. 205. Reyn. 67. 1 Req. 523, 428, 435, 472. Anon. 50. 1 Vent. 108. 2 Reb. Rep. 311. Salk. 272. 2 Reb. 121. 1 Sid. 102.

A conviction on 15 R. 2. of a forcible detainer on view, cannot be good, unless it shew, that the defendant was also guilty of a forcible entry; for it seems plain from the expres words of that statute, that the justices have no jurisdiction by it over a forcible detainer, where there has not been a forcible entry; but it seems that such forcible entry is sufficiently set forth in the indictment, where the party injured is described in the indictment; and it seems a reasonable opinion, that an indictment on 8 H. 6. setting forth an entry and forcible detainer is good, without flushing whether the entry was forcible or peaceable; for the words of the statute are, where any doth make forcible entry in lands, &c. or them hold forcibly, but it must set forth an entry; for otherwise it appears not, but that the party hath been always in possession, in which case he may lawfully detain it by force. 2 Reb. Abo. 80. pl. 10. Palm. 156, 195, 197. 

The time and place of the deftice are sufficiently set forth in an indictment alleging, that the defendant tall die intravit, &c. ifpum A. B. many forts deficient, without adding the words aduec & bidem; for the entry was forcible, and deftice before the time of nature; and the one plainly tending to the other, it is a natural intend ment that they both happened together. Cro. Jac. 41. 1 Hen. P. C. 150.

It has been ruled, that a deftice is sufficiently set forth, by alleging, that the defendant entered, &c. into such a tenement or house, without adding either the words ilicitg, on culpab, or inde, for the word deficient implies as much. Nay 125. Cro. Jac. 32. Cro. Eliz. 186. Nay 120. ent. R. 260.

The

FOR

2. What ought to be the form of a record grounded upon these statutes.

Thefe statutes require, that in the indictment the entry must be laid main fort, or cum multitudine gentium, a multitude of people, and that without these the statute is not sufficient; but some have held that equivalent words will be sufficient, especially if the indictment concludes contra famam fluitit, and that these words in the statute are put in causa abundanti; but it is not sufficient to say only, that he entered vi & armis, since that is the common allegation in every trespass. Stil. 135. 2 Bulst. 258. 2 Rel. Rep. 46. 1 Med. 80. 81.

An indictment on the sufficient of facts in an indictment to say, that it was taken before A. B. and C. D. jufiticiariv ad pacem domini regis conferendum auffignatis, without flushing, that they had authority to hear and determine felonies and tresfales; for the statute enables all justices of the peace, as such, to take such indictment as they think sufficient.

An indictment of forcible entry into a tenement (which may signify any thing whatsoever, wherein a man may have an estate of freehold, or into a house or tenement, or into two clofes of meadow or pasture, or into a house or half a house of land, or into certain lands belonging to such a house, or into such a house, without flushing in what town it lies, or into a tenement with the appurtenances called Tempency in D. is not good; for the place must be described with convenient certainty, for otherwife the defendant will neither know the special ground he is to make his defence, neither will the justices or sheriff know how to reimburse the injured party to his possession. Dalit. 15. 2 Rel. Rep. 46. 2 Rel. Abo. 8. 3 Leom. 102. Cro. Lit. 6. a. 2 Rel. Abo. 82. pl. 4. 5. 1 Rel. Rep. 334. Cro. Jaso. 633. Palm. 278. 2 Reb. 286. 3 Leom. 101. Bras. tit. For. Est. 25. 2 Leom. 186. 2 Rel. Abo. 80. pl. 7.

But it hath been resolved, that an indictment for a forcible entry in dominum manum et suis appannihg, &c. is good, for these are words equivalent. Cro. Jac. 633. Palm. 278. 2 Reb. 286.

Also such indictment may be void as to such part thereof only which is uncertain, and good for so much as is certain; therefore an indictment for forcible entry into a house and certain acres of land thereunto belonging, may be quashed as to the land, and good as to the house. 2 Leom. 186. 3 Leom. 104. 1 Hen. P. C. 148.

An indictment on the 5 or 15 R. 2. needs not shew who had the freehold at the time of the force, because these statutes equally punish all force of this kind, without any regard to what estate the party had on whom the force was made; yet it seems that such indictment ought to shew, that such entry was made on the possession of some person who had some estate in the tenements, either as a fheeholder or lessee for years, &c. for otherwise it doth not appear that such entry was made injurious to any one. R. Abo. 93. C. fol.㎡ 81. But it is said, that an indictment on 8 H. 6. must shew, that the place was the freehold of the party graved at the time of the force, and therefore that it is not sufficient to say, that the defendant entered into such a house or tenement outside the freehold, &c. Aduec extraeus liberum tenementum J. S. for otherwise it may be intended, that it was his freehold at the time of the indictment only. 2 Reb. 495. Salk. 260. Hesly 73. Latih 109.
The justices who make the conviction must set the fine. 

3. Who may be guilty of a forcible entry, and into what possession it may be made. 

A man who breaks open the doors of his own dwelling-house, or of a castle, which is his own inheritance, but forcibly detained from him by one who claims the bare custody of it, cannot be guilty of a forcible entry or detainer within the fixture. 1 More 746. Cre. Fac. 18. 2. 25. 345. 

A joint tenant or common in possession often against the purport of these statutes, either by forcibly ejecting or forcibly holding out his company; for tho' the entry of such a tenant be lawful per my & per tua, & that he cannot, in any case be punished in an action of trespass at the Common law; yet the lawfulness of his entry no way excuses the violence, or lessens the injury done to his company, and consequently an indemnity of forcible entry into a moiety of a manor, &c., is good. 3. Lam. 224. Palm. 419. 1 Hawk. P. C. 147. Dalt. 315. 3. 16. 

A man cannot be indicted for entering into the King's possession by force, for that he cannot be discharged. 1 Co. 69. 10. Co. 112. 

An infant at the age of eighteen, and some fay fourteen, or a feme covert, by their own act, may be guilty of a forcible entry; but no before the time; but it is doubted, whether the infant may be imprisoned, because his infancy is an excuse by reason of his infiradion; and he shall not be subject to corporal punishment by force of the general words of any statute, wherein he is not expressly named; but it is clearly agreed, that the command of an infant or feme covert to enter is void, and therefore the person entering is only punishable, Bridg. 173. Cram. Jiff. 62. Dalt. 300. 

One may be guilty of this offence by a force to ecclesiastical possessions, as churches, vicarage houses, &c., as much as if the same were done to any temporal inheritance. 1 Sid. 101. 1 Lev. 99. 1 Ktb. 438. Cre. Fac. 41. 

Also an indemnity of forcible detainer lies against one, whether he be tenant or stranger, who shall forcibly disturb any in the enjoyment of an incorporeal inheritance, as rent, eights, common, an office. Cre. Cas. 201. 426. But the justices cannot award restitution for theft, because no man can be put out of possession of them, but at his own election. Scratt. Whether such indemnity will lie for a common or office; and see 1 Hawk. P. C. 146, who says, that he can find no good authority, that such indemnity will lie; and note that a man cannot be con- victed upon view, by force of 15 Ric. 2. cap. 2. of a forcible detainer of any incorporeal inheritance, because he cannot be said to have made a precedent forcible entry. 

No one can come within the dangers of those statutes by a violence offered to another, in respect of a way, or fuch like cementer, which is no possession. 1 Med. 73. 2 Ktb. 769. 

4. Of rewarding restitution; what shall be a bar or fay to fuch award of restitution, and of superseding and setting it aside after it is executed. 

The same justice or justices, before whom an indemnity of forcible entry or detainer shall be found, may award restitution; but no other justices, but those before whom the inquest was found, can award restitution, unless the indemnity be moved into the King's Bench; and by the plentitude of their power can relieve, because that is supposed to be implied by the statute; for that whenever an inferior jurisdiction is erected, the superior jurisdiction must have authority to put it in execution; so if an indemnity be found before the justices of the peace at their quarter-tenants, they have authority to award a writ of restitution, because the statute having given power to the justices or justice to referee, it may as well be done by them in court as out of

it; but the justices of oyer and terminer or general gaol-delivery, they may enquire of forcible entries, and fine the parties, yet they cannot award a writ of restitution. H. P. C. 140. Bridg. 175. 11. Co. 65. 69. Dalif. 25. pl. 8. 9. Co. 118. Dalt. Jiff. 314. 

The sheriff, if need be, may raise the peace committee to affist him in the execution of the writ of restitution; if he return, that he could not make restitution by reason of resistance, he shall be amerced. 2 Lam. Jiff. 157. 

Restitution ought only to be awarded for the possession of the tenements visible and corporeal; for as a man, who hath a right to such as are invisible and incorporeal, as rents, commons, cannot be put out of possession of them, but only at his own election, by a fiction of law to enable it to recover damages against the person who disturbs him in the enjoyment of them; and all the remedy, that can be defined against a force in respect to such possessions, is to have the force removed, and those who are guilty of it punished, which may be done by 15 R. 2. 


Restitution shall only be awarded to him who is found by the indemnity to have been put out of an actual possession, and consequently that it shall not be awarded to one who was only misled in law as to an heir on whom a lease was given, to avoid the death of the ancestor, before any actual entry made by such heir, and that it is the ground it followed, that it shall not be granted to an heir upon an indemnity finding a forcible entry made upon his ancestor. Lamb. 153. 154. Dal. Ch. 83. Cre. Fac. 193. 1 Hawk. P. C. 151. 

It appears by the statute, in the statute 8 H. 6. and by the 3. Elia. 11. that any one indicted upon these statutes may allege such possession, to play the award of restitution; in the construction whereof, if the Serjeant Hawkins, it hath been holden, that such possession must have continued without interruption during three whole years next before the indictment, and therefore that no, who having been in possession of land for three years or more, is forcibly ousted, and then restored by force of the statute of 8 H. 6. cannot justify a forcible detainer till he hath been in possession again for three years after such restitution; and also for the same reason it hath been holden that the crown a stranger, who under a defective title hath never been so long in possession of land to which another hath a right of entry, cannot justify such a detainer at any time within three years after a claim made by him who hath such right, and the subsequent continuance in possession, 1 Hawk. P. C. 152. and the authorities cited are, Dal. Cas. 79. Cram. 71. H. P. C. 139. Dyer 141. pl. 43. 22. H. 6. 18. Bre. tit. Force 22. 29. 1 Ind. 256. 

Alfo it is said, that the three years possession must be of a lawful estate, and therefore that a disfere can in no case justify a forcible entry or detainer against the difficulty having a right of entry, as it seems that he may against a stranger, or even against the disfere, having by his laches lost his right of entry. Dalt. Cas. 79. 22. H. 6. Cram. 71. 

Wherever such possession is pleaded in bar of a restitution either in the King's Bench, or before justices of the peace, no restitution ought to be awarded till the truth of the plea be tried, and such plea need not follow under what title, or what estate such possession was, because not the title, but the possession only is material. 1 Kgb. 538. Salt. 61. 1 Henr. P. C. 153. 1 Sid. 144. 2 Ktb. 538. Regyn. 84. 1 Fenw. 82. 

If one who has been three years in possession, be afterwards ousted, and the same day re-enter with force, and be also indicted on the same day; yet it seems, that by the plain meaning and reason of the statute, he can no more bar the restitution of the party forcibly enured upon, than if he had been indicted on another day, tho' the words of the statute are, That there shall be no restitution, &c. if the perdon indicted have been in quiet possession.
On a plea of three years poimation to an inquisition of forcible entry removed by certiorari, the defendant, if it be found against him, shall pay costs. *Ed. Raym. 1536.*

Mittimus for a forcible detainer upon view; from Lord Raymond's Report 1515.

Record of a forcible detainer upon view; from Lord Raymond's Report 1515.

Kent. \[B\]E it remembered, that on the 15th day of Sep- \[t\]ember in the first year of the reign of our Sovereign Lord George the Second, of Great Britain, France and Ireland King, Defender of the Faith and \[s\]o forth, at Beckenham in the county of Kent afofaid, Eliz. Elwell complained to us E. B. P. B. and W. P. three of the justices of our said Lord the King afofaid to keep the peace in the said county, and doth and shall to keep the peace and quietness of the same, to 

Lord Raymond's Report 1515.

**Note:** The text appears to be a legal document concerning forcible entry, with references to various courts, justices, and legal precedents.
Indictment for a forcible entry and detainer at Common law.

Middlesex. The jurors of our Lord the King upon their oath present, that in the county of Kent, in the year of our Lord, 17___, in the year of the reign of our said King, there was committed, to wit, a forcible entry, to wit, and unlawful entry, into the messuage and demesne of the said, armed with arms, and there in the possession of one and another, and the said, together with the said one and another, armed with arms, and there in the possession of one and another, as aforesaid, and to wit, and unlawful and injurious entry into a certain tenement and a certain yard, and there being in the possession of one and another, and the said, together with the said one and another, as aforesaid, and there in the possession of one and another, as aforesaid.

Indictment for the statute.

Middlesex. The jurors of our Lord the King upon their oath present, that in the year of our Lord, 17__, in the year of the reign of our said King, there was committed, to wit, a forcible entry, to wit, and unlawful entry, into the messuage, with the appurtenances, situate, lying and being in the parish of ____, in the county of Kent, armed with arms, and there in the possession of one and another, as aforesaid, and to wit, and unlawful and injurious entry into a certain tenement and a certain yard, and there being in the possession of one and another, and the said, together with the said one and another, as aforesaid, and there in the possession of one and another, as aforesaid.

The inquisition, indictment, or finding of the jury.

Middlesex. An inquisition for our Sovereign Lord the King, indented and taken at the inquest upon the body of aforesaid, in the said county, the ___ day of ___ in the year of the reign of our said King, by the oaths of ..., good and lawful men of the said county, before ..., court of oyer and terminer, and other justices of our said county, and one of the justices of our said King. The said justice did commit the body of aforesaid, to wit, a man, to the said inquest, to say upon that oaths aforesaid, that in the said county, and his said possess (and felon) so continued until the day of ___ in the year of our said King, yeoman, and of the said county, with the appurtenances, to wit, aforesaid, in the said county, and his said possess (and felon) so continued until the day of ___ in the year of our said King.

Warrant to the sheriff for restitution.

Middlesex. The jurors of our King sent and sworn before me the justice aforesaid, to the sheriff of the said county, on the ___ day of ___ in the year of our said King, by the oaths of ..., good and lawful men of the said county, before ..., court of oyer and terminer, and other justices of our said county, and one of the justices of our said King. The said justice did commit the body of aforesaid, to wit, a man, to the said inquest, to say upon that oaths aforesaid, that in the said county, and his said possess (and felon) so continued until the day of ___ in the year of our said King, yeoman, and of the said county, with the appurtenances, to wit, aforesaid, in the said county, and his said possess (and felon) so continued until the day of ___ in the year of our said King.

Precept
Precept to the sheriff to return a jury.

Middlesex. { } 

Lord the King assigned to keep the peace in the said county, and also to hear and determine divers felonies, treasons, wrecks, and other misdeemors in the said county committed; To the sheriff of the said county, greeting. On behalf of our said Lord the King, we command you, that you cause to come to our service at — in the county aforesaid, on the — day of — next ensuing, twenty-four sufficient and indifferent men of the said parish of — aforesaid in the county aforesaid, every of whom shall have lands or tenements of four furlongs yearly at the least, above reprizes, to inquire upon oath for our said Lord the King, of every certain entry made with strong hand (as it is said) in the messuage of one — as aforesaid in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impaneled, twenty-shillings of fines at the aforesaid day. And have then there this process, and this shall in no wise amount upon the perit that shall thereof receive. Witness the said — at — in the county aforesaid, the — day of — in the year of the reign of —.

The jurors oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a furible entry [or declarer] said to have been lately committed in the dwelling-house, — (herein, to you to name) in this county, and you shall spare no one for favour or affection, nor give any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given you.

So help you God. The oath that — your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts.

So help you God.

Fortis, a ferd or flauow, made by damming or penning up the water—Non licet aliis de custero faeere dammas aut fontes, aut alia impedimenta in aliquidus leundis, wafergangis, jussitis fuitque opuqutis communis in marefes pridibus. Ordinatio Monatii Rami Ramesiensi, p. 60.

Fortis, from the Sax. furd, i. e. a river, cadum for viculum. 'Tis mentioned in the Monasticon, 1 tom. pag. 587. Et tendit usque ad magnam aquam de Ayre, & fordeis ejusdem prati, &c.

Forehead, the front part of the head, or headland, flouting up on other bounds. Cowell, edd. 1737.


Forested. Barred, that out, or excluded for ever; as the barring the equity of redemption on mortgages, &c. 2 part. Inst. fol. 258. 33 Hen. 8. c. 39.

Foreclosure of mortgages. See Mortgage.

Foregoers, Were purveyors otherwise called, going before the King in progress, to provide for him. 39 Edw. 2. c. 5.

Foreign, (Fr. forein, Late. forinvs, extraneus) Strange, outlandish, or of another country, and in our law is used adjectively, being joined with divers subsufhens in several fenses. Kitch. 12, 32. The word is used, from a foreigner, and from a foreign kingdom. Where bond is given, or contract made in a foreign kingdom, it may be tried in the King's Bench. 31 Hen. 8. c. 51.

Foreign attachment, is such an attachment as is not triable in the county where it is made. 15 H. 8. cap. 5.

Foreign attachment, is an attachment of a foreigner's goods found within a liberty, or a city, for the satisfaction of some citizens to whom the foreigner is indebted. At Leman (anciently Lempset) there is the borough and the foreign; which last is within the jurisdiction of the manor, but not within the bailiff of the borough's liberty. So foreign court of the honour of Gainsborough, Clauf. 4 Edw. 2. in 26 H. 8. Foreign bought, and foreign fields, and custom within the city of London, which being found prejudicial to the fellers of cattle in Smithfield, it was enailed 22 & 23 Car. 2. that as well foreigners as freemen may buy and sell any cattle there. Cowell, ed. 1777. See Attachment.

Foreign courts. Decrees, judgments, &c. there, how far binding or regarded here. The ship being unladen at Barcelona, where the freight was payable by the charter-party, the factor refusing to pay the freight, the master of the ship litigated there in the Admiralty for it, and the court, and judge, ordered there given, that the master should have his freight, but that the damages the goods had sustained in the voyage, by reason of the deviation, should be deducted, and the account transferred to the delinquents, (who are in the nature of our masters in Chancery) to take the account, and the money ordered to be brought into court; but the factor had appealed to a higher court there. Lord Chancellor declared, that he would not flight their proceedings beyond sea; and if in this case the damages had been there ascertained, or a peremptory sentence given, the fame should have been conclusive to all parties: But it appearing, that the master had not taken a mate of that place, and therefore, in all probability, might again prevail; and defendant being willing to defit his fait there, his lordship directed a trial here by jury, to ascertain the damages sustained by the deviation. Stew. 1681. Ver. 21. See 2 Chene. Co. 238.

Dicharge of a foreign jurisdiction from a bill of exchange drawn there, is a good defence in an action brought on the same bill here. Sir. 733.

Sentence of a foreign admiralty condemning a ship as insufficient, not to be read on trial of an issue joined on that fact. Sir. 755.

Special bail shall not be given on a recovery in a foreign court. Stew. 1343.

Foreigners. Though made denizens or naturalized here, are disafbled to bar offices in the government, to be of the privy council, members of parliament, &c. by the act of the settlement of the crown. 12 Will. 3. c. 2. 1 Geo. 1. c. 4.

Foreign kingdom, Is a kingdom under the dominion of a foreign prince; so that Ireland, or any other place, subject to the crown of England, cannot with us be called foreign; though to some purposes they are divided from that of England; and if a foreigner, or others, be subject to a foreign kingdom, and one of them is killed, it cannot be tried here by the Common law; but it may be tried and determined by the constable and marshall, according to the Civil law; or the fact may be examined by the privy council, and tried by commissioners appointed by the Crown, at any court of England, or statute. 3 Inst. 40. 33 H. 8. One Hutchinson killed Mr. Calten abroad in Portugal, for which he was tried there, and acquitted, the exemplification of which acquittal he produced under the great seal of that kingdom; and the King being willing he should be tried here, referred it to the judges, who all agreed, that the party being already acquitted by the laws of Portugal, could not be tried again for the same fact here. 3 KB. 285. If a stranguer of Holland, or any foreign kingdom, buys goods at London, and gives a note under his hand for payment, and then goes away privately into Holland; the seller may have a certificate from the Lord Mayor, on proof of sale and delivery of the goods; upon which the people of Holland will execute a legal process on the party. 4 Inst. 38. Also at the instance of an ambassador or consul, such a person of England, or any minister, may have the laws here, or the laws from a foreign kingdom hither. Where bond is given, or contract made in a foreign kingdom, it may be tried in the King's Bench. 11 Hob. 11. 2 Rol. 322.

Foreign lands, judgments, &c. of things done there. A. was sued in the Admiralty upon an obligation supposed to be made and delivered in France, and was prayed a prohibition. Per cur. Such a bond may be filed here.
here in B. R. but being begun in the Admiralty, we cannot prohibit them, being as the pernomce of their whole good sea, which may be examined there but not here.

3 Lt. 232. Mich. 31 El. B. R.

Foreign laws and customs. How far regarded here. On a marriage of two French people in France, the contract was that, the husband, surviving the wife, should have the whole fortune of the marriage, and that the wife's fortune should pass to her own kindred. To this contract extended to the whole fortune of the wife, and not only to the particular mentioned, and the saying that the wife should only according to the custom of Paris, is as much as if the custom had been recited at large, and that the fortune should go to. Lord Keeper decreed relapse the custom should not be imitated. If the Lords, they had relief for the whole. Chanc. Prct. 207. Mich. 1702. S. C. cited in a case of a marriage article made in Holland, and in the marriage article the customary law of Holland, marriage articles are to take place of any other debts, and it was inferred, that therefore they should be confirmed here according to the laws of Holland, where they appeared to have been made. But it was answered, and so ruled, that it ought to have been proved in this case, what is the law of Holland, as in the above case it was proved, what was the law of France; without which proofs, our courts cannot take notice of foreign laws. Win's Rep. Pofcb. 1718. Freeman v. Defore.

The plaintiffs being creditors of Colley, preferred their bill against the defendant, being all foreigners, but the goods were passed over into England, into merchants hands by Colley; and this court taking notice, in respect of the different customs and the rest of the whole of theseKing'sHolds; secondly, because the bill was not sealed; thirdly, because the debt grew in France, and he came over hither to keep his body from arrest, the court decreed the debts, and caused a decree to be drawn up pro confesso, because the defendant would not answer, and the court ordered the monies or goods in the hands, to pay the debts, although they were passed over to others to the use of an infant. Thib. 131, 132, cites 8 For. Sore & Leland v. Colley.

The plaintiff being a Dutch woman brought 400£, portion to her husband, who agreed with her before marriage, to leave a complete maintenance for herself and her children, but not expressing what; the marriage took effect, but he declining in estate, her friends called on him, and he thereupon assigned certain bonds, wherein M. was bound to him, and a letter of attorney was made after to S. to receive the money upon the bonds, who received the bill of the bill was to have the money from M. and S. M. by plea sets forth the payment to S. and that he had no notice of the assignment of the bonds. And this was allowed a good plea for M. But S. pleaded a letter of attorney, and payment to him on good consideration, but did not deliver the documents or fore his part was delivered, and the agreement and assignment of the debt in Holland, where such agreement between husband and wife, and such assignment of bonds are good, they are to be allowed here. By the Lord Keeper. Clun. Cafes 233. Trin. 26 Car. 2. Albemarle's cafe.

Foreign money. When one demands foreign coin in pecie, the writ ought to be in the deinit only; but when the value of it in English silver is demanded, it may be in the debts and debitor. Per Court. 12. 2 Mo. 46. Trin. 37 Car. 2. C. B. Arg. in case of Darwin v. Pindar.

An appeal lies from those lands to the King and Council here, but that is by constitutions of their own. Arg. Mod. 45, in case of Darwin v. Pindar.

The King constituted a governor and council of state of Barbados, there being but one good against the governor for imprisoning the plaintiff by order of the Council, Judgment was given for the plaintiff in B. R. Hill. 3 Jac. 2. 2 Mo. 159. Wibram v. Dutton. But in a writ of error in the House of Lords, it was argued, that tho' it did not appear, that the King gave any authority to the Governor and Council to commit, yet it is incumbent to their authority as being a Council of State; the Council here in England commit no otherwise. And where the commitment is not authorized by law, the King's patent gives no power for it. But the government remains weak, where the Council of State cannot commit a delinquency, so as to be forthcoming to another court that can punish his delinquency. And therefore prayed that the judgment should be reversed, and the same was accordingly reversed. Par. Caf. 34.

These plantations are parcel of the realm, as county palatine, and being a feudal power, are exempted from the laws of the realm, according to the common course of English equity, Arg. Par. Cafes 33. in case of Dutton v. Bracton, 1 Trin. 33. 218. 2 Mo. 159.

It was insisted by Counsel, that by the custom of the island of Barbados, a plantation there, that's a fee-simple estate, is in the first place liable to the payment of debts, so that the owner cannot, by his will, devise his plantation, but that it will be liable to the payment of his debts; but these debts must be either due contracted on the place, or elsewhere, for matters relating to the plantation, St. Poefs. 1067; Vern. R. 453. Niel v. Robinson.

A. recovered a debt contracted there against an executor of the will of one A. plantation, in Barbados, and brought an action of trover, and had judgment for the fourth part of a negro. Arg. Poefs. 1687; Vern. R. 453. cited as Sir Meynard's case.

A plantation in Barbados is not a testamentary estate by the laws now in force. Per cur. Trin. 1687. Vern. 469. 2 Mo. 159.

In Barbados, all freedoms are subject to debts, and are esteemed as chattels till the creditors are satisfied, and then the lands delivered to the heir. 4 Mod. 226. 5 W. & M. 2 R. in case of Blaxland v. Vinar.

A plaintiff may sue in the Admiralty court, if he will upon the ground that he is a subject of Virginia. But if he opposes the contract in England, he may sue here. But if part of the contract be here, and part over the sea in Virginia, or
FOR

er upon the fact, the Common law only shall have jurisdiction, and those are the true differences. Per Jones J. 2 M. R. 452. Hill. 22 Terc. B. R. Cope's case, 4 Edw. 3d. 21 & 22 Cor. 2. B. R. Crisp v. The Mayor, Ever. 3. 500. J. 2 M. R. 453. Hill.

The reason why an ejectment will not lie of lands in Jamaica, or any of the King's foreign territories, is because the courts here cannot command them to do execution there; for they have no writs; per 2 Telfin J. Vint. 59. Hill. 21 & 22 Cor. 2. B. R. Cope v. The Mayor, Ever. 3. 500.

The court cannot judge of the usufruct of covenants of lands lying in Jamaica, but they must be tried by a jury.

2 M. 240. Trin. 29 Cor. 2. C. B. Goff v. Elkin.

Lands lying in Jamaica pass by grant, and no livery and feisin is necessary. Per 2 M. 240. Trin. 29 Cor. 2. C. B. Goff v. Elkin.

Treason done in Carolina, in raising a rebellion there, may be tried in Middlesex, by 25 H. 8. 2. 3 Salk. 358.


Laws of England do not extend to Virginins, being a conquered country; their law is, what the King pleases. Per Hill Ch. J. 2 Salk. 666. Smith v. Bresen and Co.

Leffor brought debt against leffor for rent, upon a demife of lands in Jamaica, and laid his action in London; defendant pleaded, that the lands were in Jamaica, and that there are courts there, &c., that if entry and outher were pleaded, it could not be tried here, and that the right of debt and defendant depending on foreign laws, cannot be given in evidence here. And per cur. Where an action is local, it must be tried accordingly; therefore if the leffor declares on the privyty of effate, and that lies in Ireland, &c., the action must be brought there; for the action is local, therefore such leffor cannot without naming the foreign plaintiff, to the courts at New York, (whence the plaint is described) without naming an affiance of a term in Ireland; for the action is founded on a privyty of effate, otherwise 'tis founded on a privyty of contract, which is transitory, as debt for rent by leffor against leffor, for that may be maintained where the land lies not; and if a foreign interest, which is local, should happen, it may be tried here, where the action is laid; for that purpose there may be a suffegion entered on the roll, that such a place in such a county is next adjacent, and it may be tried here by a jury from that place, according to the laws of that county, and on nil deliberate, you may give the laws of that country in evidence. 2 Salk. 651. Trin. 3 Ann. B. R. Way v. Yally.

If there be a new uninhabited country found out by English subjects, as the law is the birth-right of every subject, so wherever they go, they carry their laws with them, and therefore such new-found country is to be governed by the laws of England. 2 Wm's Rob. 75. says, it was laid by the Master of the Rolls, 9 Edw. 1st. 1723, to have been so determined by the Lords of the Privy Council upon appeal.

But after such country is inhabited by the English, acts of parliament, made in England, will not bind them without naming the foreign plantation.

Therefore it has been determined, that the statute of frauds and perjuries, which requires three witnesses to a will, and that tho' should subscribe in the retractor's presence, in case of a devil's land, does not bind Barbadoes. Ibid.

4. Foreign plea, Is a refund of the judge, as incompetent, because the matter in question is not within his jurisdiction. Kitchen. 75. 4 H. 8. cap. 2. and 22 Hen. 8. c. 2. 14.

A foreign plea is, where the action is carried out of the country where 'tis laid, and is to be sworn, which a plea to the jurisdiction is. Per Gard. 423. Pojch. 9 W. 3. B. R. Chumley v. Broom.

As foreign pleae, are a plea to the jurisdiction, and not foreign pleas, and therefore not to be sworn to, but may be received without an oath. Arg. and judgment accordingly. 5 Mad. 333. Chambreley v. Broom. Vol. II. No. 77.

For by Stat. 6 Ric. 2. c. 2. in writs of debt and account, and all other such actions, if in pleas upon the same, he cited that the contract was made in another county that is contained in the original writ, the same writ shall be abated.

Before this statute, writ of debt and account against a receiver, and such-like actions, might be brought in any county, where the party might be brought in to answer, and the defendant might have conceded of a contract or receipt, &c. in any other county; because de
titum et contractus, &c. sunt nullius loci. 7 Rep. 3. in Botter's cafe.

If it appears by the declaration, that the money was to be paid out of the jurisdiction of the court, the judgment is not good; and 'tis not necessary to swear the plea, if it appears on the obligation, that the money was to be paid out of the jurisdiction of the court, and he pleads payment according to the condition. But if one will not swear a foreign plea, where he ought to do it, the plaintiff may enter judgment on a nihil dictum, for such a foreign plea, not being sworn to upon the matter. 3 St. 225. Trin. 1650. Dudding v. Collier.

A prohibition was prayed to the court of the common, to an action of debt there commenced; for that the defendant had pleaded before impeachment, That the cause of action did arise in a place out of their jurisdiction, and offered to have sworn his plea, and that he did not perceive this plea; and a prohibition was granted; for inferior courts do not cognize of transitory things, which arise out of their jurisdiction, as F. N. B. 45: is: But then 'tis not sufficient to furnish such matter for a prohibition, but a plea to that effect must be tender'd in the inferior court, and that before an impeachment (whereby the jurisdiction would be admitted) and it must be upon oath; and then if refused, a prohibition shall be granted; or upon such refusal, a bill of exceptions may be made, and error assigned. Vent. 180. Hilk. 23 & 24 Cor. 2. B. R. St. Akens v. Chaloner.

Debt was brought in B. R. on a bond made at Chaloner, the defendant did not imparle but pleaded by attorney, that he is, and at the time of the action brought was a tenant, and not in the same jurisdiction as Chaloner, and prayed judgment if the court of B. R. be to hold plea of this matter. But the plaintiff, taking this to be a foreign plea, signed judgment, because it was not sworn to. And to set aside this judgment, it was infufled, that tho' this is a plea to a jurisdiction, yet it is not a foreign plea, and therefore need not be sworn to; and accordingly the judgment was set aside. See Carth. 429. Pojch. 9 W. 3. B. R. Chumley v. Broom, and 5 Mad. 335. Chambreley v. Broom, S. C. and 12 Mad. 123. Chumley v. Broom, S. C.

Debt was brought in London. A prohibition was moved for, and granted, on, upon foggestion that the defendant had tendered for plea below, that the cause did arise out of their jurisdiction, and offered to make oath of the truth of it. Now it was shewed, that he tendered the plea after the court was up, whereas it should be, in propriam perfunctam, and in court. And tho' an affidavit was offered in B. R. of the truth of the plea; and one Turner's cafe, 4 Cor. 2. 247. was cited out of the court, where such prohibition had been granted upon affidavit in B. R. without oath below; yet by three justices, abente Holt, the rule was discharge. For in all pleas that ouste a court of jurisdiction, whether inferior or superior, there must be oath, in that court, of the truth of the plea. 6 Mad. 149. Pojch. 3 daw. B. R. Spinks v. Wood.

In debt, if the defendant pleads foreign plea in another county in persun, he shall not be examined; but if it be by attorney, the attorney shall be examined. But in this case they use to examine the party at this day without oath. Br. Examination, p. 23. cites 2 Ed. 4. 10.

If one be fixed in an inferior court, for a matter out of the jurisdiction, the defendant may either have a prohibition from one of the Common law courts, or may, if it happen in the vacation, and it happens then, when the Chancellor is open, move the court of Chancery X

Persons refusing out of the forest, not bound to attend the common summonns, C. de F. 9 H. 3. b. 2. c. 2. 3. Water, pertuse and affaires, not to be made without licence, C. de F. 9 H. 3. b. 2. c. 4. Regards and law of dogs to be as accufloned, C. de F. 9 H. 3. b. 2. c. 5. Swainmotes to be held 'but twice in a year, C. de F. 9 H. 3. b. 2. c. 8. Scotists and gatherings restrained, C. de F. 9 H. 3. b. 2. c. 7. Punishment of Killing King's deer, 9 H. 3. b. 2. c. 10.

Noblemen going to the King may kill deer, 9 H. 3. b. 2. c. 11. Who may take toll, and of whom, 9 H. 3. b. 2. c. 14.

Pleas of the forest how to be attached and held, 9 H. 3. b. 2. c. 16.

Owner of purlicus not to have common, unless they will have their grounds re-united to the forest, Ordin, Forst. 33 Ed. 1. 8. 5. How prelaments shall be made of offences in the forest, Ordin, Forst. 33 Ed. 1. 8. 5. c. 1. The justices in the forest shall name the officers except verdurers, Ordin, Forst. 33 Ed. 1. 8. 5. c. 2. Ministers of the forest shall not be put in juries out of the forest, Ordin, Forst. 33 Ed. 1. 8. 5. c. 3. Punishment of injuries in the forest, Ordin, Forst. 33 Ed. 1. 8. 5. c. 4. Common restored in the forest after perambulation, Ordin, Forst. 34 Ed. 1. 8. 5. c. 6. The punishment for offences in grease, Justice & Affif, Forst. inrer temp. sect. 1. In cutting timber, ibid. sect. 3. Concerning affart and perturse, ibid. sect. 4. For offences in hunting, ibid. sect. 7. &c. The manner of making agiment and pannage in the forest, ibid. sect. 14. Concerning cattle trespassing, ibid. sect. 15. Persons unduly imprisoned by the ministers of the forest, shall have a bomane repligunga, 1 Ed. 3. b. 2. c. 8. Perambulation to be as in time of King Ed, 1 Ed. 3. b. 2. c. 9. The owner of woods may freely take his choffers, 1 Ed. 3. b. 2. c. 1. Forrester's gathering nothing without consent, 25 Ed. 3. b. 5. c. 7. General pardon of offences of vert and venison, 43 Ed. 3. b. 6. 4. Indictments of the swainmote to be without fees, 46 Ed. 3. 7. The jury shall give their verdicts of trespass in the forests, in the same place where they receive their charge, 7 R. 2. c. 3.

None shall be imprisoned within the forest without in- dictment or mainprise, 7 R. 2. c. 4.
For

The owner of a wood, after cutting it, may incline the
spring for seven years, 22 Ed. 4. c. 7.

Discharge of the offices in the forest of Inglewood,
4 H. 7. c. 6.

Oppositions in the forests in Wales prohibited, 27 H. 8.

1. The King shall have chase and war in the grounds
of Hampton-Court, 32 H. 8. c. 5.

The justices of the forest may make deputies, 32 H. 8.

2. The forests refrained to the known bounds of 21
Flav. 1. 16 Car. 1.

A place shall be deemed a forest but where courts
have been held or verdicts chosen within 60 years before
the reign of Charles 1. 16 Car. 1. c. 16. sct. 5.

Commissioners to ascertain the bounds of forests, 16
Car. 1. c. 16. sct. 6.

 Owners of tenements, &c. to enjoy ancient common,
16 Car. 1. c. 16. sct. 9. The bounds of the forest of
Dean afoctained, 20 Car. 2. c. 3.

Saving of right of common, 20 Car. 2. c. 3. sct. 11.

And of miners, 20 Car. 2. c. 3. sct. 12.

Coal-mines, &c. for what terms to be leased, 20 Car.
2. c. 3. sct. 18.

3. For preserving timber in New forest, 9 & 10 W. 3.
c. 36.

Right of common, &c. how to be enjoyed, 9 & 10
W. 3. c. 36. sct. 7.

Warrants of chief justices in eyre or officers of the
forest exempted from lumper duty, 10 Ann. c. 26. sct. 74.

Penalty on officers of forests and parks confederating
with deer-keepers, 6 Geo. 1. c. 15. sct. 5.

Keepers, &c. may seize instruments used in unlawful
cutting of trees, 4 Geo. 3. c. 31.

Forestry, (Et foret quiets de theodosio & paflaggio,
& de forestagio, & theodosia aquarum & viarum forestall
mean contingutum. Charta 18 Ed. 4. m. 10. n. 30.)

Seems to signify some duty or tribute payable to the
King's forests, as ciminings, or such like. It may
likewise be taken for a right to use the forst, or a payment
for the right, or rather a taking of reasonable olle-
viers there. - Cowell, sct. 1737.

Foreftalling, (Viarum obftructus, from the Sax. forst,
c. c. oafs, and falf,) Signifies the buying or bargaining for
any corn, cattle, or other merchandise, by the way, be-
fore it comes to any market or fair to be sold; or by the
way as it comes from beyond the seas, or otherwise, to-
ward any city, port, haven, or creek of this realm, to the
intent to sell the same again at a more high and dear
Indictments, fln. 64. Cowell.

1. Of the offences of forftalling, ingrefling, and regr-
grating by the Common law, (that is, by the common cuftom
of the realm, before any act of parliament was made concern-
ing them,) and how punished.

2. The statutes against forftalling, ingrefling, and re-
grating.

3. Cases adjudged upon these statutes.

4. Pleadings.

1. Of the offences of forftalling, ingrefling, and regr-
grating by the Common law, (that is, by the common cuftom
of the realm, before any act of parliament was made concern-
ing them) and how punished.

All endeavours whatsoever to inhuman the common
price of any merchandise, and all kinds of praftices
which have any apparent tendency thereto; whether by
spreading false rumours, or by buying things in a market
before the acuttomed hour, or by buying and selling
again the fame thing in the fame market, or by any
other such like devices, are highly criminal at Common
law: And all such offences ancienly came under the
general notion of forftalling; which included ingrefling,
regrating, and all kinds of offences of this nature. -
Hawt. P. C. 234. 43 Scot. 38. 3 Inf. 195, 196.

And surely there can be no attempt of this kind, but
must be looked upon as an high offence against the pub-
llick; as it apparently tends to put a check upon trade,
to the general inconvenience of the people, by putting
it out of their power to supply themselves with a commodity,
whether they are their natural or their particular expec-
tation, whatsoever they may be; which produces
extremely oppressive to the poorer fort, and cannot but
give just cause of complaint to the richest. - Hawt.
P. C. 234.

But it hath been resolved, that any merchant, whether
he be a subject or a foreigner, bringing victuals, or any
other merchandise into the realm, may sell the same
in grofs; but that no person can lawfully buy within the
realm any merchandise in grofs, and sell the same in grofs
again; because, by such means, the price will be in-
creased; for the more hands any merchandise passeth through, the
dearer it must grow; because every one will make his
profit thereby, and by the mean of the same fellow
man might ingroffe into his hands a whole commodity,
and then fell it out at what price he should fthink fit;
which is of such dangerous consequence, that the bare
ingroffing of a whole commodity, with intent to sell it at
an unreasonable price, is an offence indictable at the
Common law, whether any part thereof be sold by the
ingroffer or not. - Hawt. P. C. 234. 3 Inf. 195.

H. P. C. 152.

And so jealous is the Common law of all praftices
of this kind, that it will not suffer corn to be fold in the
field; perhaps for this reason, because, by fuch means,
the market is, in effect, forftalled. - Hawt. P. C.
235. 3 Inf. 197. H. P. C. 152.

As to the manner whereby offences of this kind are
punifiable by the Common law, it is faid, that, by an
ancient statute, the offender was to be grievously ame-
ced for the firth offence; for the fecond, to be condem-
ned to the pillory; for the third, to be imprisoned; and
for the fourth, to be compelled to abjure the fivell. And
there seems to be no doubt, but that, at this day, all
offenders of this kind are liable to a fine and imprifon-
ment, anfwerable to the heinousnefs of their offences,
upon an indictment at Common law. - Hawt. P. C.
235. 3 Inf. 197. H. P. C. 152.

2. The statutes againft forftalling, ingrefling and re-
grating.

Stat. 51 Hen. 3. c. 6. sct. 1. First, Six lawful
men fhall not appear truly to gather all meafures of the
town, six bushells, half and quarter bushells, gallons,
pottles and quarts, as well of taverns as of other places:
Meafures and weights, viz. pounds, half pounds, and
other little weights, wherewith bread of the town, or
of the court, is weighed: and upon every meafure, bus-
heil, and weight, the name of the owner fhall be
written, and likewise they shall gather the meafures of
mills: After which, twelve men fhall fwear to make
true anfwer to fuch things as fhall be demanded of them
in the King's behalf upon the articles here following; and
fuch things as be secret, they fhall utter secretly, and
answer privately.

The meaning of this fition relates to the office of bread
and ale; but fo much of it as relates to the office of bread
is repelled by fl. 31 Geo. 2. cap. 29.

Sdt. 2. Alfo, if there be any that fell by one mea-
ure, and buy by another; alfo, if any do ufeth false eiles,
weights or meafures; and if any butterer fell contagious
fiell; Alfo, they fhall inquire of cooks that feebe fhefs,
or fiish, with bread, or water, or otherwife, that is not
wholeome, or after that they have kept it fo long that
it lofeth its natural wholeomenefs, and then feebe it
again, and fell it; or if any buy any fhefs of fiines, and
then fell it to another, and afterwards sell it again; and
any thing before the hour, or that paffs out of the town
to meet fuch things as come to the market, to the in-
tent they may fell the fame in the town unto regrators.

When a quarter of barley is fold for two Hillings,
then four quarts of ale fhall be fold for one penny; when
for two Hillings and six pence, then feven quarters for two
pence;
when for three shillings, then three quarters for a penny; when for three shillings and sixpence, then five quarters for two pence; when for four shillings, then two quarters at one penny.

Order, for bakers, &c. Insert. temp. c. 10. (made during the reign of King Hen. 3. King Edu. 1. or King Edw. 1.)-That all bakers, who shall make of their bread, any other commodity, whether of the same nature, or of a different kind, shall be excluded from the market, and be liable to the penalty of the third article. *Hawk. Stat. vol. i. p. 180.* No forecaster shall be suffered to dwell in any town, who manifestly is an oppressor of the poor, a publick enemy of the country, who, meeting grain, fish, hearst, or other things coming to be sold, doth make halls to buy them before another, to the prejudice of the poor, either by the gaining the same, and deceiving the rich, and, by that means, goeth about to sell the said things much dearer than he brought them; who cometh about merchant-strangers, and offereth them his help in the sale of their wares, and informeth them, that he can sell them at a price dearer than they mean to have done: He that is convicted thereof, the first time, shall be amerced, and shall lose the thing so bought, according to the custom of the town; that he is convicted the second time, shall have judgment of the pillory; the third time, he shall be imprisoned in the prison; and in the fourth time, he shall abjure the town; and likewise they that give them counsel, help, or favour.

Stat. 23 Ed. 3. cap. 6. Butchers, fishmongers, regrators, hotellers, brewers, bakers, poulterers, and other sellers of victuals, shall be bound to sell the same for a reasonable price. And when the mayor and aldermen, at the instance of their tenants, shall determine a price, before the mayor, bailiff or justice, thereto assented, or elsewhere in the King's court, if the said price be not paid, or whereof, and the mayor and aldermen declare the price, and shall make fined to the King, and the King the other half. *Conformed by 2 Ric. 2. flat. 1. cap. 2.*

Stat. 27 Ed. 3. cap. 11. All merchants that bring their wares to the cities, towns, or ports, within the realm, may safely sell them; and no perfon shall go by forced or water towards such wares, to fotheall them, or give false names of their makers, or before they come to the ports, nor enter into the things for such cause, till the merchandise be let to be sold; upon the paines contained in the third article, viz. the pains of felony; but the penalty is not in use in this case; perhaps from the laws of the times, being obsolete by the invention of Calcut, and because of their presence, all the wares were removed by Ed. 3. and H. 4. [See flat. 2 H. 5. flat. 1. cap. 6. and 2 H. 6. c. 4. and 3 H. 6. cap. 4, concerning the flatle, in the statues at large] the penalty of death in the said third article is also repealed by 38 Ed. 3. flat. 1. cap. 6: but the forfeiture of the goods remains, provided the King either does not pay the same, or if he pays the same, he shall not make it, or declare it to falsely, and upon the paines contained in the third article, shall forfeit to the King, the goods of the merchant, and the goods of the sum for the penalties, and the goods of the other half, to the King, for the sum for the penalty. *Flat. 2 H. 5. flat. 1. cap. 6.*

Stat. 31 Ed. 3. H. 1. cap. 10. Every man that bringeth victuals to London, may freely sell the same without being interrupted by stiffer, butcher, poulterer, or other; and the mayor and aldermen shall redeem the Vol. II. N°. 78.

defaults of fathers, butchers, bakers and poulterers, as also of those that fell abroad, ale, or wine, notwithstanding every charters of franchises, statutes, customs, or privileges; and the mayor and aldermen shall do the same, upon the pain in 28 Ed. 3. cap. 10. [viz. for the first default one thousand marks to the King, for the second two thousand marks, and for the third default, the franchises of the city shall be taken from the King's hands;} So that the punishment be not made, in respect of any singular profit.

Stat. 6 Ric. 3. cap. 10. Alienis being of the amity of the King, and coming within the city of London, and other cities and boroughs, within the walls, and five and other victuals, shall be under the special protection of the King; and they may sell and make their profit at retail or in gross.

Enforced by 14 Hen. 6. cap. 6.

Stat. 13 Ric. 2. cap. 8. Victuallers shall have reasonable gains, according to the direction of the justices of the peace, and no more, upon pain to be grievously punished according to the discretion of the justices, where the same is not limited in certain. And such victuallers, or victuallers, and other victuals, and other victuals that have affile of bread and ale, or shall make no amercement, or fine for any default touching the affile for which a man ought to have bodily punishment. And that the survey in cities, &c. shall put the statute against victuals, in 23 Ed. 6. cap. 6. in execution. *Conformed by 4 Hen. 8. cap. 25.*

Stat. 1 Hen. 4. cap. 17. The flat, 6 Ric. 2. cap. 10. shall be duly executed, notwithstanding the letters patient granted of the victuallers, contrary to the fishmongers of London, by the late King Richard.

Stat. 25 Hen. 8. cap. 2. felt. t. enacts. That to remedy the frequent rise of the price of cheeves, butter, capons, hens, chickens, and other necessaries victuals for man's subsistence, by ingrafting and regulating the same; and that the Lord Chancellor, and the several principal officers of state, &c. may, upon complaint of any inhabiting of the country, or of such victuals without ground or reasonable cause, in any part of the King's dominions, set and tax reasonable prices of such victuals: And that after proclamation made of such prices, all farmers, owners, brokers, and all other victuallers whatsoever, having or keeping any such victuals to the intent, to sell, shall sell such victuals to the intent of the King's subjécts as will buy them, at such prices as shall be taxed by such proclamation, under the pains to be limited in the said proclamation.

Stat. 2. All farmers, owners, brokers, and other victualers, keeping any victuals whatsoever, before the said proclamation be made of such prices, all farmers, owners, brokers, and all other victualers whatever, having or keeping any such victuals to the intent, to sell, shall sell such prices as shall be set by the proclamation, upon the pains limited in the proclamation.

Stat. 3. Provided, that the officers of the cities, boroughs, or towns corporate, and all other persons having authority to set prices of such victuals, may set such prices in such manner as if the said act had not been made.

Stat. 2 & 3 Ed. 6. cap. 15. enact. That if any butchers, bakers, poulterers, brewers, cooks, collemongers or fruitiers, shall conspire, covenant, promise, or make any oaths, that they shall not sell their victuals but at certain prices; or if any artificers, workmen or labourers, do conspire, covenant, promise together, or make any oaths, that they shall not make or do their works but at certain price or rate, or shall enterprize, or undertake upon them to finish what another hath begun, or shall do but a certain work in a certain time, they shall not work but at certain hours and times; every such person conspire, &c. shall forfeit, for the first offence, 10l. and if he pay not the same within 24 days, shall suffer twenty days imprisonment, and for the second offence, shall forfeit 20l. &c. and for the third, 40l. &c. and, if any such conspiracy, covenant, promise, or make any oath, by any society, brotherhood, or company of any craft, mystery or occupation, of the victuallers above-mentioned, with the presence or consent of the more part of them, that then, immediately upon such act of conspiracy, &c. and by any such particular punishment before appointed, their corporative shall be disfrall; and that the said offences shall be determined at the alazines, felonies of the peace, or court-let. Y

Revived.
have or suffer imprisonment for the space of two months, without bail or mainprize; and shall also lose and forfeit the value of the goods, cattle and victual, to him or them bought or had.

Stat. 5. And if any person lawfully convicted or attainted of any of the offences aforesaid, be thereof attainted lawfully convicted or attained, that he may recover the said person or persons so offending have and suffer, for his or their said offence, imprisonment by the space of one half year, without bail or mainprize, and shall lose double the value of all the goods, cattle and victual, to him bought or had.

Stat. 6. And if any person, being lawfully twice convicted or attainted of or for any of the said offences, shall again offend the third time, and be thereof lawfully convicted or attainted, that he may recover the said person or persons so offending have and suffer, for his or their said offence, imprisonment by the space of one half year, without bail or mainprize, and shall lose double the value of all the goods, cattle and victual, to him bought or had.

Stat. 7. Provided, on the contrary, that the buying of any such barley, bigg, or oats, as any person or persons (not forestalling) shall buy to convert it into malt or oatmeal, in his or their own house or houses, and so shall be converted into deer, or the buying of any such thing by any such filzmonger, butcher or poulterer, as concern his or their estate, or the estate of the Lords and Commons, in this present parliament assembled, and by the authority of the said, that whatsoever person or persons, that after the first day of May next coming shall buy, or cause to be bought, any merchantable victual or any other thing whatsoever, coming by land or by water toward any market or fair, to be sold in the said, or coming toward any city, port, haven, creek, or road of this realm, or Wales, from any parts beyond the seas, to be sold, or make any bargain, contract, or promise, for the having or buying of the said, or any part thereof, to come as is aforesaid, before the said first day of May, shall be in the market, fair, city, port, haven, creek or road, ready to be sold; or shall make any motion by word, letter, missive, or otherwise, to any person or persons, for the inhaling of the price, or dearer selling or any thing or things above mentioned; or any person or persons coming to the market or the fair, to obtain, or forbear to bring or convey any of the things above rehearsed, to any market, fair, city, port, haven, creek or road, to be sold as is aforesaid; shall be deemed and taken, and adjudged for a forestaller.

Stat. 2. Provided likewise that for the said person or persons, that after the said first day of May shall by any means regulate, obtain, or get into his or her hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, peacocks, or any other dead victual whatsoever, that shall be brought to any fair or market within this realm, or Wales, to be sold, and to sell the same again in any fair or market holden or kept in the said place, or in any other fair or market within four miles thereof, shall be accepted, reputed, and taken for a regulator or regulators, and shall be liable to the same penalties, either by the common law, or as aforesaid, to recover the same, and to be under the same penalties, whether the goods be brought to any fair or market within this realm, or Wales, to be sold, and to sell the same again in any fair or market held or kept in the said place, or in any other fair or market within four miles thereof, shall be accepted, reputed, and taken for a regulator or regulators, and shall be liable to the same penalties, either by the common law, or as aforesaid, to recover the same, and to be under the same penalties, whether the goods be bought without forestalling; or else that any common provision made, or hereafter to be made without fraud or covin, by any person or persons, or of any of the things aforesaid, for any city, borough, or town corporate, or for provision of victualing of any ship, cable or fort within the King's dominions, without forestalling, which shall be employed only to that use and purpose; or the buying and providing of any of the victuals above mentioned, necessary and requisite for the furnishing and provision of the inhabitants of Colonies, Guinea and other the marine countries, of the town of Berwick, Holy Island, or the marches of England against Scotland, which without fraud or covin, shall be transported and conveyed, as soon as wind and weather may serve, to such of the places aforesaid for which the same shall be provided, shall not be in any wise deemed, adjudged, or taken any offence or penalty in respect whereof, on the contrary.

Stat. 8. And it is also further enacted by the authority aforesaid, That if any person or persons, after the first day of May next coming, having sufficient corn and grain for the provision of his or their house or houses, and owing of their grounds for one year and no longer, shall the same produce, for the change of his or their feed, and do not bring to the same fair or market, the same day, so much corn as he shall fortune to buy for his seed, and sell the same, if he can, as the price of corn then goeth.
F O R

geeth in the said market or fair, that then every such person or persons so buying corn for feed, shall forfeit and lose the double value of the corn so bought.
Sect. 9. Or if any person or persons, after the said first day of May, shall buy any manner of oxen, steers, kine, heifers, calves, sheep, lambs, goats or kids, living, and feed them in the said fourtieth part, unless they shall feed the same by the space of five weeks in his or her own houses, ground, farm ground, or else in such ground or grounds where he or they have the heritage, or common pasture, by grant or preemption; then that every person or persons so buying and feeding again, shall lose the double value of the same, or things so bought and fed again; the one moiety of all which forfeitures aforesaid shall be to the King, and the other moiety to him or them shall will for the use, in any of the King's courts of record, by bill, plaint, action of debt or information; in which the bill, plaint, action or information, no wager of law, eonion or pleaution, shall be admitted.
Sect. 10. Be it further enacted, &c. That the juries of the peace in every county within this realm, or Wales, at their quarter-feelions, shall have full power and author- ity by virtue of this act to examine all and every the defaults and offences perpetrated, committed or done contrary to this act, within the county where any such felotions shall be kept, by inquisition, pre- fement, bill or information before them exhibited, and by examination of two lawful witnesse, or by any of the false, or other matters of the said juries, and to make process thereupon, as though they were indicted before them by inquisition or by verdict of twelve men or more; and upon the conviction of the offender, by information or suit of any other than the King, to make execution of the one moiety of all the for- feitures to be levied to the King's use, as they use to do of other fines, issues and amerciations grown in the fel- lissions of peace; and to award execution of the other moiety for the complainant or informer against the of- fender, by fieri facias or capias, as the King's juries at Westminster may do and use to do: And if any such con- victior or attainer shall hereafter happen to be at the King's suit only, then the whole forfeitures to be extrtaled and levied to the King's use only.
Sect. 11. And it is further enacted, &c. That what- ever person shall, at any time hereafter, be puNished by virtue of this act, for any thing therein contained, that then the said person shall not otherwise be vexed, troubled, sued, or put to any pain or punishment for that thing wherefor he or they shall have been so pu- nished.
Sect. 12. Provided always, and it is enacted by the authority aforesaid, That it shall be lawful to every per- son or persons, which shall be aigned and allowed, by three juries of the peace of the county where he shall dwell, thertanto, to buy (otherwire than by feall) corn, grain or cattle, to be transported or carried by water from any port or place within this realm, or Wales, unto any port or place within the said dominions or dominions, if he or they shall, without fraud or covin, ship or em- bark within forty days next after he or they shall have bought the fame, or taken covenant or promise for the buying thereof, with such expenses and diligence as wind and weather will serve to carry and transport the said person or persons, as his or their cokets shall de- clare; and there to disembark, unladen and fell the same, and do bring a true certificate thereof from one juries of peace of the county, or mayor or bailiff of the town co- mmunauté where the same was disembarked, and also of the custome of the port where such unloading shall be, of the place and day where the said corn or cattle shall be disembarked, unladen and founded, to be directed unto the custome and commtroller of the port where the same were embarked, that being mentioned in this act to the contrary notwithstanding.
Sect. 13. And over that, that at all times hereafter, when wheat shall be commonly at the price of six shillings and eight pence the quarter, or under, malt and barley at three shillings and fourpence a quarter, or under, oats or oats malted at the price of 2 shillings the quarter, or under, pease or beans at the price of four shillings the quarter, or under, and rye or milletwine at the price of five shillings the quarter or under; and which quarters shall be intended to be of London measure; then that it shall be lawful to every person or persons (not forfealing) to buy, engross and keep in his own house, or the houses of the kinds aforesaid, as without fraud or covin shall be bought at or under the prices afore expressed; any thing in this act to the contrary notwithstanding.
Sect. 14. Provided always, and be it enated by the author- ity aforesaid, That if any person or persons shall, by virtue of this act, or any thing therein contained, extend not to charge any person or persons for any the offences above mentioned, unless he or they be sued for the fame within two years next after such offence done or committed. This act to endure until the end of the next parliament.
Sect. 15. Provided always, and be it enacted by the author- ity aforesaid, That it shall be lawful to all and every the King's Majesty's subjects now dwelling or inhabiting, that hereafter shall dwell or inhabit within one mile of the main sea, to buy all manner of fifth, or of any thing, in so far as aforesaid, being licensed and authorized to be carried by any persons as are aforesaid, to be brought with the common, or any thing therein contained to the contrary in any wife notwithstanding.
Sect. 16. Provided also, and be it enacted by the au- thority aforesaid, That it shall be lawful to all and every the persons known and personally known to be drover or drovers, being licensed, authorized and allowed in writing by three justices of the peace, whereof one to be of the quar- um, of the county or counties where the fame drover or drovers shall be most abiding and dwelling, to buy cattle in any such districts or counties where drovers have been wont, in times past, accustomedly to buy cattle at their free liberty and pleasure, and to sell the same as aforesaid at reasonable prices, in common fairs and mar- kets, distant from the place or places whereof he or they shall buy the same, forty miles at the least, so that the same cattle be not bought by way of forfealing; this act, or any thing therein contained to the contrary in any wife notwithstanding.
Sect. 17. Provided always, That such licence of justices of peace shall not endure above one year, unless the fame be yearly renewed by so many justices as is aforesaid.
Made perpetual by the 5 Edw. c. 12. sect. 4. No drover of cattle, hogs, lades, kidder, carrier, buyer, or transporter of corn or grain, butter and cheese, be from and after the feast of Easter next after the first day of this present parliament, licensed, admitted, attainted, or allowed to such offices or doings, or to any of the said offices or doings, by general and open quarter-feelions of the peace, be to hold in the thire where such perfon or persons to be ad- mitted, attainted or allowed, doth or shall dwell, and hath or shall have dwelt there by the space of three years next before the sft of his said licence. And that no per- son or persons, after the first day of May next coming, be admitted to the said offices or doings, or to any of them, but such only as be or have been married men, and shall be, at the time of such licence to be granted, householders, and not householders, or retainers to any perfon or persons, and of the age of thirty years at the least: And that all licences being made and granted, as is aboveafo, shall have connuence and be good only for one year next after the date hereof, and for no more nor longer time.
Sect. 5. Which said licences and every of them shall bear date of the day and place where the said felotions shall be given, and shall be signed and sealed with the proper hands and seals of three of the said justices of the peace, being present at the same sallions, at the least; whereof one to be of the quarum; upon pain that every person or persons that shall make any licence by any licence in hand for ordi- nance, to lose and forfeit to our Sovereign Lady the Queen, her heirs and successors, five pounds Sterling: And that all licences made and granted, or hereafter to be made and
and granted otherwise than is before expressed, shall from and after the said first day of May next commencing be void and of none effect.

2. And further, Be it enacted, &c. That the justices of the peace in the said general and open sessions shall or may, by their directions, take bond and surety, from time to time by recognizance, of such as shall be admitted or allowed hereafter a common carrier or owner of cattle, badgers, cattle, carters, binder carriers, carrier buyers of corn, grain, butter or cheese, that they, or any of them shall not, by colour of his or their licence, fosil or ingross, or otherwise practice or do any act or thing contrary to the tenor and true meaning, or in defrauding the said former statute, or of any matter or thing therein contained: All which licences, and every of them, and the said recognizances, shall be made and written by the clerk of the peace of every county where such licence shall be granted, or by his lawful deputy, and by none other person or persons: And every person that shall have any such licence, shall pay to the clerk of the peace, or his deputy for making thereof, twelve pence at the most; and for every recognizance in form abovefo Said, to be made and acknowledged, eight-pence at the most; and for registering of the said licence and recognizance, four-pence at most; For which said fee, the said clerk, or his deputy, shall pay to the said clerk, or his deputy, for writing and registering of such licence or recognizance, or such act or thing as aforesaid, and for the day, and place where such licence or licences shall be granted: Which looks to the register of the said clerk of the peace, or his deputy, shall have and bring to every recognizance, to the intent that it may appear what number of licences be and shall be from time to time granted, whereby the better consideration may be had thereof.

 Sect. 7. Provided always, and Be it further enacted by the authority aforesaid, That no perfon or persons shall or may, by authority of such licence above-mentioned, buy any corn or grain out of open fair or market to fall again, unless such perfon and perfons shall be thereto licensed, and shall have special and express writs contained in such licence or licences, that he or they shall have to do; upon such perfon or persons, shall or may do the contrary, five pounds: The moiety of which forfeitures above rehearsed, shall be to the Queen our Sovereign Lady, her heirs and successors, and the other moiety to him or them that shall sue for the same in any court, or quarter-sessions, or the said clerk, or any person, by service of record, by bill, in treason, to the intent of debt or information, in which the bill, plaint, action or information, no wager of law, effion or protection shall be admitted.

 Sect. 8. The justices of peace in every county within this realm or Wales, at the quarter-seessions, shall have full power and authority, by virtue of this act, to inquire, hear and determine all and every the defaults and offences perpetrated, committed or done contrary to this act, within the county where any such forfeitures shall be kept, by inquisition, prevination, bill or information, before them exhibited, and by examination of two lawful witnesses, or by any of the same ways or means, by the said justices, or any one of them, make prayers thereupon, as though they were indicted before them by inquisition, or by verdict of twelve men or more: And upon the conviction of the offender, by information or suit of any other than the Queen, to make extracts of the moiety of the forfutues to be levied of the Queen's use, and for the use of the other fines and amendements grown in the said forfutues, and to award execution of the other moiety for the complainant or informer against the offender, by foro factoos or capias, as the Queen's justices at Walfminister may do, and use to do: And if after such conviction or arrest of the Queen's use, they use to do of other fines and amendements grown in the said fines of peace, and to award execution of the other moiety for the complainant or informer against the offender, by foro factoos or capias, as the Queen's justices at Walfminister may do, and use to do: And if after any such conviction or arrest of the Queen's use, they use to do of other fines and amendements grown in the said fines of peace, and to award execution of the other moiety for the complainant or informer against the offender, by foro factoos or capias, as the Queen's justices at Walfminister may do, and use to do:

 Sect. 9. Provided always, That this act, or any thing therein contained, shall not in any wise extend to the prejudice of the liberty of any city or town corporate;
FORM. FOR

ORS, or within the limits of the weekly bills of morta-
lity, may be guilty of many abuses greatly to the preju-
dice of their employers, by indirectly selling such cattle, and by that means, flocking lands, which they may hire to the tenant, to sell or dispose of at his request, or for the city of London, or weekly bills of mortality, where such cattle may be brought to be sold again, whenever they shall find a proper time, or opportunity of selling the fame to advantage: Be it therefore enacted, by the au-
thority aforesaid, That from and after the twenty-ninth day of September 1759, no Coleman, or other broker of fashor, who shall be employed to buy or sell any sort of cattle for others, by commissiôn, or for reward to be paid or taken, shall by himself, or any servant or agent, directly or indirectly, on or for his own account, buy any live oxen, cows, calves, heifers, oxen, sheep, lamb, or swine, in London, or within the said limits of the said weekly bills of mortality, or at any place whilft any such cattle shall be on the road, or be driving, bringing, or coming up, to be sold, or offered to or for sale, in London, or at any other place within the bill of mortality (other than such cattle which any such fashor, broker, or factor, shall actually purchase for the necessary use or provision of his family, and shall actually use accordingly): And no such fashor, broker, or factor, after the said twenty-ninth day of Sept-
ember, shall sell or expose, or offer to sell or expose to his own use, or in his own place within the said limits of the said weekly bills of mortality, either by himself, or his servant, or agent, any live ox, bull, cow, steer, bullock, heifer, calf, sheep, lamb, or swine; up-
pon pain that every person who shall so offend in the pre-
misde, shall, by his own force, be called to the bar, and every such offence in manner herein after mentioned, forfeit and pay for every such offence double the value of any live cattle which he shall so offend to be examined, may be committed, by any such fashor or ju-
tices, to some prison of the city, or place, for which such witnesses shall so offend, for any time not exceeding one calendar month, nor less than ten days from the time of every such commitment; until such offender or offenders shall sooner pay the money forfei-
ted: And if any witnesses who shall appear, or be brought by any warrant, before such justices or juflices, shall re-
 fuse to be examined, any person or persons shall, in conse-
quence of the said joact, hold, receive, or retain, without any conviftion, or appeal, for the peace of the county, or place, in which any such conviction shall have been made, which shall be held next after such conviction; unless such next general or general quarter-feftions of the peace for any such county, city, or place, shall be held within fix days after such conviction: And if any such general or general quarter-feftions of the peace, shall happen to be held within the said space of fix days next after such conviction, then it shall be lawful for any such perfon or perons to appeal againft such judgment or determination to the justices at the second general or general quarter-feftions of the peace for any such county, city, or place; and shall also give three days no-
tice in writing, of such every appeal, to, or before the same at the usual place of abode of the perfon or perons who shall prosecute to conviction the party or parties fo appealing: And if the justices of the peace at such general or general quarter-feftions, are hereby authorized and re-
quired, on every such appeal being made, to hear and determine the matter of every such appeal; and to make such order, and award such costs therein, as they in their discretion shall deem meet: And the determina-
tion of such court of general or general quarter-feftions on every such appeal, shall be final and conclusive to all parties thereto appealing; and no certiorari shall be al-
lowed to remove any such proceedings or determination.

Sect. 16. And be it further enacted by the authority aforesaid, That one moiety of all money forfeited by this act shall, when recovered, go to the perfon or perons who shall prosecute to conviction the party or parties against whom complaint shall be made; and if the money forfeited shall not be paid on or within three months after such conviction, then the said moiety shall be made thereof, by oath, before any such justice or justices; then every such justice or justices is and are hereby authorized and required to proceed to make inquir-
 ing touching the matter complained of, and to examine into the same by the oath or oaths of a credible perfon or perons; and if the oath or oaths of such perons be sworn to, then every such justice or justices shall issue his or their war-
ant or warrants under his hand and seal, or their hands and seals, for levy ing thereof within his or their jurif-
diction, by divers on the goods and chattels of every such offender or offenders, and to cause false to be made of such goods and chattels; in case the money forfeited, together with the charges of such divers

Vol. II. N°. 78.
any offence shall be committed against this act, shall, notwithstanding such inhabitancy, be a good and competent witness.

Sec. 19. And be it further enacted by the authority aforesaid, that if any plaint, action or suit shall be commenced or prosecuted against any person or persons, for what he or they shall do or have done in perjury or in execution of this act, the same shall be commenced within six months after the offence committed; and shall be laid in the county or city where the offence shall have been committed, and such person or persons so sued, in any court whatsoever, shall and may plead the general issue, Not guilty, and may give this act and the special matter in evidence, at any trial to be had thereon:

And if a verdict shall be found for the defendant or defendants, or if the plaint shall be nonsuit, or if the defendant shall have appeared; or if judgment shall be given, upon a demurrer, against the plaintiff or plaintiffs, the defendant or defendants in every such action shall recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases for recovery of his or their costs.

3. Cases adjudged upon these statutes.

Apples. Information in the Exchequer upon the statute of 5 & 6 Ed. 6, for the ingrossing of apples, being detrimental to vitual, the defendant pleaded and was found guilty; the offenders being a coftermonger; and it was thereupon demurred, that it was out of the statute, and not such vitual as the law intends: And it was adjudged accordingly, and error thereof brought in the Exchequer-Chamber; and, upon conference, the two chief justices resolved, that it was not within the statute: And Coke said, there was not any thing prohibited within the statute, but it had a proviso, how, in some kind, it might be bought; but there was not such proviso for apples; therefore it never was intended to be restrained; and for that cause the judgment was affirmed. 


Upon an indictment preferred 22 Car. 2, at the assizes at Kent, against one ingrofing apples, pears and cherries, framed upon the statute made against engrossers of vituals, the defendant pleaded and was found guilty; formerly judgment was arrested, and the counsel heard. Edward Johnson of the inner Temple prayed for judgment for the defendants to be kept as heretofore what had been objected formerly; and that upon these reasons: 1. Because that apples, pears and cherries are vituals within the statute; and that because the statute is not to be abridged; and the statute of 2 Ed. 6. made concerning forfeitures, expounded this statute, that apples, pears and cherries, for the frumenty or called fellers of vituals; and for Bois his case that is objected that apples are not vituals, it is not to be meant of all sorts of vitual in a general acceptation, and without doubt ingrossing of them is ingrossing at the Common law. Salt is no vitual praef, nor is used as vitual in any country; yet it is there said to be vitual. But apples are vitual praef, no coftermongers are called vitualers by their charters. Rolli, Chief Justice said, that 4 Jac. apples were adjudged no vituals; and after, upon a writ of error, this judgment was affirmed in the Exchequer-Chamber, and therefore the same judgment is not to be questioned over; and if they should be adjudged vituals, the trade of the coftermongers would be destroyed; and for salt, it is no vitual, but a preparation of vitual; and hops were adjudged to be no vitual, 20 Jac. upon a reference made to the judge. Neither are apples to be accounted corns, as the statute renders, for the statute did not say so. Afterwards, in judgment, Julicke,diffed, and Nicolait, Julicke, held, That apples are vitual within the statute, because they are better than salt. Aft, Julicke, held, That apples are vitual, but not within the statute; for a statute cannot alter by reason of time, but the Common law may: It was adjudged. 

Syl. 190. 2 Ed. 6. 1849. 2

Barley and beans. In an information, because the defendant, between the 20th of June 2 Jac. and the 4th of July next after, at Wiltnings, in the county of Middlesex, did buy, ingrof and obtain in his hands, by buying and contracting of divers persons unknown, three hundred quarters of barley, of the value of each quarter, a hundred pounds; a hundred quarters of the value of twenty shillings every quarter, ad remembranda contra formam statute, &c. whereupon an action accorded to the King and the informer, to have of the defendant four hundred pounds; etc. the value of the barley and beans, whereof the informer prayed a moiety, &c. The defendant demurred to the indictment, and the King prayed judgment for the moiety of the value of the said quarter, and for the 4th of July next after, pleased Not guilty. And as to the ingressum between the said 20th day of July 2 Jac. and the said 22d of May next after, the defendant, faith, that before the exhibiting of the said indictment, the 22d of May next after, 2 Jac. One Robert Benedet did exhibit an information in the Exchequer for the King and himself against the defendant, who between the first of June last, and the day of the said information, did ingrof five hundred quarters of wheat, of price every quarter thirty shillings; five hundred quarters of barley, of price every quarter twenty shillings; five hundred quarters of oats, of price every quarter twenty shillings; and five hundred quarters of beans and peas, of price every quarter twenty shillings, ad remembranda contra formam statute, &c. And did aver, that Stephen Balston, named in the first information, and Stephen Bunsen, his co'-defendant, made an ingressum against the said Robert Benedet, and the defendant. Upon this information it was ordered, that the defendant should be committed, or continuing his default, that the defendant shall have appeared; or if judgment should be given, upon a demurrer, against the plaintiff or plaintiffs, the defendant or defendants in every such action shall recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases for recovery of his or their costs.

B. 13 Jac. 1.
his own corn; and a general issue was found upon it.

And it was delivered for the law to the jury by the

justices, that a contract in market for corn not in the

market, or which was not there that day, is not within

the branch of the statute. But if corn or grain be in the

market, and which the court of eaters do not hear of

out of the market, and delivered to the vendee out of the

market, yet it is within the statute. And in the argu-

ment of that case, Anderson said, that the market shall be

falsely said, the place in the town where it hath used to be

kept, and not every place of the town: and a sale in a market

over is in London, ought to be in a place which it happens

to the street, and not in chambers or inward rooms, other-

wise the property is not altered. And so it is of all sta-
tutes, in open markets. And the recorder of London said,

that such was the custom in London. Godsh. Rep. 131.

His 19 Eliz.

It was held clearly by Popham and Fenner, that

a buyer of corn, to convert it into meat, and then fell it,

is not ofgingroled within the statute of 5 & 6 Ed. 6. cap.


Fifm. From, a fishmonger of London, was indicted at

Newmarket for selling divers kinds of fish, viz. fillets, whiting, &c., as intentions ad revendendum contra form.

fluctus. Unto this he pleaded Not guilty, and the indictment was removed hither by certiorari. Hendon ferjeant moved in arrest of judgment, that by the ex-

presse words of the act, five fishmongers, butchers, &c., act in such office for the purpose of selling fish or for ingrofng, if they buy only things belonging to their

trades; for it is not the intent of the statute to restrain

them, it being necessary, and for the benefit of the subje&

ct, that they should buy fuch things. But the court held,

that although they be not within the statute for ingrofing,

yet if they retreate and fall at unreasonable prices, they

are expressly within it: And he is indicted, that he buyed ea intentions ad revendendum contra formam fluctus;

and is found guilty; so it shall be intehibited that he in-
goled and did not sell at reasonable prices; and if he in-
goled and sold at reasonable prices, it ought to have been

flown to the jury upon evidence, as all the court agreed;

there being a provoico contained in the act, that

one may take advantage by giving in evidence without

formal pleading thereof. And forasmuch as he is here

found guilty, it shall be intended, that he ingroled contra formam fluctus; wherefore rule was given, that judgment

should be for the King against the defendant, unless other

matter were flown to the contrary, upon the Monday fol-

lowing; at which day Grifinyon moved, that the trial was

ill, because it was tried at the fame seffions that he was

indicted, and to redress that injury, it was agreed, a mentre facias, returnable at the next seffions; and be

relied upon 22 Ed. 4. Corne 44: Sed non allocutur; for it

is the usual and common course to try at the same time

the party is indicted, especially as this case is, being at the


That trial before justices of grool-delivery may be the same day.

Thirdly, He showed that the entry is, that the defendant pleaded Not guilty; et de los panis, Et. and Johannes Michael who pro regi sejutori

similiter, &c. And it doth not appear by what authority he

acted or in what manner, by what force every one to buy at the

shop where he was, sold his goods, it is in loco suo, ought to have joined; sed non allocutur: for the said John Michael is the clerk of the peace in

London, and he is an officer known to the said court where the ingroled was taken, and it needs not to be mentioned in the record, and the court here knows it were not ingroled, but sold in the market; accordingly for the King. 


Hay and straw. Several were indicted, for that they

ingroled magnum quantitatem straminii & simii, &c. with an intent to sell and make it dearer; it was objected, that the

statute of 5 & 6 Ed. 6. cap. 14. concerning Ingroilers, &c. for ingroling 2000 quar-

ters of oats; afternil debet pleded, it appeared in evidence upon a trial, that they were foreign oats, and ex-

empted by the 13 Eliz. c. 53. as I regign viciualis; to

which the court agreed, and also that the defendant was a licensed bager, and by that too exempted from the

penalty of the statute. And it was held by Hale, chief

baron, that any thing in the same statute upon which the

suit is commenced, may be given in evidence; but if it

be in another suit, it must be pleaded; but that since the

statute 21 Jac. 1. upon the general fines, any thing

may be given in evidence in excuse of the party, and

thereupon the plaintiff was nonsuited. Hard. Rep. 231.

Trin. 12 Car. 2.

Salt. One was indicted and convicted, by the name of

Daniel, fishmonger, for ingroling and buying meral

salmons, quos temuli & venduli; it was objected, that every

fishmonger, by the statute might buy and fell at

pleasure; but the contrary was adjudged if at unreasonable

prices; and the books say, that ingroling fift going to

market is punishable. And per Gera. If a man buys at

false and sells at unreasonable prices, that is


Salmone. One was indicted and convicted, by the name of

Davies, fishmonger, for ingroling and buying meral

salmons, quos temuli & venduli; it was objected, that every

fishmonger, by the statute might buy and fell at

pleasure; but the contrary was adjudged if at unreasonable

prices; and the books say, that ingroling fift going to

market is punishable. And per Gera. If a man buys at

false and sells at unreasonable prices, that is


Salmone. One was indicted and convicted, by the name of

Davies, fishmonger, for ingroling and buying meral

salmons, quos temuli & venduli; it was objected, that every

fishmonger, by the statute might buy and fell at

pleasure; but the contrary was adjudged if at unreasonable

prices; and the books say, that ingroling fift going to

market is punishable. And per Gera. If a man buys at

false and sells at unreasonable prices, that is


Salmone. One was indicted and convicted, by the name of

Davies, fishmonger, for ingroling and buying meral

salmons, quos temuli & venduli; it was objected, that every

fishmonger, by the statute might buy and fell at

pleasure; but the contrary was adjudged if at unreasonable

prices; and the books say, that ingroling fift going to

market is punishable. And per Gera. If a man buys at

false and sells at unreasonable prices, that is

price of forty shillings, to the intent to sell the same again, contrary to the form of the statute; whereof he prayed, that the defendant might forfeit the value of the corn, and that he might have the value, &c. The defendant pleaded Not guilty the jury find, by 5 Ed. 6, it was enacted, That every person, who, after the first day of May thence next ensuing, shall get into their hands, by buying, contract or promise, &c. other wise than by devise, grant or lease of land or title, any corn growing in fields, or any other grain, butter, &c. or dead vials, to the intent to sell them again, shall be taken to be an ingroffer; and, for the first offence, shall be imprisoned two months without bail, and shall forfeit the things ingrossed. And as to the three hundred and eighty quarters of the said wheat, they found the defendant Not guilty; and as to the twenty quarters residue, they found that the defendant, the first of September 10 Jac, and continuing afterwards till the 20th of August next following, at the said city, did ufe the art and trade of flarch-making; and that he, on the 21st of September 15 Jac, did get into his hands, by buying, and not by devise or lease, twenty quarters of wheat, residue of the said four hundred, to the intent to convert the same into flarch; and on the 20th of October in the same year did convert the same into flarch; and the 26th of October did sell the same to several persons; and the said quarter of wheat, of the 21st of September, was of price thirty-six shillings. But whether the defendant were guilty of the ingrossing aforesaid, according to the form of the statute, the jury knew not, and therefore defined the opinion of the court; but if otherwise, &c. and this record was removed into the King’s Bench upon appeal. And this appeal against the King and the informer. Bridge 5. Trin. 18 Jac. 1.

Wheat-meal. In an information upon the statute 5 Ed. 6. c. 14. for buying of wheat-meal, and converting it into flarch; it was refolved by three of the juftices, (Coke being against it) that this is not within the statute; but they agreed, that if one bought corn and thereof made meal or oatmeal, and fold it, that this is within the statute; for that is usual, and is no alteration, and therefore remains the same corn; but flarch is altered by a trade or science, which is a mystery, and so it is not the same thing that was sold. 6 Geo. 1. Trin. 9 Jac. 2. Brewh. 162. S. P. See also R. on the Law in The Laws against Forfelling, &c. pa. 26 to 45.

4. Pleadings.

Upon the statute of 5 Ed. 6. of ingroffers, if the information be, that the defendant hath bought corn, &c. it is not sufficient; for the words of the statute are, get into his hands. 2 Leon. 39.

Indictment for forfelling, by buying fifth at Billingsgate; and held by Halt at nift prit, that the party was Not guilty; for Billingsgate was a market time out of mind; and so the party was acquitted; and by him, it was otherwise, all the forforners were liable to prosecution. Note; This was at the instance of that company against a poor woman that cried fifth. 1 Show. Rep. 293. Halt’s Rep. 343. S. C. Mich. 3 W. & M. 348. The indictment was brought by the Attorney General against the defendant, founded on the statute of Edw. 6. for that he had sold cabbage alive in Norfít within the space of five weeks after he had bought them by which he had forfeited double the value of the cattle. Upon Not guilty pleaded, there was a verdict against the defendant moved, on the ground of judgment, that no such information would lie in this court, because the statute 21 Jac. expressly enacts, That all informations brought by the Attorney General upon any penal statute in any of the courts at Westminster, shall be void and of no effect. But, on the other hand, it was endeavoured to distinguish this case from those cases upon statutes, which give juftices of peace in their fiefs the ordinary jurisdiction only because this statute of 6 Ed. 6. gives the fiefs power to proceed upon it, as well in a summary way, by examining two witnifees to the fact (which is an extraordinary jurisdiction) as by trial by a jury. And it was never intended by the statute 21 Jac. to confine any proceedings to inferior courts, but in cases only where the trial of the fact is directed by the statutes to be by jury in such courts, because of the great consideration a good common law. But this statute allows no trial but that of twelve men on oath. But the court, upon reading both the statutes, was of opinion, that, since it was clear the defendant might have been prosecuted at the fessions, by way of indictment upon the statute, no other court could proceed upon it, with the restraint of the statute 21 Jac. and against the express words thereof, it being an information by the Attorney General. That it had been always ruled, this statute 21 Jac. does not give any new jurisdiction to justices of peaces, justices of oyer and terminer, &c. where they had did before; and therefore it does not extend to any penal laws, upon which the prosecutions can only be in the superior courts at Westminster. And upon this reason are the opinions founded in those books, where it hath been held, that an action of debt upon a penal law will not lie in the inferior courts; a plea in no action can be commenced before the courts of fessions, or before justices of nisi prius, or oyer and terminer. The information was quashed. Caris. 465.

Information in the Common Pleas upon the statute 5 Ed. 6. of ingrossing; and the judgment was, that he be a criminal in more or in fewer degrees; because, an information against the statute. Adjourned. 2 Ed. Rep. 400. Poph. 21 Jac. 1.

In an information exhibited upon the statute of 5 Ed. 6. cap. 14. for ingrossing, or corn, divers stacks of corn, and it is by this word cumulus, the certainty of this word was so great, it was brought against the cumulus is; for by this non confort curiae, upon this information, for what he should be found guilty by the 7 H. 4. fol. 30. In an action of rent, the quantity of land ought to be shewed, out of which the rent is flowing. Coke, Chief Justice, I never did see an information in this kind, before. He was of opinion, that the information was bad but not by this word cumulus, being altogether uncertain; for the name might be an heap thrifled, or in thocks, but most properly when thrifled; here it is altogether uncertain; quodam partis terra, not good for uncertainly, 11 H. 4, and in an ejecution firmæ for a ridge of land, not good, being uncertain; for that in some countries a ridge of land is more, and in some countries less; also a deinitio lieth not de una cumula, no indictment can be de una cumula triticæ, pre- tit, this is not good for uncertainly. Dodderidge, Justice: The right hand bar to this information is framed upon a penal law, and therefore the certain quantity of corn ingrossed ought to appear to the court: And it was never heard to have an action brought for an heap of salt. Houghton, Justice: An ejection firmæ brought de una cumulæ, vortæ, Green acre, is not good. Coke: We have adjudged this to be bad for uncertainity: præcepit good reddat vigilii liberatæ terræ, in ancient time this was good; but now explors of illa opinis, for the same ought to contain certainty, or not good, because of the haberes facias poffidénum; and therefore certainty ought to appear, or not good; the whole course of the opinion, but the information here was not good, for the uncertainity in it 2 Bull. 317. 12 Jam. 1. in B. R. Information against a forfeller, who pleaded guilty, and prayed the court to mitigate the forfeiture. Coke, on hearing the facts, 5 Ed. 6. cap. 14. reasoned that they might mitigate the forfettice, because it was only the value. 1 Rel. Rep. 194. One was indicted on the statute 5 Ed. 6. as a forfeller; and the indictment was, that he met with his 5. S. at D. near BridiJ, and bought so much lead of him, which was to be had at BridiJ market. It was objected, that the indictment was ill, because it did not set forth that 5. S. was coming towards the market with the lead; for the statute is, that a forfeller is he, who buys any thing of one coming to market with it, and the averment ought to be, that it was coming to the market at that time. 1 Rel. Rep. 421. Mich. 14 Jac. 1.

Information 4.
FOR

Information for ingrossing cattle; the defendant jufi¬
ified as to a certain number under two several licences, without showing how many by one, and how many by another, and was adjudged for the plaintiff. Mo. 879. Ed. 14 Joc. 1.

It was said by Hubbard, chief justice, and Winch, but
Warkworth contra, that if a man hath a licence of fore¬
stallng upon the 5 Ed. 6. c. 14. he need only recite the
flature 5 Ed. 6. in his pleadings, without reciting 13 Ed.
intended, and the 12 Eliz. only qualifies the person. Noy 27. Hel. 15 Joc. 1.

Information on 5 Ed. 6. for ingrossing corn; the de¬
fendant jufified as to part, by licence from three justices of the peace, but did not aver his selling it again in¬
mediate. It was said, that in such a case it is aver¬
ment, it being parcel of the flature, and not in nature of a condition subjicent, which is to be alleged by him that will take advantage thereof. 2 Roll. Rep. 33. 10 Joc. 1. in B.R.

The defendant as spinster, alias the wife of William
Fower, was indicted on 5 Ed. 6. cap. 14. for ingrossing;
in arrest of judgment, Symon excepted, that she being a
feme covert, her husband ought to be joined, because a
feme covert cannot ingross. 3fors. for the plaintiff, that as
Hob. 93. Mary and Hafey, the husband shall not be
joined, inasmuch as a covert, the alias ditt. to the
wife of such a man, that this is no sufficient alle¬
gation, the is a wife, and so doth not appear on record.
2. she is not chargeable without the husband, as Hob.
93. Mary and Hafey: And Dr. Hafey's cafe, the flature
only, and in the same ground hold in ingrossing, gives
only a penalty, and no corporal punishment; the
husband cannot be joined to the wife in an indictment, as
in an action or information for her offence. Twijlen
doubted this alias ditt. void, albeit in criminal cafes the
alias be good, and the clerks agreed, that in indictments
the husband is never named, but only in informations.
3. Twijlen doubted the wife cannot be said to fell or in¬
grofs; but per cur. The wife may as well ingrofs and fell,
as convert or ejdum, which must be actually proved against
the wife; and the court agreed the addition is never put in
the alias ditt. but all conceived, that after verdict the
man may be found guilty, and if so found, the usual
usual, and doth not necessarily imply the was a wife, but
so called; and judgment pro rege nifi. Afterwards, in
the same term, Symon, for the defendant, that the being
a feme covert, no judgment can be against her for ingross¬
ing and selling one hundred of muckarrel upon the flature, all the hath being her husband's; and the doth here insufficiently appear to be a feme covert by the alias ditt. which is as applicable to her as such, as otherwise, therefore shall be intended fuch; sed non ailatute; for the
alias ditt. is nothing, and the verdict hath found her guilty, which they could not do the the a feme covert; and
this may be sufficent for error in fact, that she was
coverts; and judgment pro rege; and after she was fined
fifteen shillings, the value, &t. 2 Kob. Rep. 468, 469,
479, 503. Hel. 20. &t. 21 Car. 2. in B.R.

Indictment for ingrossing upon 5 Ed. 6. exception was taken to this indictment given in ingrossing, and it was infuficent, that the information ought to have been brought in Norfolk where the fact was done, and not in Middlesex; and that the flature of the 21 Joc. 1. was
made for the cafe of the subject. On the other side it was objected, that the King's Bench is not restrained, and that the Attorney General may exhibit informations in this court for the King notwithstanding the flature; and he cited Latich 192. 1 Sid. 360. 2 Keb. 340. 2 Ven. 8. 973. 3 Keb. 247. 2 Crs. 178. 3 Ed. 176. 114. &t. 12. And now Hatz Chief Jus¬
tice said, ten judges had agreed in the following relo¬
tion: First, That the 21 Joc. 1. cap. 4. does not ex¬
tend to any offence created since that flature, so that pro¬
cutions on subsequent penal flatures are not restrained thereby; but that flature is as it were, re¬
pealed, and the nature of the case shown; Secondly, that the
usual actions on penal flatures made before that act, must by force of 21 Joc. 1. cap. 4. be laid, brought
and prosecuted in the proper county where the fact was
done 1 Salk. 372.

Fosdin was indicted for that he had ingrossed magno et
excellenti numinis in specie forestorum, derog. Will for¬
to, with a design to make them dearer, &c. and Mr.
Rob. Eyre moved to quaff it for the uncertainty, because
they do not shew how much, &c. and he cited Cen. Car.
340. Almagni quantitatem fremiani et fani, held ill. [See 2 Bajir. 317. 1 Roll. Rep. 134. and the cafe of
the King and Richard, 5 Ed. 6.] Since the revolution
where a ferryman was indicted for extortion, in taking
four-pence a score for sheep carried over, where he should
have taken but two-pence a score, &c. The defendant
upon not pleading guilty was convicted; but judgment
done, because by agreement did not flow for how many score he had taken four-pences: and the indict¬
ment against Fosdin was quashed. Ed. Roym. 475. Trin.
11 Wili. 3.

Forsennarius. The forseer, or keeper of a forest, al¬
igned by the King as head forseer; or warden of a whole
forest, or else of a part of it, and who of a forfeer, and
lands and woods within the bounds of a forest, as under¬
forestors. Rex propeftus quod annus illi qui biceps habet
intra metas forestae Dominii Regis, quo pandat infor¬
ttorium in bofis ruit—item propeftus quod falsi forseerii curam
consipetur fapon forseeralis milium & aliorum. Panohal.
Antiqu. p. 17.

Forestor, (Forsennarius,) is a sworn officer of the
royal, appointed by the King's letters patent to walk the
forefts both early and late, watching both the vert and
the venison, attaching and preseenting all trespasses against
them within their own bailiwick or walk, where oat
may be read in 10 Ed. 6. 21. And though these letters patent be ordinarily granted but quamdiu fe begetequi;
yet some have it to them and their heirs, and they are
called forseers in fee. Ed. fol. 157, 159. By the fame
Crompton in Latin, f. 175. Forfennarius feuil. Cowell,
ed. 1727.

Forsenh and Forsing, (from the Sax. forsen, aute, and
fagen, prender.) Esi captio adhibitum, quae in fore et
undinis ab eligito fit, prorsum mineftr Regis ea caperit
qua Regi fuerint nefessaria. Ante capis vel premio. —
Es sunt quasi de wardric, & de utieue & forfens &
an. 1135. Fitia, lib. i. c. 47. Forsing quiesantum privi perlis deceptatis. So that forseing is what we call pre¬
emption, and is the taking of provisions from any one in
fairs or markets before the King's purveyors are served with necessaries for his Majesty.

Forrefted estates. Commissioners appointed for the
sale of forseited estates, 4 Geo. 1. cap. 8. 5 Geo. 1. c.
22. 23. 6 Geo. 1. c. 24.

Estate of John iffables. Eqf: how forseited and applied, 7 Geo. 1. c. 1. c. 28.

Forfeited estates unfold refeited in his Majesty, 9 Geo. 1. c. 19. fept. 15. 18.

Farther directions for the sale of forseited estates, 13 Geo. 1. cap. 28. 1 Geo. c. 21. 2 Geo. c. 33.

A fraudulent sale of Lord Dormwoutter's estate set aside, 5 Geo. 2. c. 23.

Rents of the Lord Dormwoutter estate applied to the support of Greenwich hospital, 8 Geo. 2. c. 29. 11 Geo. 2. c. 30.

Lord Wadlington's estate to be conveyed in trust for the creditors of the Tyke Buildings company, 18 Geo. 2. c. 37.

A a
For being forfeited estates in the crown, 20 Ge. 2. 41.

Echates on holdings and denominations in Scotland, taken away, 20 Ge. 2. 50, fol. 11.

Certain forfeited estates in Scotland vested in the Crown uncontrollably, 25 Ge. 2. 4. 41.

Forfuiture, (Forfuitura, from the Fr. forfait, trepissum, transgression, crime,) Signifieth rather the effect of transgressing a penal law, than the transgression itself; as forfuiture of estates. 25 Ed. 3. cap. 2. Stat. de Prud. testament. Cent. 31.

Forfuiture is a word often made use of in the law, and in Civil cases is usually applied to alienations and disposotions made by those who have but a particular estate or interest in lands or tenements, as the right of those in remainder or reversion: Also the omission or neglect of a duty, by the party binds himself to perform, or to the performance of which he is injoyned by the law, and is upon the breach or neglect thereof called a forfuiture, that is, the advantages accruing from the performance of the thing are by this omission defeated and determined. 2 B. & A. 175.

In this sense of the word, the principal matters relating to forfuitures are considered under other titles; and therefore in this place it is thought proper to consider it chiefly as it relates to crimes and offences, for which the party is punished in his estate and polity.

1. For what crimes an offender shall forfeit his lands, and his goods and chattels, by the Common law.
2. For what crimes by statute.
3. To what time the forfuiture shall have relation; and what is to be done with the offender's goods before conviction.
4. How for, the offender's blood is corrupted; and in what cases the wife shall lose her dower.

For what crimes an offender shall forfeit his lands, and his goods and chattels, by the Common law.

By the Common law, all lands of inheritance whereof the offender is seized in his own right, and also all rights of entry to lands in the hands of a wrong-doer, are forfeited to the King. 39 Ed. 1. attainer of high treason, although the lands are held of another; for there is an exception in the oath of fealty, which frees the tenant's allegiance to the King; so that if he forfeits his allegiance, even the lands held of another lord are forfeited to the King, for the lord himself cannot give out lands but upon that condition. Ca. Lit, 9, 3 Inf. 19.

Also upon an attainer of petit treason or felony, all lands of inheritance whereof the offender is seized in his own right, as also all rights of entry to lands in the hands of a wrong-doer, are forfeited to the lord of whom they are immediately holden; for this by the feudal law was deemed a breach of the tenant's oath of fealty in the highest manner, his body with which he had ingaged to serve the lord being forfeited to the King, and thereby his blood corrupted, so that no person could represent him; and consequently dying without heir the lord is in by echeate. 3 Inf. 19.

If the lord can't enter into the lands holden of him upon an echeate for petit treason or felony, without a special grant, till it appear by due process, that the King hath had his prerogative of the year, day and waile, Stamford P. C. 191. 2 How. P. C. 448.

And as to this, the statute of Prerogativa Regis (1 Ed. 2.) it seems to have been generally holden, that the King hath a right, not only to waste the lands of inheritance, which a person attainted of felony held immediately of any other lord, but also to hold them over for a year and day; and by some he had always this right, but according to others he had but a right only; in other cases he was holden in lieu of the right of

it. 2 Inf. 36. 37. 4 Co. 124. & vide 2 Haw. P. C. 449.

As to lands whereof a person attainted of high treason died seised of an estate in for, they are actually vested in the King without any office, because they can't defend, the blood being corrupted, and the freehold shall be in abeyance.

4 Co. 58. 62.

It is said, that the inheritance of things not lying in tenure, as of rent-charge, rent-fee, commons, &c. are forfeited to the King by an attainer of high treason; and that the profits of them are also forfeited to him by an attainer of felony during the life of the offender, and that the profits only shall be extinguisht by death, for it can't echeate, because it lies not in tenure; neither can it defend, because the blood is corrupted. 3 Inf. 19, 21. 2 How. P. C. 449.

It seems agreed, that no right of action to lands of inheritance could ever be forfeited; neither could a right of entry to lands held of another be forfeited; for an estate is not an use, (except where land had been fraudulently conveyed with an intent to avoid a forfuiture;) nor a condition forfeited before § H. 8. neither could land in tail be forfeited after the making of Wifem. 2, any longer than for the life of the tenant in tail, till § 26 H. 3. Ca. 2. 3. 7 Co. 17. 55. Inf. 19. 1 St. R. Abr. 34. Stamf. P. C. 187. Plow. 554. Dyer 289. pl. 55. Ca. Lit. 130, 372, 391.

The profits of lands, whereof one attainted of felony is seised of an estate of inheritance in his wife's right, or of an estate for life only in his own right, are forfeited to the King and nothing shall all go to the lord. Inf. 19. Fins. Affiff 166. Forfuiture 23. 4 Inf. pl. 4.

All customary estates of inheritance are forfeited by an attainer of treason or felony, unless there be some particular custom to the contrary, as in Gavelkind, because the person attainted of higher mortuary in the attainer, and therefore could not be holden to have or hold any estate, or take any property in any thing; and therefore if a person be seised in fee of a copyhold, and be attainted of treason or felony, the copyhold is in the lord without any preientment of the homage, because it is against the nature of a court bar to inquire of criminal matters or offences against the King and such homages as appertain to the person of the lord, but often influenced by him; but if a copyholder be convicted of felony, and prented by the homage, by a special custom, the estate may be forfeited to the lord; but this is only by the special custom, since the copyholder is not by the conviction to hold the estate, as he is if he were attainted; and therefore since it is by the custom only that such forfuiture accrues, it must be in the manner which the custom has betted it, which is by the preientment of the homage; but if a copyhold is granted for life, or by another copy the reviernent is granted to another, the land, after the death of the first copyholder, shall surrender, forfuiture, or other determination of the first estate; the first copyholder comms murder, and is thereof attainted, the King pardons the murder and the attainer, and all forfuitures thereby; in this case, he is in the reviernent is intitled to the estate; for the King can't have it for the benefices of the tenure, since he can't be tenant at will to any person; and the lord can't have it, because he can't be tenant to himself; therefore the particular estate of tenant for life being exstinguished, the reviernent immediately commences. 1 Boulf. 12. 2 Brunswick, 217. Lang. Gavelkind 17. Gen. L. 154, 159. 5 Lev. 163. 2 Kohe 451. 2 Ven. 38. 5 Co. 117. Ca. Cap. sect. 53. Pelles, 615 to 621.

As to forfeitue of goods and chattels, all things whatsoever which come under the notion of a personal effate, and which a man is intitled to in his own right, whether they are movables or immovables, are forfeitable in the following infances to the King, for the trouble and charge he has been in at holding courts, and bringing the offender to justice. Staund. Prerog. 45. 46. 12 Co. 12.

All personal things fetty by way of trufl on the offender are as much forfeited, as if he had the legal intereat, for a copy, if there be no special forfuiture, is taken in another's name, or a lease made to another in trust for a person who is afterwards convicted of treason or felony; these are as much liable to be forfeited, as a bond made to him in his own name, or a lease in possession. Cro. Jur. 312. Heb. 214.
A man forfeits all such personal estate in the following instances:

1. Upon a conviction of treason or felony, as is clearly agreed by all the books. 5 Co. 109. And therefore a person convicted of manslaughter, and making purification, as was the ancient practice, or burnt in the hand according to the present, forfeits all goods, land, and chattels, but not his body. By the King hath left a subject; and therefore the party is punishable, though in a more gentle manner than when there is a fatal and deliberate revenge. 5 Co. 110. But a person convicted of hereby forfeited neither lands nor goods, because the proceedings against the person are not fatal to the same. Doel & Stud. lib. 2. cap. 29. Hale’s P. C. 5.

2. Upon the coroner’s inquest taken on a view of a dead body, and finding him guilty either as principal or as accessory before the fact, and that he fled for the same, whereby he forfeits his goods absolutely, and the issues of him and the heirs of his body, unless acquired or pardoned. Stann. P. C. 183. Hale’s P. C. 271. Kelso, 68 b. Dyer 239. pl. 36. 5 Co. 110.

3. Upon a jury’s finding that the defendant fled at the same time that they acquit him of an indictment of capital felony, or, as some say, of larceny, before judgments of oyer, etc., but such a finding causes no forfeiture of the issues of the land, because by the acquittal the land is discharged; neither will it have any effect as to the goods, if the indictment were insufficient, or if the flight be disproved on a traverse, which, as all agree, may be taken to any felony, except that by a coroner’s inquest of such same felony, except to that person, and to him to the flight, as of the particulars of the goods. Kelso, 68. 5 Co. 110. Hale’s P. C. 271. Stannard, 185.

4. The goods of perons outlawed are forfeited to the King, for the retiring from the inquiries of justice is held to criminal in the eye of the law, that it is punished with loss of goods so long as the outlawry stands in force. So if a person make default till the award of an exorcist, either upon an appeal or indictment of a capital felony, he forfeits his goods, unless he was pardoned before the award was executed; and it is held, that the law is the same as to such a default upon an indictment of petit larceny, and that whereon goods are forfeited, they are faved by an acquittal at the trial; but by a reaffirmal of the award the exorcist are freed, whether such reaffirmal be for an error either in fact or in law, as for the imprisonment of the defendant, or at the time the exorcist was awarded, whether in the bill of attainder, or in the process. 5 Co. 110, 111. Finc. Coram. 181. Forfeiture 28. Stannard. P. C. 183, 184. Stannard, Prerog. 47. Bre. Coron. 8. Finch 352. 1 Rel. Adu. 793. 4 Att. pl. 13, 25. Ass. pl. 11. Cor. Elia. 4, 72. Hale’s P. C. 109. 43 Ed. 3, 17. 3 Cor. Lit. 259. Cor. Jus. 404. St. Litt. 185.

5. If a man be feared, or, if a felon be killed, or if a robbery be committed, or by refilling in order to escape, he forfeits his goods and chattels; for when a man thus for- fakes life, all his goods and chattels are demise’d; and therefore the King shall have them as the maintainer of publick justice. 5 Co. 109. Finc. Coram. 289, 312. Stannard. P. C. 184. 3 Jiff. 56, 277. Pleaf. 260.

6. If a felon waivers, that is, leaves any goods in his flight from those who either pursue him, or are apprehended by him for his disorders, his goods are forfeited to the King, his own goods, or goods stolen by him; and at Common law, if the owner did not pursue and appeal the felon, he, the goods for ever; but by the 21 H. 8. cap. 11, for encouraging the prosecution of felons, it is provided, that if the parties come in as evidence on the indictment, and attain the felon, he shall not have restitution. 5 Co. 109. 3 Jiff. 134. Cor. Elia. 694. sid. 2 Hacket. P. C. 170.

And here we may observe a difference between goods waived, stray, and the like, and goods forfeited for felony or flight, which it has been observed, goods forfeited for felony are not in the King without issue, but an office founded of such felony or flight, because the property can’t alter without matter of record; but goods waived are in the King without office, because there the property is in nobody, and therefore by publick agreement is put out of the finder, in which it is vested in the State, and is vested in the King as a recompense for his trouble and charge in the execution of justice. 5 Co. 109. Foxley’s case.

2. For what crimes by statute.

By the 26 H. 8. cap. 13, it is enacted, 4 That every offender and offenders being hereafter lawfully convicted of any manner of high treason by presentment, confession, verdict or precepts of outlawry, according to the due course and custom of the Common laws of this realm, shall lose and forfeit all his lands and goods, such offices, all such lands, tenements and hereditaments, which any such offender or offenders shall have of any estate of inheritance in use or possession, by any right, title or means, within the realm of England, or elsewhere within any of the King’s dominions, at the time of any such treason committed, or at any time after. All persons, every peron and persons, their heirs and successors, other than the offenders in any treasons, their heirs and successors, and such peron and persons as claim to any of their uses, all such rights, titles, interés, possessions, leaves, rents, offices, and was pro, while they shall have at the day of committing such treasons, or at any time before, in such large and ample manner, as if this act had never been had nor made.

And by the 33 H. 8. cap. 20, it is also enacted, 6 That if any peron or persons shall be attainted of high treason, by the due course of this realm, in every such case every such attainted by the Common law shall be of as good strength, value, force and effect, as if it had been done by authority of parliament; and that the King, his heirs and successors shall have much benefit and advantage by such attainer, as well of fues, rights, entries, endowments, as possessions, revivers, remains, and all other things, as if it had been done and declared by authority of parliament; and shall be deemed and adjudged in actual seisin and possession of the lands, tenements, hereditaments, fues, or any possession, that is in all other things of the offenders so attainted, which his highness ought lawfully to have, and which they beimg so attainted, ought or might lawfully lose or forfeit, if the attainted had been done by authority of parliament, without any office or inquisition to be be found of the same; any law, statute, or use of the realm to the contrary thereof in any wise notwithstanding.

Saying to all and every peron and persons, and body politic, and their heirs, affigns and successors, and every of them, (other than such persons and persons, which hereafter shall be attainted of high treason, and their heirs and affigns and every of them and all and every other person and persons claiming by them or any of them, or to their use, or to the uses of any of them, after the said treason committed,) all such right, title, use, possession, entry, revivers, remains, interés, conditions,
In the construction of these statutes the following opinions have been held. 1. That neither of these statutes are repealed by the 1 Mar. 21. 2. That in the construction of the statute is as follows: therefore the parties to the deed, or if the only one, that the revocation be under his hand and seal, without saying any thing about changing his mind; or as some say, if it only require the tender of a ring by the party, info aduoc declarante his intent, &c. 7 Co. 14, 13. 

Plow. 19. 1 And. 293. 7 Co. 14, 13. 

P. 292. 37 Co. 129, 39. 1 roll. Rep. 142. 2 Keb. 566, 763, 773. 1 Lev. 279. Lane 44. That neither an annuity granted pro confitio impecuniosa, nor an office granted for life, and requiring fief and confirmation, are forfeitable by these statutes; but such office in fee simple, was not granted without the grantor in giving an estate defensible to all the heirs of the grantee, however unqualified, appears not to have been induced to make his grant from the consideration of the peculiar merit of the persons who are to execute the office. Plow. 381. Plow. 379.

By an act of parliament made 13 Car. 2, it was enacted, That all the manors, franchises, lands, tenements, possessions and revenues, remainders, rights, interests, hereditaments, leases, chattels real, and other things of what nature soever, that Sir John Danvers, or any other to his use, or in truth for him, had the 25th of March 1646, or at any time after, should be forfeited to the King; and it was adjudged, that all interests of what nature soever, an estate-tail was forfeit.

2. Leav. 169. 2 Penl. 57. 2 Med. 130. 3 Keb. 459, 651, 712. 1 Pitt. 299. Poff. 181. B. C.

But it is holden, that the statutes of premonitory, which gives a general forfeiture of all the lands and tenements of the offender, extend not to land in tail. Co. Lit. 127. 

It is agreed, that a dying against a corruption of blood in a faitue concerning felon y saves the land to the heir, because the echeat to the lord for felony is only de jure tenement, occasioned by the corruption of blood; also the faving the land to the heir, saves the corruption of blood and fees of dower. Hale's P. C. 8. 3 infra. 47.

But a dying against the corruption of blood in a statute concerning the offender, does not save the land to the heir, because the land goes to the King by way of immediate forfeiture, and not by way of echeat, 1 Salk. 85.

3. To what the forfeiture shall have relation; and what is to be done with the offender's goods before convicition.

The forfeiture upon an attainer of treason or felony shall have relation to the time of the offence, for the avoiding all subsequent alienations of the lands, but to the time of the conviction, or ftagium facti found, &c. only as to chattels, unless the party were killed in flying from, or retreating those who had arrested him; in which case it is said, that the forfeiture shall relate to the time of the forfeiture. Plow. 488. b. Co. Lit. 2 b. 8 Co. 170. 

But if the time proved varies from that laid in the indictment, and the jury find the defendant guilty generally, the forfeiture shall relate to the time laid, till the verdict be baffled by the party interested, as it may be in this respect, tho' not as to the point of the offence. Hale's P. C. 264, 270. 3 infra. 250. But if the jury find the defendant guilty on the day on which the fact is proved, whether before or after the day laid in the indictment; in such case the forfeiture shall relate to the day of the guilty found. Kelp. 14. Hale's P. C. 264, 2 infra. 318. 3 infra. 230.

No attainer whatsoever shall have any relation as to the mean profits of the lands of the person attainted, but only from the time of the attainer. 8 Co. 170. Plow. 272.

The forfeiture of a perfon becoming feal de cte has relation to the time the mortal wound was given, so that all intermediate alienations are avoided. Plow. 260. 5 Co. 110. Hale's P. C. 29.
It hath always been held, that one indicted or accused of treason or felony may, bona fide, fell any of his chat
tels real or personal, for the sustenance of himself and
family, until they be actually forfeited. 3 Co. 171.

But where a perfon being in Newgate for robbery and
bargulry, before conviction, made a bill of sale of all his goods
and chattels, and did not immediately free them by the for
feiture the sheriff of London, it was held by Hall, that
the bill was fraudulent, and that though a false, bona fide,
for a valuable consideration had been good, because the
party had a property in the goods till conviction, and
ought to be reasonably restrained from them, yet that
such a conveyance as this cannot be intended to any
other purpose than to prevent a forfeiture, and defraud
the King; and this he said was a fraud at Common law.

Skins 357.

It seems the better opinion, at this day, that before in
deed the goods of the offender cannot be searched and
invented, and that after indictment they cannot be
feized and taken away till the felon is convicted, for
till the conviction the property remains in the felon.

And by the 25 Ed. 3. cap. 14, it is enacted, "That
no such, under the title, nor escheator, build up
of traitor, or any other perfon, take or seize the goods of
any perfon arrested or imprisoned for suspicion of felony,
before the same perfon so arrested and imprisoned be
condemned or attainted of such felony according to the law;
or else the fame goods otherwife lawfully forfeited; up
on which arrest, he has no right; and the goods so taken
to him that is so hurt in that behalf, by act of debt, du
For precedents of such actions, see 1 Lutw. 274.
Er. 749.

This statute is to be taken in an affirmative of the Common
law, and hath been adjudged to extend as well to the
feizure of money as of any other chattel. 3 Co. 171.

Reyn. 414.

It seems plain from this statute, that goods may be
seized as soon as they are forfeited; and it seems the
whole township is answerable for them to the King,
and may seize them where-ever they can be found. Cut. Lit.
3. and 2 1 Hawk. P. C. 456.

And at Common law it was no plea for such town-
ship, that the goods were delivered to the custody of
J. S. who immezzled them, or, but it is enacted by 31
Ed. 3. cap. 3. that if any man or town be charged in
the Exchequer by effect of the judicess of the chattels
of fugitives and felons, and will deny in discharge of
him another which is chargeable, he shall be heard, and
right done to the other. 2 Hawk. P. C. 456.

4. How for the offender's blood is corrupted; and in
cobfet the wife shall live her deuer.

It is clearly agreed, that by an attainder of treason or
felony, the blood of the offender is so far stained and cor-
rupped, that the party loses all the nobility or gentility
he might have had before, and becomes ignoble. Cut. Lit.
3. 41. 3 in fil. 211. St. P. C. 195.

Also it is clearly agreed, that he can neither inherit as
heir to any ancestor, nor have an heir, and the policy of
the law herein is to make men more mindful of their al-
legiance, and to deter them from taking up arms against
the crown; for as the natural love men have for their
parents, often reforms them from actions which would
prejudice them, either by instilling the infamy of such
actions on them, or making them sharers in the punish-
ment which the law has appointed for such offends: so
men are lesa careful of their perons, when their misfor-
malities will neither involve their children in guilt or pu-

Therefore it is laid down as a pure rule, that where-
ever it is necessary for any one, who would make a title to
another, to derive the descemt through him, that the
attinder is an effedual bar to such title, unless the land
were intailed, in which case he claims per femern dona,

Vol. II. N°. 79.
title to the remainder, which they cannot do, because to make title to the remainder, they must bring them- selves within the words of the gift; and the innocent daughter cannot take upon her the character of Co heir alone, since they both make but one heir to the ances-
tor; and both cannot join, because one is attainted, and incapable of that character. Co. Lit. 163. b.

Although a person attainted be to many purposes look-
ed upon as dead in law, yet he hath a capacity to pur-
chase land, which the King, shall have upon office found, and not the lord of the fee, because his person being forfeited to the King, he can't purchase but for the King. Co. Lit. 2. b.

But if a man attainted be pardoned by act of parlia-

tment he may purchase as before, for he is totally refor-
ed and interdicted to all persons; but if he be pardoned by charter, he may thereupon purchase lands, but can't inherit his former relations; for the King's charter can't alter the law, or take away the right of others, or restore the relation that was lost. Co. Lit. 8. a. 391, b. 392. b. 


If a man be attainted, and after pardoned by charter, the children born before such pardon shall not inherit; but if they fall, the children born after the pardon may inherit; for the pardon makes him capable of new relations as well as of new purchasings, tho' all the old legal benefits and relations are lost. Noy. 170. Co. Lit. 8. a. 3 Infy. 233.

Before the statute of 1 E. 6, cap. 12, the wife not only lost her dower at Common law, but also her dower under an ex-offusio partis, or by special custom (except that of gavelkind,) by the husband's attainted of treason or capital felony, whether committed before or after the marriage. Co. Lit. 31. b. 37. a. 41. A. N. B. 150. Perk. ftet. 308. Brn. tit. Dower 82. Plow. 261.

But the wife forfeited lands given jointly to her hu-

band and her, whether by way of frank-marriage or otherwise, but only for the year and day and waite. Co. Lit. 37. 3 Infy. 216.

It is enacted by 1 E. 6. cap. 12. par. 17. That albeit any person shall be attainted of any treason or felony whatsoever; yet notwithstanding every woman, that shall promise to be the wife of the person so attainted, shall be endowable and enabled to demand, have, and enjoy her dower, in like manner and form as her husband had not been attainted, &c.

But this is repealed as to treason by 5 & 6 E. 6. cap. 11. par. 9. by which it is enacted, "That the wife, whole husband shall have been attainted of any treason whatsoever, shall in no wise be received to, or challenge, demand, or have dowry of any the lands, tenements or hereditaments of the person so attainted, during the time attainted in force."

If the husband feised of lands in fee makes a feudment, and then commits treason, and is attainted of it, the wife shall not recover dower against the feodee. Bendl. 56. Dyer 140. Co. Lit. 111. a.

So if the husband is attainted of treason, and after-

wards pardoned, yet the wife shall not recover dower; but of lands purchased by the husband after the pardon, the wife shall be endowed. 3 Lecr. 6. Perk. flat. 391.

If a husband have been levied fines with proclamation, it is erroneously attainted of treason, and the five years pass after his death, and then the outlawry is reversed, the fine and nonclaim are no bar till five years after the recovery, because the wife could not sue for her dower while the attendant flood in force, neither could she any way revenge it. 3 Infy. 216. Mau 239. pl. 87.

After the making of the statute 1 E. 6. cap. 12. it seems to have been doubted, whether the wife should not lose her dower in case of any new felony made by act of parliament; and therefore where several offences have been made felony since, care has been taken to provide for her to recover. 2 Bac. Ab. 524. See also 12 Fin. Ab. tit. Forfeiture.
The notion of forgery does not so much consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of a more decent andfallacy; and either to impose that upon the world as the solemn act of another, which he is no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a fallacy to give it an operation, which in truth and justice ought not to have any effect. 1 Hawk. P. C. 183. 2 Roll. Abs. 28, 29.

II. Case 27.

Hence it is held to be forgery for a man to make a false impression of certain lands to J. S. and afterwards make a deed of severalty of the same lands to J. D. of a date prior to that of the severalty to J. S. for herein he falsifies the date in order to defraud his own seffee by making a second conveyance, which at the time he had no power to make. 3 Inst. 169. Pult. 46. b. 27 Fl. H. 3. 1 Hawk. P. C. 182.

Also it is forgery for a man, who is ordered to draw a will, to frame in his own head into that of another's, and thus convey to him certain legacies in it of his own head. 1 Nut. 101. 2 Hawk. 759, 760. 3 Inst. 170. 1 Hawk. P. C. cont. Dyre 283 b.

So if one infects into an indiction the names of those against whom in truth it was not found, this is forgery. 3 Med. 466. 1 Hawk. P. C. 183.

So the like may come at the bottom of a letter, at a considerable distance from the other writing, causes the letter to be cut off, and a general reference to be written above the name, and takes off the seal and fixes it under the release. 3 Inst. 171. 1 Hawk. P. C. 183.

Also the making any fraudulent alteration of the form of a true deed, in a material part of it, is forgery; as the making a leaf of the manor of Dale appear to be a leaf of the manor of Sale, by changing the letter D into an S, or by making a bond for five hundred pounds expressed in figures to have been made in the first hand, adding a new cypher. Mar 659. 1 Hawk. P. C. 183.

But in 3 Inst. 169. Lord Coke seems to think, that a deed so altered is more properly to be called a falsa than a forged deed; but by Jeramie Hawkins this is forgery; for a man's hand and seal are as falsely made use of as a forged hand. So if such an alteration is no more his deed than a stranger's. 1 Hawk. P. C. 183.

But as the fraud and intention to deceive, by imposing upon the world that as the act of another, which he never conformed to, are the chief ingredients which constitute this offense, so it hath been held, that he who writes a deed in another's name, and seals it in his presence, and by his command, is not guilty of forgery; because the law looks upon this as the other's own feeling, as done by his approbation and command. Pain. 40. 21 H. 6. 4 b. 1 Hawk. P. C. 183.

If a man writes a will for another without any directions from him, and he for whom it is written becomes non compos before it is brought to him, it is not forgery; for it is not the bare writing an instrument in another's name without his privity, but the giving it a false appearance of having been executed by him, which makes him guilty of forgery. 2 Inst. 760.

Also he can't be punished as guilty of forgery, who raseth out the word libris out of a bond made to himself, and puteth in marcis, because here is no appearance of a fraudulent design to cheat another, and the alteration is made by a man's own consent, to suit who makes it, whose security for his money is wholly avoided by it; yet it seems to be forgery, if by the circumstances of the case it should any way appear to have been done with an eye of gaining an advantage to the party himself, or of prejudicing a third person; also it is holden, that such an alteration, even without those circumstances, is a misdemeanor, that it be not forgery. Mar 619. 1 Nut. 99. 1 Salis. 375.

It seems, that by a bare non-falsity a man can't be said to be guilty of forgery; as if a man in drawing a will omit a legatee, which he is directed to inherit, yet it hath been holden, that if the omission of a bequest to one cause a material alteration in the limitation of a bequest to another, as where the omission of a devise of an estate for life to one man caueth a devise of the same lands to another to pass a present estate, which otherwise would have been utterly void, he who makes such an omission is guilty of forgery. Mar 760. 1 Nut. 101.

But it seems to be no way material, whether a forged instrument be made in such a manner, that it were in truth such as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a bond for five hundred pounds, by a man being a member of parliament, who in truth, at that time was not a member, is as much a crime as if he were. 1 Hawk. P. C. 184. 1 Sid. 142.

It is clearly agreed, that at Common law the counterfeiting a matter of record is forgery; for since the law gives the highest credit to all records, it can't but be of the utmost ill consequence to the publick to have them either forged or falsified. 1 Roll. Abs. 65. 76. 7 Ven. 140. Cre. Eisz. 178. 1 Mtd. 646.

Also it is agreed to be forgery to counterfeit any other authentic matter, as a publick nature, as a privy seal, or licence from the barons of the Exchequer to compound a debt, or certificate of holy orders, or a protection from a parliament-man. 1 Roll. Abs. 68. pl. 33. Cre. Cor. 376. 1 Jnn. 325. 1 Roll. Abs. 65. pl. 5. 2 Balf. 137. 1 Lott. 139. 1 Sid. 142.

It is also understood, that a man may be in like manner guilty of forgery at Common law by forging a deed; and therefore it seems, that one may be equally guilty by forging a will, which can't be thought to be of less consequence than a deed. 1 Roll. Abs. 66. pl. 10. Roy. 81. Owen 47. 1 Sid. 275. 3 Lott. 170. Mar 750. 1 Nut. 101. 2 Inst. 292. 1 Hawk. P. C. 184. where it is said, that he can't find this point anywhere directly holden.

There seem to be some strong opinions in the books, that the counterfeiting any writings of an inferior nature to those above mentioned, is not forgery at the Common law; also it hath been holden, that forging another's hand, and thereby receiving rent due to him from his tenants, is not punishable at all; but by Hawk. it can't be fully be proved by any good authorities, that such base crimes are wholly disfigarded by the Common law, as not deferving publick prosecution; for the opinion, that they are punishable at common law, is not certainly to be means to be maintainable, since many of them are not certainly punishable by force of 33 H. 8. cap. 1. Neither can it be a convincing argument, that they are not punishable at Common law, because they are of a private nature, as much as the writings concerning such matters; yet no one will say, that the making a false deed conceiving a private matter is not punishable at Common law; but perhaps, says he, it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof, as in the above cases, is properly punishable as forgery, and the counterfeiting of other writings of an inferior nature; that the forger is himself criminal, whether any third person be actually injured thereby or not; but that the latter is no crime unless some one receive a prejudice from it. 1 Roll. Rep. 437. 1 Sid. 16. 155. 451. 1 Roll. Abs. 66. pl. 8, g. "Wrench 144. 4 Mor. 3 I. 231. 1 Lott. 101. Cre. Eisz. 256, 853. 3 Balf. 265. Cre. Eisz. 166. 1 Balf. 146. 1 Hawk. P. C. 184.

But these opinions came fully to be considered in a late noted case, where it was held, that the counterfeiting a relief or acquittance for a sum of money, though without a seal, was a fraud on the General, that it would be the most injurious notion, and even a reflection on the Common law, to suppose it to defective as not to provide a remedy against offences of this nature. This case was this: An information was exhibited in the name of the Attorney General, charging that Mr. Ward, caueth unlawful delivery to the Duke of Bucks 315 tun and one quarter of alum
But not I. And if and bill of edict, which is hereby ordered to be forfeited. Upon Not guilty plead ed, it was tried at the bar, and a verdict found for the King in Easier term 12 Geo. The defendant absconded till the last day of Michaelmas term, when he voluntarily came into court, and defiled to be bailed: But the court refused it, and so he was committed, and now in Hail; large term his counsel (Mr. Hungerford, Mr. Ketelby, Mr. Filmer, Mr. Besler, and Mr. Strange) took some objections in arrest of judgment, and what they principally relied upon were these: 1. That this is not such a paper, of which a forgery could be committed at Common law. This is laid as an offence at Common law; and Hawkins in his Plains of the Crown 182, says, that it must be a matter of record, or any other authen tick matter of a publick nature, as a deed or will: Other writings of an inferior nature, as forging the hand of an authority to receive rent, counterfeiting a letter made in another man's name, &c. are fayings properly prohibited by the 33 H. 8. c. 1. In Eas tis. 166. it is held not actionable, to say, "You have falsely forged your father's hand, and thereby falsely procured your father's tenants to pay their rent to you!" because it would not be forgery, if it had done to 1 Rex. 3. The 32nd does not appear to deliver the allure at the time he did the fact. Exis tens mensabili is at the time of the information, and then it wants one necessary ingredient to make it a forgery at Common law, which is, that it be to somebody's damage.

Mr. Attornies, Mr. Lee, Mr. Marsh, Mr. Faukerley, and Mr. Verno, e contra argued, that this was forgery at Common law; and that it was the highest reflection upon the law, to imagine there ever was a time, where in such a fact as this was not punishable by the law of England. As to the passage in Hawkins, it is not warranted by the authorities quoted in the margin, and he has laid it down much too large. St. 12. is an indictment at Common law, for forging letters of credit to raise money, and nobody imagined it did not lie; and there is not laid that he actually received money upon it, which makes the cafe an anwer to both exceptions. 5 Mott. 137. This is a prosecution for forgery, and laid at Common law, and never imagined it was not an offence; and the defendant was convicted. 1 Sid. 142. Counterfeiting a protection from a member of parliament. Salt. 406. Hil. 32 Car. 2. rot. 55. Rex v. Sheholm, for forging a bill of exchange. Ray. 81. The like for forging a warrant of attorney. Mitch 6 Geo. Rex v. Ward (a brother of the defend ant.) Indictment for forging a promissory note, and laid at Common law, and never imagined it was not an offence; and the defendant was convicted. 1 Sid. 71. 3 Leon. 170. is for forging the entry of a marriage. It could not be an indictment as a cheat on the 33 H. 8. because there must be an actual obtaining upon that. The purpose of forging it is to be forged, it is not necessary to shew an actual damage, a possibility of damage is sufficient. There was no money raised in the cafe in Stiles. Atid if it was a bond, the party cannot be hurt by a forged one, and yet the forger shall be punished. The jury have found that it was done with defign to avoid the delivery, not to defraud the Duke, which is sufficient. But to take it as strong as possible, and make evident as possible to the jury the time of the information; yet favourable it will be a forgery, tho' done before the time was actually come in which he was to deliver it. If a man is to pay money at a future day; shall his forgery a releave before the day, and then he is to pay, and make the forger pay, if it be a crime? This is an offence at Common law. Mr. 619. Noy 99.

To this it was replied by Mr. Ward's Counsel; that no cafe was cited where it was determined to be an off ense at Common law, and the precedents cited paffed for salienia. That there was no reflection on the law, for this is not a forgery, but a cheat: They did not pay it was no crime, but it is one of the things, that this was an obtaining within 33 H. 8. because he obtains a right to keep that allum, which otherwise he would be obliged to deliver to the Duke. And the preamble of 5 Eliz. cap. 14, which takes notice of these offences, and calls them by their names, the thing was one of the clorta ment that was indicted at the Common law, which is an argument they were not punished as forgeries.

Per curiam: As there is no judicial authority on either side, we must take it up upon the question of the thing. There is no reason why this should not be punished as a forgery, as well as a cheat, and that there is to the great, or greater, for the value may be 100,000/. in one cafe, and a deed perhaps offers only a single acre of land. The statute 5 Eliz. shew this to be a crime, by using the words writings, in contradification to deeds. It cannot be prosecuted as a cheat at Common law, without an actual prejudice, and that is an obtaining on the 33 H. 8. the cafe cited out of Crs. is not law, and forely those words are actionable. Regina v. Travers was for ing an indorsement on an army debenture, and laid as at Common law. The reason why we do not meet with an ancient determination is, because personal cred it was not taken into the examination. It is not necessary to shew an actual prejudice, a possibility is enough; and here it appears, there would have been one, if the forgery had been. Judicium pro rege. Afterwards he was sentenced to stand in the pillory before Westminster-Hall gate, (which he did) to pay 300/. for the charge of forgery. The prosecution in the indictment till all was performed. Hil. 13 Geo. 1. The King v. Ward. Stran. 1747. L. Raym. 1464. S. C.

Indictment setting forth, that defendant intending to defraud the King, and unjustly to procure a payment to be made as that of the pay of an officer, did knowingly publish a certain fake and counterfeit affidavit, purporting to have been sworn by one Elizabeth Roe, before Thomas Engier, Esq a justice of the peace, by which means he received 5 l. 6s. 8d. of the paymaster of the King's bounty; and this was laid as an offence at Common law. After verdict for the King, it was moved in arrest of judgment, that this not being laid to be forged by the defend ant, was not an offence at Common law, but he ought to have been indicted on 33 H. 8. cap. 1. as for a fake token. Sed per curiam; Since Ward's case this can never be doubted. And it has always been held, that the statute did not create a new offence, but added a new rule, as a better means of preventing the King's fake, or falmatus. The 5 Eliz. cap. 14. reciting the forgeries at Common law, has the word writings, in contradiction to deeds: And it is in the election of the party, in the cafe of forging deeds, to lay the indictment either at Common law, or upon the statute. Judgment pro rege. Mich. 14 Geo. 2. Stran. 1144. The King v. O'Brien.

Forgery to the party's own detriment only, is not criminal. L. Raym. 530. 1 Salt. 375.

2. What shall be deemed forgery by statutes, and the pun ishment thereof.

By the flat. 5 Eliz. cap. 14. sec. 2. it is enabled, "That if any perfon or persons, upon their or his own head and imagination, or by falk and counterfeit fraud and with others, falk unjustly, fably and falsely forge or make, or forcibly, with or without the aid of any other, or made any fake deed, either written, signed, sealed, or writ ten falsely, or with the view of deceiving, or as the further aid of any person or persons, of writing, to the intent that the efface of falsehood or inheri tance of any persons, of, to any land, tenements or hereditaments, or seals or paper, or the right, title or interest of any person, or the act of said forgers, or any other person or persons, in which the falk shall or may be neglected, troubled, defeated, recovered or charged, or shall pronounce, publish or shew forth in evidence, any such fake and forged deed, charter, writing, count-roll, or will as true, knowing the fame to be fake and forged, as is aforesaid, to the intent above remembered, excepting faking
ing an attorney, lawyer or counsellor, he shall for his client plead, shew forth, or give in evidence such false and forged deed, &c. to the forging whereof he was not party or privy,) and shall be thereof convicted either upon action, or actions of forgery of false deeds, to be founded upon the said forgery, at the suit of the party guilty thereof, or at the suit of the person injured: this is done by the fourth and sixth clauses of the laws of this realm, &c. he shall pay unto the party griev’d his double costs and damages, to be found and ascribed in that court where such conviction shall be; and also shall be set upon the pillory in some open market-town, or other open place, and there have both his face and his hand cut off, or be cut off with a hot iron, &c. and shall forfeit to the King the whole illus and profits of his lands and tenements, and suffer perpetual imprisonment.

Sed. 3. It is enacted, "That if any person or persons, upon their own head or imagination, or by false conformation or fraud had with another, shall writing, falsly and falsely forge or make, or writingly, falsely and falsely cause or attaint to be made and forged, such false charter, deed or writing, to the intent that any person or persons shall or may invade, or claim any estate or interest in any lands, tenements or hereditaments not being copyhold, or any demesne in fee simple, fee tail, or for term of life, lives or years; or shall, as is aforesaid, forge, make or cause, or cause to be made or forged any obligation, or bill obligatory, or any acquittance, release or other discharge, or the making of a wrong deed, or the forgery of a thing personal, or shall pronounce, publish or give in evidence, except, as is before excepted, any such false or forged charter, deed, writing, obligation, bill obligatory, acquittance, release or discharge as true, knowing the same to be false and forged, and shall be thereof convicted, he, or the party he shall cause to be convicted by his order, shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be had, and shall be also set upon the pillory in some open market-town, or other open place, and there have one or two years cut off, and also suffer imprisonment for one or two years, &c."

Sed. 7, 8. It is further enacted, "That if any person or persons being convicted or condemned of any of the offences aforesaid, by any the ways and means limited, shall sitter any such his or their conviction or condemnation, in faithfully, commutative or perpetually, upon any the said false offences in form aforesaid, that then every such false or other offence shall be adjudged felony without benefit of the clergy, saving to all persons other than the said offenders, and such as claim to their uses, all rights, &c. which they shall have to any the hereditaments of such false or other offence, being committed or attainted at any time before, &c. saving also the dower of such offender’s wife, and the right of his heir.

Sed. 10. It is enacted, "That all judices of oyer and terminer, and judices of assize, shall have power to inquire of, hear and determine the offences aforesaid.

But it is provided, Sed. 9, 12, 16, 18. "That this act, or any thing therein contained, shall not extend to any ordinary, or his commissary, &c. for putting their seal of office to any will to be exhibited unto them, not knowing the same to be false or forged, or for writing of wills or testaments, or for the provost, or justice, or any proctor, &c. of any ecclesiastical court; for the writing, setting forth or pleading of any proxy, made according to the Ecclesiastical law, for the appearance of any person being cited to appear in such court; nor to any archdeacon or official for putting their oaths to any will, or in the presence of the testator or procurator, &c. of any ecclesiastical court; for the writing, setting forth or pleading of any proxy, made according to the Ecclesiastical law, for the appearance of any person being cited to appear in such court; nor to any person who shall plead or pleas for any deed or writing exemplified under the Great seal of England, or under the seal of any other authentick court of this realm; nor to any person who shall cause any of any court to be set to any false or forged deed, writing, sealing, insulating; not knowing the same to be false or forged.

In the construction of this statute the following points have been held.

Vol. II. N. 79.
F O R

were intelligible; and upon this ground it hath been ad-
judged, that an indictment setting forth, that the defen-
dant super caput fum præsum did forge, &c. meaning thereby to express that he did it out of his own head, is sufficient. 3 Keb. 359, 357; 3 Iom. 369. 1 Keb. 349.

2 Keb. 129. 2 Lev. 221. 1 Vent. 23, 24. 1 Salk. 370. 1st P. C. 187.

11. That upon an indictment of trepas, forgery, and publication of a deed, a verdéld finding the defendant guilty of de transfraite & forgia praevidit, proest praevidit in inditamentum jactantur, is insufficient, because there are words de transfraite & forgia praevidit, included the whole; also perhaps for a verdéld may be sufficient for another reason, because the offence is equally within the statute, and the punishment the very same, whether the party be guilty both of the forgery and publication, or of one of them only. 2 Lev. 111, 121. 3 Keb. 353.

12. That if the conveyance be defective, so as not to pass the thing intended to be conveyed, yet it is within the act, as where an indictment of forgery the error assigned was of a deed inrolled, and the acknowledgment laid eleven months after the inrollment; and it being objected, that it being a bargain and sale it can have no force, notwithstanding any binding to the party without the acknowledgment, but the court held, that admitting the acknowledgment essential, so that the inrollment was not good, unless that appeared, (which they seemed to deny) yet it was within the statute; and that there being a flaw in the conveyance forged, went to the learned magistrates, yet the party may be impeached, molested and troubled by such a deed, which makes it within the statute. 1 Keb. 707, 742, 803. The King v. Ring, and Palfich. 4 Geo. 2. 8. P. determined between The King and Grosse. See Heb. 577.

The defendant, was convicted on the statute 5 Eliz. cap. 14. for forging a leaf and release. And the indictment sets forth, that Garbut & wax were feised in fee of certain messuages, lands and tenements called Jautick in the parish of Clackton in Essex, and that the defendant forged a leaf and release as from Garbut et us', whereby they were charged for &c. a valuable consideration to convey to him, 14. all that park called Jautick Park in the parish of Clackton in Essex, containing eight miles in circumference, with all the deer, woods, &c. thereto belonging. After verdéld pro rege, it was moved in arrest of judgment, that the premises foopoked to be conveyed were so much more valuable than those which were conveyed, that it was impossible this conveyance ever could molest or disturb them; if it was a true deed it could not pass their lands at law for want of a proper description; and tho' where lands are improperly described, a court of law would not be bound to exclude any words, or that is only where there is a previous con-
tract for a sale, and they do it as carrying that contract into execution; whereas here is no contract, and the case is no more, than if a had been sold Blackcock, and B. had forged a conveyance of Witwaters, which certainly would not be within the statute. The court for several terms inclined strongly with the objection: But this term the Chief Justice declared that they were all of opinion to over-rule it: the words of the act are, 41. to the intent that the flate of frehold or inheritance of any person to any lands, &c. on the right title of, in and to the same, shall not be molested, troubled, defeated, recovered or charged. By this it appears, that it is not necessary, there should be a charge or a possibility of a charge; it is sufficient that it be done with intent to molest Garbut and his wife in the possession of their lands. And that when there is given that the defendant had sentence to undergo the punishment ap-
pointed by the act for forging a deed, and the same was executed upon him at Charing-Croft. Ens. 4 Geo. 2. The King v. Jaffet Coresse. Stron. 901.

By the 2nd Geo. 2. cap. 25, reciting, that the laws above are not effectual for preventing the abominable crimes of forgery, it is enacted, 11. That if any person, from and after the 29th day of June in the year of our Lord 1720, shall falsely make, forge or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly act or affirm in the false making, forging or counterfeiting any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, promissory note for exchange of money, or any bill of exchange, or promissory note for payment of money, acquittance or receipt either for money or goods, with inten-
tion to defraud any person, knowing the fame to be false, forged or counterfeited; then every such person being thereof lawfully convicte, according to the due process of law, shall be deemed guilty of felony, without benefit of clergy.

Provided, that no attainer for this offence shall make or work any corruption of blood, lots of dower, or dif-
herion of heirs.

And 17 Geo. 2. reciting the last above mentioned statute, and that the same does not extend to the forging of any acceptance of bills of exchange, it is enacted, 31. That if any person from and after the 24th of June 1734, shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly act or affirm in the false making, altering, forging or counterfeiting any acceptance of any bill of exchange, or the number or principal sum of any ac-
countable receipt for any note, bill, or other security for payment of money or delivery of goods, with intention to defraud any person whatsoever, or shall utter or publish any forgery or counterfeite, or any bill of exchange, or any bill of exchange, or account book or receipt for any note, bill, or other security for payment of money or delivery of goods, with intention to defraud any person, knowing the same to be false, altered, forged or counterfeited; then every such person being thereof lawfully convicte, according to the due process of law, shall be deemed guilty of felony, and shall suffer death as a felon, without ben-
efit of clergy.

By 2d. Jan. 7. cap. 20. Any person forging or counter-
feiting any entry of the acknowledgment of any mem-
orial, certificate or instrument, as is therein mentioned or decribed to be required, and be thereof lawfully con-
vinced, such person shall incur, and be liable to such pains and penalties as are imposed upon persons for forging and publishing of false deeds, &c. by 5 Eliz. c. 14.

By 6 Geo. 1. cap. 22, sect. 1. Forgery authorities, &c. to transfer flocks, herds or other goods, or to receive digital, or per-
fonation of deeds, or sales, is made felony without clerg.

Siat. 9 Geo. 1. cap. 12. sect. 4. enacted, that if any person after the second of April 1723, shall forge or counterfeite, or procure to be forg'd, &c. or knowingly act or affirm in the forging, &c. any order made forth in pursuance or according to any act of 6 Geo. 1. cap. 20. or of this act, or any affigment of such order, or of the annuities payable thereon, or any receipt or dis-
charge to the Exchequer, for the annuity due on such fanding order, or any letter of attorney, or other au-
thority, to transfer, assign, &c. any such order, or to receive the annuities thereon, or shall counterfeit any name of the proprietor of such order, in any affigment, receipt, letter of attorney, &c. or shall fraudulently de-
mand to receive any such annuity, by virtue of such forged receipt, &c. or shall falsely and deceitfully peronne any true proprietor of any the said orders, thereby af-
figment or endeavouring to affigment any such order, or de-
ceiving or endeavouring to receive the money of such pro-
pritor, as if such offender were the lawful owner thereof; in every such cafe, every such person (being convicted thereof in due form of law) shall be adjudged guilty of felony without benefit of clergy.

in such case, essays 25. and 4. enacted, That persons convicted of forgery, &c. praftifing as attorneys, &c. of-
fending against the act for preventing frivolous and vaca-

tions arrests, shall be transported for seven years.

Siat. 4 Geo. 2. cap. 18. sect. 1. enacted, That any person for forging or counterfeiting letters for any ship, containing a Mediterraneo pass, or who shall alter or erate any pass, made out by the commissioners for executing the office of Lord High Admiral; or shall pub-

2
In an indictment for forgery at Common law, though it is in the present instance the paper was perjured, yet the indictment is good. *Centra in an action of *for fraud feuis. Therefore where the indictment was for forgery of a surrender of the lands of *S. S. and it was not shown in the indictment, that *S. S. had any lands; yet *Holt Chief Justice, at *Bury Summer assizes [2] Hil. 3. upon motion, it was held, it would not be ex imaginatione sua propria, or ex captis suis propriae, for as it is, it must be intendment that the writing was upon his head, and this might be by another; but this was a literal translation of the words of the statute, and therefore by all means, but that it be not so elegant a translation as might be. 2 *Levi. 221. *Pemb. 30. Car. 2.

Information fet forth, that the defendant did forge *quodam scriptum continuus in *scriptum obliquum *per quod statum *scriptum obliquum *A. obliquus fuit praed. defendant in 40 libris, &c. the defendant was found guilty, and exception was taken, that the fact alleged was a contradiction of itself; for how could *A. be bound when the obligation was forged? And also, that it did not fet forth that *scriptum obliquum was, or whether it was *scriptum fictum or not. *Per cur. The defendant was found guilty only of *scriptum fictum, writing, in which was contained *quodam *scriptum obliquum, and that may be a true bond. Judgment was arrested. 3 *Med. 104. *Pemb. 2. *Jef. 2.

The indictment was, that the defendant *fabricavit *su *fabricavit *scriptum fictum, or forged, and it was held upon demurrer; for an indictment ought to be certain and positive. 1 *Salk. 242. *Mich. 7 Hil. 3.

Indictment was for forging *quodam *scriptum obliquum of *J. S. It was objected, that it should be *scriptum, purporting a writing obligatory of *J. S. *sed non *allocutur, &c. for the 5th *Ed. 14. mentions false deeds as well as false writings. 1 *Salk. 342. *Hill. 1 *Anne B. R. 8 *Jean. Ab. tit. Forgery.


*Fregibus, A herdland, a badland, or a forestland. *Cowell, edit. 1727.

*Fregibus, Outward, or on the outside. *Ken. Glefs.

*Fregibus manerium, The manor, or that part of it which lies without the bars or town, and not included within the liberties of it. *Summa reddituum officii de manorialibus. *Haenzius Bandary cum manudiantio societatis. *Paroch. antiq. pag. 351.

*Fregibus servitium, The payment of aid, feugage, and other extraordinary burdens of military service; opposed to *infrキングservitium, which was the common and ordinary duties within the lord’s court and local liberties. *Cowell, edit. 1727.


*Fregibus, Where a man by force, or otherwise, exacts what is not due. *Cowell, edit. 1727.

*Fregibus, A fort. is properly said for *fariuim, when he accepts of his father’s part of his lands, and is contented with it in the lifetime of the father, so that he cannot claim any more. *Cowell, edit. 1727.

*Fregibus, Land extending further, or lying before the rent, a promontory. *Ex duobus ferrandis xvi. debarcis, *fr. de ferando Johannis Wacker, *quod est anter *acam *am *tium *e *t *C. *Gen. *M. *Anglia. 2 *par. tol. 332. *Camden expounds *Cantium *promontorium, the foreland of Kent.

*Fregibus, Was such land in the bishoprick of Hereford, as was granted or leased *dominatus *in episcopus *fide *et *littera, *but the latter might have it for his present income: But now that the same is disaffessed, and the same land granted as others, by leave, yet still retains the same. *Butterfield’s Survey, *f. 56.

*Fregibus, Is required in law proceedings, otherwise the law would be no art; but it ought not to be used to enfringe or infringe. *Id. 23. A form of letter, or form of pleadings, that go to the action, may be taken advantage of and helped on a general demurrer. *Lev. 1015.
If tenant in tail hath several daughters, and after his death they enter and make partition, if one of the daughters after discontinues, and dies leaving issue, such issue may have a formdon in defender. F. N. B. 476. See cit. Coparceners.

So if two coparceners be tenants in tail by descent from their father or mother, and afterwards they make partition, and one begins his estate before the other, the other coparcener dies without issue, the issue shall have a formdon in defender for the whole land. Fitz. N. B. 475, 476.

So if lands in gavelkind be intailed, and descend to many brethren as heirs to their father, and they make partition, some of the lands being given to the alien of the race, and alien dies, and his heirs are suitors for a formdon in defender against a stranger who abates, and allege the expiess in his father; for to such an intent the estate-tail was executed in the donee; but in this case, it feems, that the wife of the donee who had the inheritance in him, shall not be concluded, because the estate-tail was not executed to all purposes in the husband. Perk. Fe. 534.

If tenant in tail discontinues in fee, and dies, and the discontinuance makes a lease for life, and grants the reversion to the issue, he shall not have a formdon against the tenant in fee, because by his formdon he must recover an estate of inheritance, which the tenant hath not in him. Co. Lit. 297 b.

If in a formdon in defender the demandant is barred by verdict or on demurrer, yet his issue in tail shall have a new formdon on the construction of the statute W. 2. So if he be barred of a writ of error by a rule of errors by his ancestor, yet he shall have a new writ of error; for he does not claim altogether as heir, but per formdon doni; and by the statute he shall not be barred by the faint or fallacy of pleading of his ancestor so long as the right of install remains. 6 Co. 7.

The writ of formdon in remainder lies where a gift is made in tail or for life, remainder in tail or in fee, and the tenant in tail or for life aliens, or is disfellowed, and dieth without issue, he in remainder, or his representatives, may bring their formdon in remainder. Lit. feel. 397. F. N. B. 493.

In a formdon in defender the demandant is barred by verdict or on demurrer, yet his issue in tail shall have a new formdon on the construction of the statute W. 2. So if he be barred of a writ of error by a rule of errors by his ancestor, yet he shall have a new writ of error; for he does not claim altogether as heir, but per formdon doni; and by the statute he shall not be barred by the faint or fallacy of pleading of his ancestor so long as the right of install remains. 6 Co. 7.

The writ of formdon in remainder lies where a gift is made in tail or for life, remainder in tail or in fee, and the tenant in tail or for life aliens, or is disfellowed, and dieth without issue, he in remainder, or his representatives, may bring their formdon in remainder. Lit. feel. 397. F. N. B. 493.

But it feems, that by the better opinion, a formdon in remainder lay after an estate for life; for this was an interest well known long before the statute de donis yet others doubt hereof and think, that in this case it was given in a formdon in remainder, as was done by W. 2. in the same year, by which it is provided, That whenever from beneficent it shall happen in the Chancery, that in one cafe a writ is found, and in case cafe falling under like laws, and requiring like remedy, is found none, the clerks of this Chancery shall agree in making the writ. On which words it is clearly agreed the writ of entry in consimili causa is grounded, which is a proper writ for him in reversion or remainder after an estate for life. F. N. B. 484. Booth 1517.

If lands be given to A. for life, and the reversion is afterwards granted to B. in tail, and after the death of A. a formdon in remainder, B. shall have a formdon in remainder and not in the reverter. F. N. B. 484. Dyce 125.

If lands be given to the father and son, and to the heirs of their blood begotten, remainder over in fee, and the father died leaving only one son, who afterwards dies without issue, and a stranger abates, or the estate had been discontinuance, he in remainder may have one formdon,
18  18  18
13  76  96
2   65
fordemon, and need not bring several writs. Dyer 143. 5.

If a remainder be once executed, that is to say, if the remainder-man be once feised of the estate-tail in possession, and the right descends to his heir, the heir shall not have a formemberof remainder, in but the defcender; as if A. grants lands to B. in tail, remainder to C. in tail, B. dies without issue, issue of the donor and aliens in fee; lands of D. in fee, D. shall not have a fememberof remainder, because C. his fater was feised, and the right descends to him, but he shall have the general writ of formemberof remainder in defender. F. N. B. 486, 487. 8 Co. 89.

Booth 152.

The writ of formemberof remainder lies where the donee in tail or his issue, and a stranger, abates, or who they were feised by force of the intail, discontinues the fame; in either of these cafes, the donor or his heirs may have a formemberof remainder in defender. Lit. Scot. 596. F. N. B. 487.

wli Dyer 199. pl. 55.

This writ lay at Common law for; though at Common law the estate-tail was a fee-simple conditional, so that by having of issue, the donee by alienation, &c. might have barred the possibility of the donor's right of reverter, yet the having of children was in the nature of a condition precedent; and therefore if the donee ought to have a child, he might bring his formemberof remainder in reverter, and recover against any alienation or disfopition of the donee. 2 Lefl. 356. Plow. 235.

It seems that all such inheritances, as may be intailed, may be recovered in a formemberof, and that therefore it lies not only of lands, but also of rents, commons, et cetera. or if the heir abates from the land in fee.

But no formemberof will lie for things merely personal, which only charge the perfon, and neither issue out of land, nor relate to it, and therefore can't be demanded as a tenement in a precept; as if A. grants to B. and the heirs of his body, to be mafter of his hawks, or keeper of his hounds, with a fee or faltyr annexed to it, the issue of B. can't have a formemberof thereof. 1 Rot. Abr. 837. Plow. 2.

If there be a custum in a manor, that copylefters may be intailed, which co-operating with the statute of dome is allowed to be good, the issue in tail may have a formemberof of such lands. Co. Lit. 60.

3. How the demandant must set forth his title, and of the tenant's plea in abatement or bar.

The demandant in a formemberof in the defender must make himself heir to him who was laft feised by force of the intail, but he need not mention an ancestor who happened to be ineritable, but was never actually feised by force of the intail; as if he be grandfather, father and fon, and the father dies in the life-time of the grandfather, the fon may bring his formemberof without alleging any right in the father. So if the donee in tail has two sons, and the eldest dies in his life-time, the second may, after the death of his father, bring his formemberof without taking notice of the eldest son.

Reg. 343. 8 Co. 87. Dyter 216. pl. 56. F. N. B. 477. Hall. 78.

So where in a formemberof in defender the demandant sets forth, that the right descended to him as brother and heir of the donee, without alleging that the donee died without issue; and it was held good; for he could not be heir to his brother, unless the brother had died without issue. 1 Mad. 219. 2 Mad. 64. 8 C.

In a formemberof in reverter, the demandant need not in his writ or count allege, that all the issue inheritable are deceased; but it is sufficient for him to say, that the donee is dead without issue, and that after his death it never reverted to him, for he is a stranger to the pedigree, and therefore not obliged to make it out. Dyer 216. pl. 56. Booth 155. Dyer 14. pl. 73. 19. pl. 90.

So in a formemberof in remainder, the demandant need not allege that all the parties are deceased; he is a stranger, as in the precedent case; and it is sufficient for him to shew, that he was laft inherited by force of the Vol. II. N°. 79.

intail is dead without issue. Booth 155. 2 Lev. 218.

1 Law. 286. 1 Brownl. 155.

So in a formemberof in remainder upon an estate-tail limited to F. and K. the remainder to F. in fee, & querist mortem, P. K. and T. son and heir of F. ought to remain; and the writ was adjudged good without laying expressly the death of F., though it was urged that the form of the writ was fo, because the laying of T. to be heir of F. doth import as much. Hob. 51.

But in a formemberof in remainder, it is not sufficient for the demandant to allege, that the issue in tail is dead without issue, without saying that the tenant in tail is also dead without issue, for he in remainder can have no title unlefs the estate is free; and it is not implied, that because the issue is dead without issue, that therefore the tenant in tail is, for he may have other sons besides his eldest. 5 Mad. 17. Per Holt Ch. J.

Alfo if there be tenant in tail who hath three sons, and the fecond leaves issue in tail of his father, and the land descends to the eldest, in whose life-time the fecond son dies, although the youngeft son may, on the death of the eldest, bring his formemberof in defender, and lay down the intail, and then bring it to his eldest brother that was laft feised, and make himself immediate heir unto him, without mention of the fecond brother; yet if the fecond son survived the eldest, the tenant in the formemberof may plead the fine of the middle brother, and that he or his issue did survive, &c. and this will be a good bar. Hob. 332.

In a formemberof in defender by husband and wife in right of the wife, who is dead, or fecond, as to the wife alone, for the deficient followeth the blood, and to that the husband is a stranger. Hob. 1. 1 Brownl. 154. 8 C.

In a formemberof in remainder, the demandant ought to shew the deed of gift, if ever be required thereof, but he need not mention it in his count, but the tenant is to demand the same therefor. F. N. B. 486, 487. Booth 153.

There are several pleas both in bar and in abatement, which the tenant may plead to this action; such as non-tenure, which is a plea in abatement, and by which the tenant shews, that he is not tenant of the fettled estate, and that he has not any title to the wife alone, for the deficient followeth the blood, and to that the husband is a stranger. Hob. 1. 1 Brownl. 154. 8 C.

In a formemberof in defender against three, who plead non-tenure, and issue thereupon joined, it was found specially that they were tenants with moiety of the three parts; as to the wife, he is tenant in fee, in ward, by statute-regrant, eldest, or the like; and therefore the plea of special non-tenure must always shew who is tenant. Booth 29.

In a formemberof in defender against three, who plead non-tenure, and issue thereupon joined, it was found specially that they were tenants, as the wife suppofed, was the quefion; and it seems by the book that they were, for they should have pleaded several tenantry, and then the demandant might maintain his writ. 1 Brownl. 153.

At Common law, non-tenure of parcel of an entire thing, as a manor, &c. abated the whole writ; but now by the 25 E. 3. cap. 16. it is enacted, 'That by the exception of non-tenure of parcel, no writ shall be abated, but only for that parcel whereof the non-tenure was alleged. Booth 29. 1549.

If the tenant pleads non-tenure of the whole, he need not shew who is tenant; but in a plea of non-tenure of parcel, he must shew who is tenant, and this even before the statute; for the Common law would not suffer a writ, good in part, to be wholly destroyed, except the tenant shewed the demandant how he might have a better. 1 Mad. 181.

The tenant can't, after a general imparlance, plead non-tenure of part, tho' he may plead non-tenure of the whole. 3 Lev. 55.

In a formemberof in reverter it hath been adjudged, that if the tenant pleads non-tenure generally, the demandant may maintain his writ that he is tenant, tho' he can re-
cover no damages; and that Littleton and Coke were not to be intended of simple plea of non-tenure, but of non-tenure with a disclaimer, as they pleaded upon the simple fee of non-tenure, supposing the tenant hath no freehold, but a reversions in fee, the defendant shall not be entitled to the fee, for nothing is disowned by the simple plea of non-tenure but only the feehold, which may be true, and yet he may have the reversions in fee, and where there was a disclaimer, or pleads non-tenure, and disclaims, the defendant shall be entitled to the whole, because he hath disclaimed the whole. 3 Lev. 330. 2 Lott. 903. S. P.

Non dedit, i. e. No such intail, is a good plea in bar of all formen, and it may be pleaded by the voucheer. Co. Litt. 324. b. Booth 165.

To a motion unremed in remainder may be pleaded in bar of an estate, made by another long before the donor in the court had any thing, and that the tenants are heirs to the first intail. Booth 164.

A remitter may be pleaded in bar, as thus; that the donee was feized in fee, and being an infant made a feoffment to the donor, who gave the land to the infant in tail, by which he was remitted, whole estate the tenant hath. Booth 164.

If in a formen in remainder in the tenant pleads infancy, and that the remainder defended to him, and pays his age; and the demandant pleads that the tenant, defendant did not in infancy, and for the demandant, a final judgment shall be given notwithstanding the infancy of the tenant. Lev. 163. 1 Sid. 118. 252. S. C.

The tenant may plead that the demandants, at the day of the purchase of the writ, was seised of the lands for which the formen was bought, but in such plea he must shew of what estate. Winch. 23. Dy. 137. b. pl. 26.

It is held as a rule, that nothing can be pleaded in abatement to this action after a view, but what arises upon the view. 3 Lev. 19.

A formen and lineal warranty, with affects, by defendant, may be pleaded in bar to a formen in defendant. So a collateral warranty, without affects, before the statute 4 & 5 Ann. might be pleaded in bar to such a formen. 2 Inf. 291. Booth 163. See tit. Warranty.

So a common recovery may be pleaded in bar to a formen in remainder or reverter, either with double or single voucher; so much fingle, if the tenant to the writ were seised of the estate, and at the time of the recovery; with double voucher, tho' he were not seised. Booth 164.

In a formen the tenant may plead in bar an exchange between the ancestor of the demandant and he under whom the tenant claims, and that the demandant entered into the estate in exchange, and takes the profits; and that the ancestor may plead this plea, tho' he be a stranger, for he is privy in estate. Booth 165.

For more learning on this subject, see 12 Vin. Abr. tit. Formedon.

Formella, A weight of lead of about 72 pounds. Cowell, edd. 1727.

Former attion, In what cases a good plea to the bringing a new action. Action in the case for eroding of a nuisance 20 February; the defendant pleaded a prior action, brought for eroding a nuisance 20 die Martir, and a recovery thereupon, and avered these to be the same nuisance and erection. The plaintiff demurred, and judgment against him; for he may have an action for continuing of the same nuisance, but can never have a new action for the same erection. 3 Salt. 10. Mich. 10 W. 3. 3. B. R.

When the record of the fate court is pleaded in abatement, and the plaintiff demands oyer of the record, and 'tis not given him in convenient time, the plea ought not to be received, but the plaintiff may find his judgment, and the rule was, that under the demandant gave oyer of the record, and so judgment should be for the plaintiff. Cartb. 454. Trin. 10 W. 3. 3. B. R.
F O S

Fother, A little fort. For salmon foundin eueriwart. Kinghorn.

Fotherouse, was a learned lawyer, and Lord Chancellor in the days of Hen. 6. He wrote a book in commendation of our Common law, intituled, De Laudibus Legum Anglie. Cowell, edit. 1727.

Fotta, Power, dominion, or jurisdiction. Cowell, edit. 1727.

Foutre, or Inostakute placitum, is when many judges are assembled to do it. Si juidicium fui judicat di- mittit (judices) sed summantes terrae dominum infructificer placitum termino competenti. Leg. H. 1, cap. 29.

Fortifications, To be made on the sea-coast in Cornwal, 4 Ed. 8.

Fowds, to be purchased for the fortifying Parsfoot, Chatham, and Harwich, 7 Ann. c. 26. 8 Ann. c. 21.

 Lands for the fortifications of Plymouth and Chatham veiled in trunchees, 31 Geo. 2. c. 39. fett. 1.

Compensation given to the proprietors, 32 Geo. 2. c. 39.

Monies payable to persons under legal disability to receive the same, to be paid over to deputy remembrancer, 33 Geo. 2. c. 11. fett. 14.

Lands in Kent, Suffolk, and Southwold, on which forts have been erected, veiled in trunchees, 2 Geo. 3. c. 57.

Compensation made to the proprietors of those lands, 4 Geo. 3. c. 35.

Fortitudo, Fortitutis, and Fortiteta, (Fortitium, vel fortitutum, & fortitium,) Signifies properly a little fort, which was made rather to preserve the person of the owner and his goods, than to undergo a siege. Within the towns and fortifications of Berwick and Carlisle, Stat. 11 Hen. 7. c. 18. Cowell, edit. 1727.

Fortuji, A fortiori, or multis fortiori, is an argument often used by Littleton to this purpose: If it be so in a feemonth paining a new right, much more is it for the restitution of an ancient right. &c. Ca. Litt. 253, 260.

Fortet, (Fr.) Signifies a place of some strength. Old Nat. Brew. fol. 45.

Fortuna, Is that which is called in our law trefou- trive, i.e. Trefuoratum docentem fortuna invesens, inquirendum est per iuratores pro Rege, &c. quod sediflet praveniubunt, &c. sones fortunas, abbreviaturas, apella, &c. Spelman tells us it signifies fortis acceitus. Cowell, edit. 1727. See Shorewart.


Fourth, A long fip of ground. Cowell, edit. 1727.

Foula, A ditch full of water, where comming floyes were made rather to preferv the person of the owner and his goods, than to undergo a siege. Nam & ipsi in omnibus tenementis fuit omnem ab antiquis legales baures juidicium, videelicet, fercum, folium, furcam, & fijmilia. In another fene fuis taken for a grave. Cowell, edit. 1727. See Futa.

Foulet, (Fr.) Gras cut or mowed for hay. Cowell, edit. 1727.

Foulcatum operatio, Foulke-work, or the service of labouring, done by inhabitants and adjoining tenants for repair and maintenance of the ditches round a city or town; for which some paid a contribution called Foulcum. Cowell, edit. 1727.

Foulitem, (Lat.) A ditch, or place fenced with a ditch or trench. Foulitem in another fenfe is, taken for the obligation of citizens to repair the city ditches. Cowell, edit. 1727.

Foulten, The same with Foultem.

Foulthum, (Foulthum) A small ditch.

Foulthum, (from futh, digged,) Was anciently one of the four principal highways of England, so called, because fospoofed to be digged and made payable by the Romane legions having a ditch on one side. Cowell, edit. 1727. See Wittingstree.

Foulterland, Is land given, aiffiged or fet forth for finding of food or viuahs for any monacheries, for the monks. &c. Cowell, edit. 1727.

Foulterian, Nutial gifts, which we call a jointure; from the Sax. fijter-ban, covenent exhibiti, that is, a fpende which the wife hath for her maintenance. Cowell, edit. 1727.

Foutier, or Juderer, (from the Teutonic fuder,) Is a weight of lead, containing eight pigs, and every pig one-and-twenty tone and a half, which is about a tun, or a common want or cart-load. Spight in his Annu- tations upon the Book of Kames, mention is made of a foder of lead, which is there said to be 2000 weight; at the mines "is 2000 weight and a half; among the plumbers at London 1900 and a half. Cowell, edit. 1727.

Foutmel, A weight of lead of ten stone or seventy pounds. Cowell, edit. 1727.


Foucarte, To carry away fodder, to forage. Flet. lib. 2. c. 41. par. 13.

Foundation, The founding of a college or an hospital, is called Fundamentis, quasi fundi-datio, or fundamenti locati. Ca. Rep. 10. See College, Hospital, Monastery.

Founder, (from funder, to pour out,) Is he that melteth metal, and maketh anything of it, by calling it into a molten state. Stat. 17 R. 2. cap. 1. We also say, That whoever builds and endows a college or hospital is the founder. Cowell, edit. 1727.

Founding-hospital. See Hospital.

Founduate, To fawn as a deer. Qui fecuntur volgum in foro. Stat. 17 R. 2. cap. 5. (from Jac. de damne damati fonnari. Fleta, lib. 2. cap. 41. par. 33.

Fourcher (Fr. Fourcher, to delay, put off, prolong) Signifies a putting off, prolonging, or delaying of an action. In the statute of Wift. 1. cap. 43, are these words, "Joint-tenants shall not more fourch, but only shall have one effe," &c. And in last, 6 Ed. 1. cap. 10, it is used in the same fene; "The defendants shall be put to answer without fourching." &c. 23 Hen. 6. c. 2. See 2 part. Inf. st. 250. In the Latin 'tis called jurassare; and signifies, where a man and his wife, or each of them, calls an effe, then 'tis called furtures, because 'tis twofold. Causa utr. & mutur. implicatit, quod jussur in essentiae alterius alteram comparatur, quodjus furtu- care possit: Et cum utra non possit, concurrentur eorum effe- nias in jus dict. alt. autem eorum tantum omnium effe- niam de multis letis habere posset. Hengham Mag. cap. 9. Cowell, edit. 1727.

Fourgeld, or Fourgell, (from the Sax. fs. pes, and geldan, foderes, i.e. pedes redempti,) Signifies an amercement for not cutting out the balls of great dogs feet in the forre. See Crpeditone. And to be quit of the so-called Fourgeld he is at liberty to keep dogs within the forre, or to pay the man who shall perceive his "jure". Froudet. fol. 197. Manwood, part. 1. pag. 86. This privilege was always allowed in Aqfs. Burg. de Pickering. 10 Ed. 3.

Fraction. The law makes no fraction of a day; and therefore if a perfon dies of a wound he received, the year and day shall be computed from the beginning of the day on which the wound was given, and not from the precise minute or hour. 2 Hawke, P. C. 163.

An act of record will not admit any division of a day, but is to be aded done the first instant of the day. Arg. and judgment accordingly. Psych. 23 Ed. No. 137.

If the King's tenant pays his rent upon the day, the King's successor shall have it paid over again; though otherwise it is in case of a common perfon. Mich. 11 Jac. 10 Rep. 127. B. cites 41 Eliz. 3. 34.

Affonso, to pay 40 l. by 5 s. per month; where a man brings an action for breach, on the first day, it is to be accounted of the damages for the entire debt; for he cannot have a new action; but he must declare that the sum of 40 l. is not part of it. And by the 40 l. is not yet due. Gers. 3. 505. Mich. 16 Jac. 2. 10 Rep.

In preemption of law, when a thing is to be done upon one day, all that day is allowed to do it in, for the avoiding of fractions in time, which the law admits not of.
A. and par. 3. And y warr. H., fuch to that fometimes war nal freeman. 

The regime of parochial jurisdiction, involving the exercise of certain rights and powers by the clergy, is examined by Charles,. say thedi, which he holds the law from the oven, and the roof, or may make no fraction of a day, and by consequence he was of age. 2 Sick. 592. Trin. 11 H. 3. B. R. at Guildhall, per Holt, Ch. J. in Sir Robert Howard's cafe.

Privy Council, 1. of A. and par. 3. And y warr. H., fuch to that fometimes war nal freeman. 

That Lord was named difciffors in affizes to outh them of their friths, the writ shall abate, 9 H. 4. c. 5. or where default is made by collution, 8 H. 6. c. 26.

The court of barons of trefon and felonies, and other liberties re-united to the crown, 27 H. 8. c. 24. 

Franchises of the late abbeys revived, 32 H. 8. c. 20. 

Clerk of the crown prohibited to fuffe processes on inquiries for felonies goods, &c. against lords, &c. who have had their charters intoned and allowed, 4 & 5 W. 4. c. 20. 

Patefants may inroll fo much of their charters as concern the particular liberties claimed, 4 & 5 W. & M. c. 22. 

Sheriff fhall upon requeft name a deputy to refide in a franchise, 13 Geo. 2. c. 18. feft. 6. 

Cable jurisdictions in Scotland refumed, 20 Geo. 2. c. 47. 

For more learning on this fubjett, fee 12 Vin. Abr. tit. Francifce. 

Frantigrame, was the general appellation of all foreigners, unless they could prove themselves to be Engliihmen, 10 Ed. 1. c. 15. 

The court of barons of trefon and felonies, and other liberties re-united to the crown, 27 H. 8. c. 24. 

Franchises of the late abbeys revived, 32 H. 8. c. 20. 

Clerk of the crown prohibited to fuffe processes on inquiries for felonies goods, &c. against lords, &c. who have had their charters intoned and allowed, 4 & 5 W. 4. c. 20. 

Patefants may inroll so much of their charters as concern the particular liberties claimed, 4 & 5 W. & M. c. 22. 

Sheriff shall upon request name a deputy to reside in a franchise, 13 Geo. 2. c. 18. sect. 6. 

Cable jurisdictions in Scotland resumed, 20 Geo. 2. c. 47. 

For more learning on this subject, see 12 Vin. Abr. tit. Francifce.

Francifce, a freetholder, qui liber tenet. See For feofs of Land. Leg. Angl. cap. 29. 

Francis, was a French gold coin worth about a French flilling; but in computation was twenty fils, which is a livre, or pound; and about twenty pence in our money. 

Cowell, edd. 1777.

Francisalanon, (Libera Elenomyfrum) Signifies a tenure or title of land or tenements betowed upon God, that is, given to such persons as devote themselves to the service of God, for pure and perpetual alms; whence the benefactors or givers cannot demand any terrenal service, so long as the lands, &c. remain in the hands of the freee. With this agrreeth the Grand Conununy of Normandy, cap. 32. See Bradford, ib. 2. c. 10. & N. F. B. fol. 211. Britton makes another kind of this land, given in alms. but in not in free alms. As if an abbot, &c. holds lands of his lord for certain divine service to be done, as to sing every Friday a mass, or do some other things; and if such divine service be not done, the lord may disfain, and in such case the abbot ought to do fealty to the lord; and therefore it shall not be paid a tenure in frank-almaine, but a tenure by fealty of a service, which he cannot be discharged from by certain service be exprifed. 

Cowell. Tenures in frank-almaine are not taken away, 12 Cor. 2. c. 24. sect. 7. See Moftmaine.

Franci/Bank. See Free/ Bench. 

Franci, Libera chofan, is a liberty of free chafe, whereby all men having ground within that compass, are prohibited to cut down wood, &c. without the view of the forester, though it be in his own demeines.

Crom. Frufiel. fol. 178. 

Frankffe, (Libeum fruendum) Is by Bredes, tit. Deufa, numb. 32. thus defined; That which is in the hands of the King or lord of any manor, being ancient demeine of the crown, (viz. the demeines) is called frank-fe, and that which is in the hands of the tenant is ancient demeine only. See Reg. Orig. fol. 12. where- by that termeth to be frank fee which a man holds at and in his fee fief and by such fee service as is required in ancient demeine according to the custom of the manor. And again, in the fame book, fol. 14, there is a note to this effect, that the lands which were in the hands of King Edward the Conqueror at the making of Domains-Book, is ancient demeine, and that all the rest of the realm is called frank-fee, wherewith Fitzberths agrees in his Nat. Brevi, fol. 161, so that by this rule all the land in the realm is
was, That every free-born man at fourteen years of age, (religious persons, clergymen, and their eldest sons excepted) should find surety for his truth towards the King and his subjuments, or else be kept in prifon; whereupon a certain number of neighbours usually became bound a second time, and thus the business was committed by any one agent; So that whatsoever offended, it was withfoorth inquired into and examined for his offence. This was called the second pledge, and the fruit thereof derived, because it commonly consisted of the same household, and of every particular person, thus mutually bound for himself and his neighbours, was called decennier, because he was of one decennio or another. This custom was so long kept, that the sheriffs at every county-court did, from time to time, to the oath of young men, as they attained the age of fourteen years, and fee that they were comprised in some deern; whereupon this branch of the sheriff's authority was styled Vifus franci pliegi, View of frank-pledge. See the statute for view of frank-pledge, made 18 Ed. 2. See also Denjuven, Lect., Letter of frank-pledge, and Frietlurg. That we borrowed this custom of the Lombards, manifestly appears in the second book of Frudi, cap. 53. Upon which will rest Hestman, &c.

What articles were to be inquired into in this court, fee in Henri's Mirror of justice, lib. 1. cap. De sana et detraeta, &c.; and there these articles were in former times, fee in Ffurthermore, &c., and in Ch. 3. lib. 1. cap. De sana &c., &c. It is also seen in Bredt, lib. 3. tract. De sermo, cap. 10, viz. Omnium homium, fete liber, fete soever, aut eft vel deftefs off, &c. De fcurto et probumu, aut de aliis, &c., &c., &c. See also the following passage, viz. De sermo et probatum, lib. 3. cap. 11. Cf.

This appears very plain in Bradden's words, who tells us, That maritragium liberum eft, qui donatur valit quod tenuit data est quos et liberalia ad amni secundarii servitut quo ad dominium foeds poffet primum ; & quo idem ille cui data est mulum omnino et faciit servitutum diq ad turgium hereditem, & quo ad quantum graminum. And then he mentions how the degrees shall be computed, viz. the donee himself shall be in the first degree, his heir in the second, his heir in the third; and his heir in the fourth degree, and afterward the land was subject to all the former services, because it was supposed then to revert to the lord for want of heirs. So that it was exempted only unto etraenum graminum. The lands which were given in marriage, & servitut obligatio, were subject to all the requisition of the services, due to the lord, which the donee and his heirs are to perform for ever; but neither he, or the next two heirs were bound to do homage; that was to be done when it came to the fourth degree, and not before; and then both services and homage were to be performed. Genwel, edit. 1737.

Frank-pledge. (Franci pliegiwm, from the French franc, liber, and pledge, fidelfuir.) Signifies a pledge or surety for freemen: For the ancient custom of freemen of England, for the preservation of the publick peace, Vol. II. No. 60.

FRA
either ancient demeine or frank-fee. The author of Termus of Law defines frank-fee to be a tenure in fee-simple of lands payable at the Common law, and not in ancient demeine. Fisch. lib. 7. cap. 39, makes secludum francium off pro quo nullum servitium previa donatur dominus, et ab omnibus sese dividere, et tunc, ne eodem所以说, That therefore it is secludum improprium quia ab omnibus servitutur liberum. These lands which were held in frank-fee, were exempted from all services, but not from homage. Cowell.

Frank-law. (Liberia lege) Is the land or tenement, wherein the nature of fee is changed by forfeiture out of knights-service for several yearly services; and whence neither homage, worship, marriage, nor relief may be demanded, nor any other service not contained in the forfeiture. Britton, lib. 60. num. 3. See Ffurthermore. It was said that the land and the lord both the benefit of folding his tenants sweep within his monarch, for the managing his land. Keil, Rep. fol. 198. a. Gout vafollis olim et asfuffratarum de regum, manuriam & servitutum dominii solam competebat, says Mr. Sumter. It is compounded of the Fr. fous, i. e. fees, and the Latin, fol. 3. fol. 6. fol. 7. fol. 216. fol. 198. &c.

Frank-law. (Liber um lege) Is the benefit of the Common law of the land. Cops. Jef. fol. 156, describes what it is by the contrary; for he that for an offence, as conspiracy, &c. loathes his frank-fee, is said to fall into these mischiefs; first, That he may never be impealed upon for a greater crime; and, secondly, he is in danger of having his name daily exposed to the publick. Next, If he have any thing to do in the King's court, he must not approach thither in person, but appoint his attorney. Thirdly. His lands, goods, and chattels must be sequestrated in the King's hands; and his lands must be eclairred, his trees rooted up, and his body committed to prifon; for this the said attorney is entitled to by Cicis Lib. Aff. fol. 59. Conspiracy, 24 Ed. 3. fol. 3-f. See Conspiracy.

Frank-marriage. (Librimummaritium) Is a tenure in tail special, growing out of these words in the gift comprised. It is where the lord both the benefit of the conveyance of his estates, and the fiscal privileges and franchises of the same are conveyed to the donee, Tusa in quarto gradu devenenter praefatur, quod terra non sit diq ad se definitum hereditem donarum revorum, lib. 3. cap. 11. All this appears very plain in Bradton's words, who tells us, That maritragium liberum eft, qui donatur valit quod tenuit data est quos et liberalia ad amni secundarii servitut quo ad dominium foeds poffet primum, & quo idem ille cui data est mulum omnino et faciit servitutum diq ad turgium hereditem, & quo ad quantum graminum. And then he mentions how the degrees shall be computed, viz. the donee himself shall be in the first degree, his heir in the second, his heir in the third, and his heir in the fourth degree, and afterward the land was subject to all the former services, because it was supposed then to revert to the lord for want of heirs. So that it was exempted only unto etraenum graminum. The lands which were given in marriage, & servitut obligatio, were subject to all the requisition of the services, due to the lord, which the donee and his heirs are to perform for ever; but neither he, or the next two heirs were bound to do homage; that was to be done when it came to the fourth degree, and not before; and then both services and homage were to be performed. Genwel, edit. 1737.

Frank-pledge is a form of surety given to a lord in return for the protection of the tenant. This form of security was prevalent in England, especially for the preservation of the public peace, as mentioned in text. The nature of a frank-pledge was such that it required a surety for every truth towards the king and his subordinates, or else the surety would be kept in prison. The sheriffs were allowed to form a second pledge from the same household and every particular person, which was called the decennier. The custom of frank-pledge continued to be practiced until the statute for view of frank-pledge, made 18 Ed. 2. It was also referred to in other legal texts, such as Denjuven, Lect., Letter of frank-pledge, and Frietlurg. The practice was borrowed from the Lombards, as evident from the second book of Frudi, cap. 53. The laws and customs regarding frank-pledge were discussed in detail by various legal scholars and texts, including the works of Bradden, Cowell, and Genwel, among others. The text concludes by noting the ancient custom of freemen of England for the preservation of the public peace and the legal implications of frank-pledge.
lord. 6. 55.

Fraud. (Pron. T.) is deceit in grants and conveyances of lands, and bargains and sales of goods, 

e. G. to the
des-

FRA

lord. 6. 35. 55. 3. 16. 55.

fraud, e. covin, collusion and deceit, are often used as

FRA

fraudulent, e. covin to be a secret affront, determined

FRA

appears, in are always deemed odious in the eye of the law.

c. L. 3. 3. Lord Coke defines covin to be a secret affront, determined in the hearts of two or more, to the de-

FRA

fraud and prejudice of another. c. L. 357.

1. What acts are deemed fraudulent in the courts of Common laws, tho' not within the express provision of any act of parliament.

2. What acts are deemed fraudulent in the courts of equity.

3. Of fraudulent conveyances to defraud creditors and par-

FRA

chafers within the statutes 13 & 27 Elizabeth.

4. Other frauds relating to frauds, and cozen determined upon them.

5. In what court the fraud is cogesiable; and in what court the wronger is farther punishable than by making void the fraudulent act.

1. What acts are deemed fraudulent in the courts of Common laws, tho' not within the express provision of any act of parliament. Here it may be laid down as a general rule, that with-

FRA

out the express provision of any act of parliament, all deceitful practices in defrauding or endeavouring to de-

FRA

fraud another of his known right, by means of some artif-

FRA

cally device, contrary to the plain rules of common honesty, are condemned by the Common law, and punishable ac-

FRA

accordance to the heinousness of the offence. c. L. 3. 3. 3.

Dyer 295.

Such as causing an illiterate person to execute a deed to his prejudice, by reading of it over to him words different from those to which it was written. 1 Sid. 312.

So if one perdues a woman to execute writings to an-

FRA

other as her truften, upon an intended marriage, which in truth contained to such thing, but only a warrant of attorney to confes a judgment; c. l. 341.

Also it is a rule, that a wrongful manner of executing a thing shall avoid a matter that might have been exec-

FRA

uted lawfully. c. L. 35.

As if a man, that has a right of action to certain lands,

FRA

by covin caues another to out of the tenant of the land to the intent to recover it from him; and he recovers ac-

FRA

cordingly against him by action tried, yet he shall not be relieve d to the ancient right, but is in of the estate of

FRA

him that was the outher. 41 Ass. 28. 44 Ass. 29.

1. Rel. Avr. 420. 549. c. L. 357. Poph. 64. 100.

If so one man diffilies another of land, to which a woman hath title of dower of covin, and with content of the woman, to the intent to endow her, and he endows her in the county accordingly, yet this is of no effeet against the diffility, but he may outh him because of the covin. 44 Ass. 29. 1 Rel. Avr. 549.

If goods are fold in a market-overt, by covin, be-

FRA

f ete two, upon purpose to bar him that has a right, this shall not bar him thereof. 2 6ass. 713. c. L. 85.

As to frauds in contracts and dealings, the Common law subjects the wrong-doers, in several instances, to an action on the cafe; as a person having the poiffession of goods tells them to another, assuring them to be his own, when in truth they are another's, an action on the cafe lies. 1. Rel. Avr. 90. c. L. 47. 4.

But if A. poiffelled of term for years, offers to sell it to B. and says, that a strangers would have given him twenty pounds for this term, by which means B. buys it, tho' in truth A. was never offered twenty pounds, no action on the cafe lies, tho' B. is hereby deceived in the vallue. 1. Rel. Avr. 91. 101. 1 Sid. 146. 6ass. 20. 85.

But if on a treaty for the purchase of a house, the de-

FRA

fendant affirms the rent to be thirty pounds per annum, whereas in truth it is but twenty pounds, and thereby the plaintiff is induced to give so much more than the house is worth, an action on the cafe lies; for the vallue of the rent is the matter that lies in the private know-

FRA

ledge of the landlord and tenant, and if they affirm the rent to be more than it is, the purchaser is cheated, and ought to have a remedy for it. 1 Sol. 211. 1 Lev. 102. 1 Sid. 146. 1 Rel. 510. 518. 522. S. P. ad-

FRA

judged.

If a vintner sells wine, which he warrants to be found and not corrupted, or if a person sells any commodity which he warrants to be good, if it proves otherwise, an action on the cafe lies against him. 11 Hen. 6. 18. 57. 1 B. F. 53.

If A. is employed by B. to fail from England to the Indies, and covinns that he or his servants shall not trence import any callicoes, &c. and A. renais C, as his servanl in this voyage, and acquaints him with the cov-

FRA

nents; and notwithstanding C. falsly and fraudulently brings thence certain callicoes, &c. A. shall have an action against C. for tho' his action lies by a matter for a bare breach of his command, yet if a servant does any thing fallly and fraudulently to the damage of his master, an action will lie. 1 Sid. 295. 2 Rob. 83. 3 C. 1 Lev. 188.

If A. be excommunicated, and the letters of excom-

FRA

munication are brought to the parson of the parish to be read and published in the church against A. and the par-

FRA

son having malice to B. infects his name instead of the name of A. and provencies him excommunicated, an action on the cafe lies. 1 Rel. Avr. 100. c. L. 182.

If a man claees the castle of another into the lands of J. S. whereby he is subjett to the action of J. S. an action on the cafe lies against him. 1 Rel. Avr. 100. 101. C. Car. 325. 3 C.

If a person bring against B. and J. S. with an in-

FRA

tent to defeat him of the benefit of it, pursues B. to ac-

FRA

knowledge a judgment to a stranger, to whom in truth

FRA

he owed nothing, and thereupon his goods are taken in

FRA

execution, B. may bring an action on the cafe a-

FRA

gainst J. S. on this fraud and combination. Carib. 3. 3. 4.

bring the same goods and pending a writ to recover by covin, to avoid the extent thereof for the debt; yet when the covin appears upon the return of the ejector by the sheriff, the land so alienced shall be extend. 1 Rel. Avr. 549.

If a man makes a feoffment to the use of his fon, an

FRA

infant, and not in consideration of marriage, &c. and to

FRA

this purpose he makes conveyances to himself of which he is

FRA

attainted, this land shall be forfeited; for the feoffment was fraudulent against the King. 2 Rel. Avr. 34.

But if the feoffment had been made in pursuance of an

FRA

agreement entered into before, by which it was agreed in consideration of his wife’s settling her lands in such manner, that he would also settle his lands on his fon; this it seems is not fraudulent, but good against the King. 2 Rel. Avr. 34.

A. being in Narçãoe for a robbery makes a bill of sale of all his goods, to the intent to make a provision for his son, and is afterwards convicted and executed; and in an action of trover bought by the son against the heir of London, it was held by Holt Ch. 1. That the bill of sale was fraudulent; for tho’ a bill bona fide, and for va-

FRA

lueable consideration, had been good, because the party had a property in the goods till conviction, and ought to be reasonably fulfilled out of them, yet this conveyance is fraudulent at Common law, for it cannot be intended that there is no other remedy than to prevent a forfeiture, and de-

FRA

fraud the King. Sin. 357.

A man comes by hises corpus out of London, and had no caufe to leave that prison, but by his covin; it was ordered, that he should be in execution till he had paid the debt recovered against him after the writ brought, and that after he should be remanded to answer the plaintiff there. 1 Rel. Avr. 549. 1 C. Car. 128.

Hence
Hence it appears, that the making use of the proceeds of the law is not only a fraud, but an aggravation of the offence; as if a person intending to steal a horse takes out a reprieve, and thereby has the horse delivered to him by the thief; or if one intending to rifle goods, gets a reprieve, he can thereby purchase the goods at a bargain obtained, without any the least colour of title, upon false affidavits, &c. 2 Inf. c. 108. H. P. C. 63. Kel. 43. 1 Sid. 254. R. 276.

If A. on a quarrel with B. tells him, that he will not strike him, but that he will give him £2. A. shall go the next day to such a town about his business, and accordingly B. meets him the next day in the road to the same town, and affiixes him, whereupon they fight, and A. kills B. he feems guilty of murder, unless it appear by the whole circumstances, that he gave B. such informations, that he caused the murder of his wife, but for the purpose of sending him an opportunity of fighting. 1 Hawk. P. C. 81.

If a person takes a lodging in a house, under the colour thereof to have the opportunity of rifing it, and to elude the justice of the law, by endeavouring to keep out of the letter of it, by gaining a profition of the goods with which he has been furnished; or by the theft of any other felon, inasmuch as his whole intention was to defraud the law. Kel. 24. 81. 1 Shaw. 50. 51.

A man takes a wife, and afterwards marries another, his first wife living; and by deed gave part of his goods to his pretended second wife; it feems this is a fraudulent gift within 13 Eliz. and by the common law too, in respect of creditors, because made without any valuable consideration; for the second pretended marriage is far from coming under the notion of a consideration, that it is therefore void. 1 Shaw. 50. 51.

A man has a judgment for a debt against A. and takes out a fieri facias, and gets the threfir to feize the goods, but would not let him proceed further, but fuffered the goods to remain in the custody of A. the debtor, B. who has also a judgment against A. for a full debt, takes out a fieri facias, and the execution upon the goods, whether he could seize upon the goods; and it was held per cur. That he might, for the former was a fraudulent execution, and the threfir might very well return nulla bana upon it. Forf. 37.

If he be judgment in debt against J. S. and he fuffers himself to be outlawed for felony with an intent to defraud his creditors, and afterwards he purchas his pardon and hath refitution, the creditor may well take execution for this apparent fraud. Dyer 245.

2. What acts are deemed fraudulent in the courts of equity.

It is clearly agreed, that all covins, frauds and deceits, for which there is no remedy by the ordinary course of law, are properly cognizable in equity; and it is admitted, that the principal fraud were one of the chief branches to which the juridiction of Chancery was originally conf- fined. 4 Inf. 84.

But as every case on this head depends so much upon its own circumstances, it will be difficult to range them in any other order than by inferting the moft remarkable cases where the parties have been relieved against fraud and impostion. 2 Bac. Abr. 597.

As where A. being tenant in tail, remainder to his brother B. in tail, A. not knowing of the intail, makes a fettlement on his wife for life for her jointure, without leaving one shilling to his wife of a which B. who knew of the intail ingrosses, but does not mention any thing of the intail, because, as he confided in his anfwer, if he had spoke any thing of it, his brother, by a recovery, might have cut off the remainder, and barried him; and alfo' after the death of A. B. recovered in effe- ment against the widow by force of the intail; yet the was relieved in Chancery, and a perpetual injunction granted for this fraud in B. in concealing the intail, which if it had been disclosed, the fettlement might have been made good by a recovery. Pead. Chanc. 35.


So where a mother being absolute owner of a term, the fame being limited to her in tail, is present at a treaty for her son's marriage, and hears her son declare, that the term was to be sold to him at his mother's death, and is a witness to the deed, and, whereas, the revocation of the term is settled on the issue of the marriage after the mother's death, and she was compelled in equity to make good the fettlement. 2 Vern. 150.

So if A. marriage-fettlement being tenant for life of certain mills, remainder to his heir in tail, and the son who knows of the fettlement, encourages a perfon to take a lease for thirty years of those mills, and to lay out considerable sums of money in new building and improving them, in order to reap the advantage thereof after his father's death; this is such a fraud and practice, as ought to be dished as in equity, and it therefore was decreed in this case, that the fellees should hold for the residue of the term that remained unexpired after the father's death. 1 Mov. 357.

So where a younger brother, having an annuity of 100l. per annum, charged on lands by his father's will, assigns it to his younger brother, and the elder brother is encouraged to purchase by the elder brother, who told him, that he thought that there was a fettlement which would have this effect; and it was decreed, that those who derive from this fettlement should hold accordingly, without being obliged to pay the sum concealed, for the fraud. Pead. Chanc. 131. Barre v. Will.

If A. has a prior mortgage in an effeate, and is a witnefs to a subsequent mortgage, but does not disclose his own incumbrance; this is such a fraud in him, for which his incumbrance shall be polpfoned. 2 Vern. 151. Clare and Earl of Bedfor, cited to have been decreed. So where a council having a fiature from A. advises B. to lend A. 1000l. on a mortgage, and draws the mortgage, with a covenant against all incumbrances, and concedes his own fiature; and it was held, that the fiature should be polpfoned to the mortgage. 1 Vern. 370. Draper v. Bolaci.

So if A. being about to lend money to B. on a mortg. the ensuing mortgage, the proprietor D. who had a prior mortgage, whether he had any incumbrance on it, or no, if it be proved that C. went to him accordingly, and that D. denied that he had any, D.'s mortgage shall be polpfoned. 2 Vern. 554. Abbot v. Rhodes.

So if A. having a mortgage on a leasehold effeate, lends the mortgagee to the mortgage, with an intent to borrow more money; that is such a fraud in the mortgagee, for which his mortgage shall be polpfoned to the subsequent incumbrance. 2 Vern. 726. Peter and Rufl. Ab. Eq. 321. S. C.

If a pofter's, that is suffering he will intending to give the greatest part of his estate to his godson, and the other part to his wife, is persuaded by the wife to nominate her to the whole, on a promise that the wife would give the godson the part deligned for him; it will be decreed against the wife on the point of fraud, though there was
no memorandum thereof in writing pursuant to the statute of frauds and perjuries. 3. Decenn. 3. Devenish and Bain.,

So where the defendant, on a treaty of marriage for his benefit with the plaintiff, signed a writing com-

prising the terms of the agreement, and afterward de-

signing to elude the force thereof, and get hose from his

agreement, ordered his daughter to put on a good humour,

and get the plaintiff to deliver up that writing, and then

marry him, which he accordingly did, and the defend-

ant, being of a mind to effect so, she was married, and the plaintiff was relieved on the

point of fraud. 2. Inst. 20. Hulbery and Mellot. 2. Vern. 373. S. C.

The plaintiff’s wife, before her inter-marriage with the plaintiff, being prevailed upon a term for years, as execu-
tive holer of the house and lands, and which was liable as afts, to the payment of his debts, in order thereto, and to
raise money for that purpose, the plaintiffs, after their

marriage, entered into an agreement with the defendant for

care of the house in question, for the residue of the

term, for 450l. thereof 210l. was to be applied in

dischage of a mortgage thereon to one J. S. and the

remaining 240l. was to be paid to the plaintiffs; accord-
ingly the plaintiffs executed an affiignment of the house to the defendant, with a receipt indorsed thereon for the

whole purchase-money, but the defendant did not then

pay the purchase-money, but gave the plaintiffs the

money due, 210l. paid thereof to J. S. the mortgagee, and of the remaining 240l. to the plaintiffs; and for the non-

payment thereof the plaintiffs brought their bill to have a

specific performance and payment of the money ac-

accordingly; the defendant, by his answer, admitted the

whole cafe to be a true one for forth; but insisted, that

he ought not to be bound thereby, for that the plaintiffs

could not make him a good title, they having articles before marriage agreed to settle this house for the benefit of

themselves and their issue, of which he had no notice at the time of his purchase; and for a discovery of these

articles, and to have up his note on the payment of the

house, the defendant brought his cross bill; the plaintiffs by his answer admitted there were such ar-
ticles, but insisted, that the house lying in Middleton,
those articles were never registered in the Middleton of-

fice, and therefore void as against the plaintiff; but on a

hearing at the Rolls, the plaintiff gave up the house, and

he terms of the house thus disaffirmed with costs; and on

the cross bill decreed the note given for the purchase-

money to be delivered up on a re-assignment of the house, and the plaintiff in that cause likewise to have his

purchase-money, by reason of the plaintiffs fraud in concealing the ar-
ticles; which decree was affirmed by my Lord Chancellor


So in a cafe between two purchasers of lands in York-

shire, where the second purchaser having notice of the

first purchase, but that it was not registered, went on

and purchased the same estate, and got his purchase reg-

istered; yet it was decreed, that having notice of the first

purchase, though it was not registered, bound him, and

that his getting his own purchase first registered was a

fraud; theiquo fide afts being only to give the

parties notice, who might otherwife without such regis-

try be in danger of being imposed upon by a prior pur-
chare or mortgage, which they are in no danger of when

they have notice thereof in any manner, though not by

registry, 2. Inst. 358. 2. Brev.

A. failing in his trade, compounded with his creditors at so much in the pound, to be paid at the time therein mentioned; and he having failed in payment at the pre-
cise time, some of the creditors petitioned the court and

agreed to take over the hand and seal, he brought his bill to compel a performance thereof; but it appear-
ing in the cause that A. to draw in the reft of the cre-
ditors, had made an under-hand agreement with some of them, who were feemingly to accept of the com-

pofition, to pay to B. 200l. for himself and to R. 100l. and deceas upon the reft of the creditors, the court

would not decree the agreement, nor relieve the plain-
tiff, but diñmissed the bill. 2. Vern. 71. Child and Dau-

bridge.

So where A. was being intrusted by B. to receive interef-
t on talleys, receives the principal, and falls, and after-

wards compouds with his creditors, but B. would not come in, without having a greater composition, which

A. agrees to give, and A. brought his bill to be relieved against this under-hand agreement; but he having been guilty of a breach of trust, and also a party to the fraud, the court refused to give him any relief. 2. Vern. 626. Smell and Brackley.

If a security be obtained from a perfon by fraud and

practice, upon a pretence of a demand that is fictitious,
it will be relieved against in equity. 2. Vern. 123.

As where A. having the means of an attorney pre-

vailed with the defendant to make a devis in a house, and

defendant, by his answer, admitted the

whole purchase-money,

the payments, and to execute a deed, leading the uses thereof to A. and his heirs; and it being proved, that he, at the time of

leving the fine, declared the murt make use of some friend’s name in trust; and afterwards by will declared

he had levied such a fine only in trust, and the better to

enable her to dispose of the estate, and thereby devise it to

J. S. and his heirs, subject to the payment of her
debts; and although A. proved a great familiarity and

friendship between them, and that she had declared he

should have her estate; yet it was decreed, not only that

the estate should be liable to the creditors debts, but that

A. should convey the estate to devise and his heirs. 2. Vern. 307.

So where A. being to procure 1000l. for B. to bor-

rows it, and pays B. only 300l. and takes other 700l. him-

self and the remaining 400l. in goods, which prove

worthless, and for concurring and being whole, both gave a recognizance; yet that being sued against B.

he brought his bill, and had a perpetual injunction against

the recognizance on payment of 300l. only, and inte-

rest, by reason of some circumstances of fraud; and it

appearing to be a contrivance between A. and the lender,
to charge B. with the whole. 2. Inst. 370. 2. Smith. 2. Brev. 246. S. C.

Where a purchase was obtained from a man in his do-

gto, at a great under value, who was persuade of the

perons that treated with him, that they could help him
to a great match, and told him, that to quality himself

for the lady, it was necessary he should convert all his

lands into money, and they treated for the purchase in

a person's name who knew nothing of them after; and

for these circumstances of fraud the purchase was set aside. 1. Vern. 206. 3. Brev. Preced. Chan. 76.

Where an agreement for a purchase was obtained from a

woman of ninety years of age, and several infirmities and
circumstances, the court would decree, it to be carried into execution against the heir at law, nor to be delivered on a cross bill for that purpose, but left the parties to their remedy at law. 2. Vern. 632. 2. Brev.

There are likewise several infances, where a parol agree-

ment is intended to be reduced into writing, but pre-

vented by fraud, has been decreed in equity, notwithstanding the statute of frauds and perjuries; as where

upon a marriage treaty, instructions were given by the

husband to draw a settlement, which he privately con-

tramed, and afterwards drew in the wife’s name, and pur-

SUING and assurance of such settlement to marry him, and it was decreed, that he should make good the set-

tlement. 2. Inst. 19. and see iii. agreement.

So where a parol agreement was concerning the lending

of money on a mortgage, and the covenants pro-

posed were an absolute deed from the mortgagee, a

deed in the very name of the mortgagee for the mort-
gagee had got the deed of conveyance, he refused to

execute the defeasance; and it was decreed against him on the point of fraud. 2. Inst. 19.

If a son and heir apparent pursues his father not to

make a will which he intended to do for himself and his

young children, proposing to do for them himself; this is such a fraud, for which equity will decree the heir to give them the

fraction
wife, and all and every bond, fiult, judgment and execu-
tion at any time had, or hereafter to be had or made, to
or for any intent or purpose before declared and expres-
fd, shall be from henceforth deemed and taken (only as against
that person or persons, his or their executors, administrators,
and assigns, and every of them, whatsoever actions, suits,
and executions, accounts, damages, penalties, forfeitures,
heriots, mortuary rights and reliefs by such guidel,ru
creant or fraudulent devices and practices, as is afore-
said, are to be in any wise dificled, hindered, de-
dered, delayed or frustrated, to be clearly and utterly
void, frustrate, and of none effect; any pretence, colour,
feigned consideration, expressing of use, or any other
matter or thing to the contrary notwithstanding.

Provided that this act, or any thing therein con-
tained, shall not extend to any heredi-
tments, hereditaments, leases, rents, commons, profits,
goods or chattels, had, made, conveyed or afforded,
or hereafter to be had, conveyed, or afforded, which
shall have been good, valid, sufficient, and effectual,
in law, in fact, or in every respect, as to any person
or persons, bodies politic or corporate, or to any
and every person or persons lawfully having or claiming,
from, or under them or any of them, which have purchased,
or shall purchase, or shall have had, or shall hereafter
have, receive, or any part or parcel thereof, or any rent,
profit or commodity, in or out of the same, or
part thereof, shall be deemed and taken, only as against
that person or persons, bodies politic or corporate,
and all and every person or persons lawfully having or claiming,
from, or under them or any of them, which have purchased,
or shall purchase, or shall have had, or shall hereafter
have, receive, or any part or parcel thereof, or any rent,
profit or commodity, in or out of the same, or
part thereof, shall be utterly void, frustrate,
and of none effect; any pretence, colour,
feigned consideration, expressing of use, or any other
matter or thing to the contrary notwithstanding.

Provided that this act, or any thing therein con-
tained, shall not extend to or be construed to
impeach, defeat, make void or frustrate any conveyance,
assignment or lease, assurance, grant, charge, lease, estate,
interest, or limitation of use or uses of, in, to, or out of any lands,
tenements or hereditaments whatsoever, had or made,
or at any time hereafter to be made, for the intent
and purpose to defraud and deceive such person or persons,
bodies politic or corporate, as have purchased, or shall
afterwards purchase in fee simple, fee-tail, for life, lives,
or years, the same lands, tenements or hereditaments,
or any part or parcel thereof to formerly, hereafter,
granted, leased, charged, incurred or limited in use, or
to defraud and deceive such as have, or shall purchase
any rent, profit or commodity, in or out of the same, or
any part thereof, shall be deemed and taken, only as against
that person or persons, bodies politic or corporate,
and his or their heirs, successors, executors, administrators,
and assigns, and against all and every other person
and every person or persons lawfully having or claiming,
from, or under them or any of them, which have purchased,
or shall purchase, or shall have had, or shall hereafter
have, receive, or any part or parcel thereof, or any rent,
profit or commodity, in or out of the same, or
part thereof, shall be utterly void, frustrate,
and of none effect; any pretence, colour,
feigned consideration, expressing of use, or any other
matter or thing to the contrary notwithstanding.

Provided that this act, or any thing therein con-
tained, shall not extend to or be construed to
impeach, defeat, make void or frustrate any conveyance,
assignment or lease, assurance, grant, charge, lease, estate,
interest, or limitation of use or uses of, in, to, or out of any lands,
tenements or hereditaments whatsoever, had or made,
or at any time hereafter to be made, for the intent
and purpose to defraud and deceive such person or persons,
bodies politic or corporate, as have purchased, or shall
afterwards purchase in fee simple, fee-tail, for life, lives,
or years, the same lands, tenements or hereditaments,
or any part or parcel thereof to formerly, hereafter,
granted, leased, charged, incurred or limited in use, or
to defraud and deceive such as have, or shall purchase
any rent, profit or commodity, in or out of the same, or
any part thereof, shall be deemed and taken, only as against
that person or persons, bodies politic or corporate,
and his or their heirs, successors, executors, administrators,
and assigns, and against all and every other person
and every person or persons lawfully having or claiming,
from, or under them or any of them, which have purchased,
or shall purchase, or shall have had, or shall hereafter
have, receive, or any part or parcel thereof, or any rent,
profit or commodity, in or out of the same, or
part thereof, shall be utterly void, frustrate,
and of none effect; any pretence, colour,
feigned consideration, expressing of use, or any other
matter or thing to the contrary notwithstanding.
ments or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic or corporate, for any money or other good consideration paid or given, (the said first conveyance, alteration, or assignment, grant, transfer, charge or limitation, not by him or them revoked, made void, or altered, according to the power and authority referred or expressed unto him or them, in and by the said fictitious conveyance, assurance, gift, or grant,) then that the said former conveyance, assurance, gift, or grant, and all the said alterations, changes, or limitations, and hereditaments so far aggregated, fold, conveyed, demised or charged, against the said barrowees, vendees, lessees, grantees, and every of them, their heirs, successors, executors and assignees, and against all and every person and persons, which have, shall or may, out of this, from any of them, or any of any of them, shall be deemed, taken, and adjudged to be void, frustrate, and of none effect, by virtue and force of this present act.

Provided, that no lawful mortgage made, or to be made bona fide, and without fraud or covin, upon good consideration, shall be impaired or impaired by force of this act, but shall stand in the like force and effect, as the same should have done if this act had never been had or made.

In the construction of these statutes the following opinions have been holden.

That where in a form the tenant pleaded non-tenure, upon which they were at issue; and it was found, that before the writ purchased, the tenant enjoined divers persons, with an intent to deprive him who had cause of action to the lands, and notwithstanding the feoffor took the profits; and on this verdict it was adjudged for the defendants, that the sheriff and the feoffor, and the sheriff and the seignior, and their deputies, or any of them, or any of any of them, were void against him. 

Provided, that no lawful mortgage made, or to be made bona fide, and without fraud or covin, upon good consideration, shall be impaired or impaired by force of this act, but shall stand in the like force and effect, as the same should have done if this act had never been had or made.

That where in a form the tenant pleaded non-tenure, upon which they were at issue; and it was found, that before the writ purchased, the tenant enjoined divers persons, with an intent to deprive him who had cause of action to the lands, and notwithstanding the feoffor took the profits; and on this verdict it was adjudged for the defendants, that the sheriff and the seignior, and their deputies, or any of them, were void against him.

That in the construction of these statutes the following opinions have been holden.

That where in a form the tenant pleaded non-tenure, upon which they were at issue; and it was found, that before the writ purchased, the tenant enjoined divers persons, with an intent to deprive him who had cause of action to the lands, and notwithstanding the feoffor took the profits; and on this verdict it was adjudged for the defendants, that the sheriff and the seignior, and their deputies, or any of them, were void against him.

That in the construction of these statutes the following opinions have been holden.

That where in a form the tenant pleaded non-tenure, upon which they were at issue; and it was found, that before the writ purchased, the tenant enjoined divers persons, with an intent to deprive him who had cause of action to the lands, and notwithstanding the feoffor took the profits; and on this verdict it was adjudged for the defendants, that the sheriff and the seignior, and their deputies, or any of them, were void against him.

That in the construction of these statutes the following opinions have been holden.

That where in a form the tenant pleaded non-tenure, upon which they were at issue; and it was found, that before the writ purchased, the tenant enjoined divers persons, with an intent to deprive him who had cause of action to the lands, and notwithstanding the feoffor took the profits; and on this verdict it was adjudged for the defendants, that the sheriff and the seignior, and their deputies, or any of them, were void against him.
for the defendant, and adjudged for him, although it was objected, that he being no creditor could not take advantage of the statute, which being a penal law ought to be construed strictly. Latch 322. Sir Andrelei Tar-
oil ver. Tipper.

In this case makes a fraudulent lease of his lands, with an intent to deceive a purchaser, and dies before he makes any conveyance of the lands, and afterwards his son and heir, knowing or not knowing of this lease, conveys to J. S. for valuable consideration, J. S. shall avoid this lease within the 27 Eliz. 6 Co. 72. b. & 2 Vern. 305. 6

4. A. has a lease of certain lands for sixty years, if he live long, and forges a lease for ninety years absolutely, and by indenure rectifying this forged lease bargains and sells it for valuable consideration, the reft in the land to B. in this case B. is not a purchaser within the 27 Eliz. for though there were general words in the lease to pass the true interest, yet it is plain, that it was never contracted for, or originally included in the bargain; so that the bargain being made of an imaginary interest, the bargainee can come under the charac- ter of a real purchaser, to defeat the purchaser of the true lease of sixty years, which A. was really supposed of. Co. Lit. 3. b. Sir Richard Grahame's cafe.

A deed, though it be fraudulent in its creation, yet by matter ex post facto may become good; as if one makes a settlement of a fettlement, and the feoffee makes a feoffment to another for valuable consideration, and af- ford the first seffor also, for valuable consideration, makes a second feoffment, the feoffee of the seffor shall hold against the second feoffment of the first seffor. 1 Stew. 2. b.

A. agrees with the East-India company to go as pre- fident to Bengal, and enters into a bond of 2000 l. pe- nalty for performance of articles; but before he set out he made a fettlement of his estate, and among other things he declared the trufh of a term of 1000 years to be for the benefit of a portion for his daughter, who afterwards married J. S. a gentleman of 500 l. per annum, who before the marriage was advised by counsel, that the portion was sufficiently secured; and who afterwards on her death had, on her requir'g, expended 400 l. on her funeral, but never made any fettlement on her; and A. having imbricated the goods and flock of the company, to a considerable value, the question was, whether this fettlement was voluntary and fraudulent as to them; and it was held to be a prudent and honest provifion, without any colour of fraud; and though in its creation it was voluntary, yet being the motive and induftrum to the marriage, it made it valuable. Prec. Chan. 337. East-India Company v. Cleavel.

On the clause of the 27 Eliz. that if a man fettles lands to ues, with a power of revocation, and after- wards sells the lands for valuable consideration, that the former ufe shall be revoked; it has been hold'n, that if a man having a future power of revocation bargains and fells the land before his power commences, yet it is within the act; so if the power of revocation be refer- red with the confent of A. and he conveys his land, not having revoked, the conveyance shall be good; so if one having a power of revocation, extinguishes it by feoffment, and then fells, the fale shall be good. Mor. 605. 3 Co. 82. b.

If a gift be made to deceive one creditor, it is void against all creditors; but where-ever a conveyance is confessed fraudulent it must be with regard to real cre- ditors and purchasers for valuable consideration. 5 Co. 60. Mor. 615.

But thou a purchaser for valuable consideration within the 27 Eliz. hath notice of a fraudulent conveyance before he purchases; and yet after the fale, makes or avoids it; for the statute expressly avoids such conveyance, so that whether the purchaser hath notice of them, or not, is not material. 5 Co. 60. Gauche's cafe. Mor. 615.

If A. brings an action against B. for lying with his wife, after A. has affinities, and makes it appear in a. bill to pay the several debts mentioned in a schedule, and such other debts as he fhould mention within ten days, and A.

revers 5000 l. damage, and brings his bill to set aside this deed as fraudulent, and made to defeat him of his recovery; in this cafe A. can have no other relief but to come in upon the surprisus, after the debts mentioned in the schedule, which was appointed within ten days pursuant to it, are satisfiyed, the deed being neither fraudulent in law or equity, A. being no creditor at the time of executing it, and it was confentitious in him to prefer his real creditors to one, whole debt, when recovered, was franded only to malfeas. Prec. Chan. Lewkew and Freeman.

A. by bill of sale made over his goods to a trustee for B. who lived with him as his wife, and was so reputed, and he also purchased a lease of the house wherein he dwell'd, in the name of a trustee, and declared the trust thereof to himself for life, then in trust for B. during the residue of the term; and this bill of sale was held fraud-ulent as to creditors, in this case, as to the declaration of the trufh of the term, the court held it good, and not liable to A.'s debts, the term being never in him, and being so fettle'd at the time it was purchased, and A. might have given the money to B. who might have purchased it for herself, as is her own name, 2 Vern. 450. Fitchen and Lady Lidley.

Fraudulent conveyances and gifts are only void against purchasers and creditors, and shall bind the parties them- selves, and their representatives. Cre. Jaf. 270. See 2 And. 172.

And therefore where A. made a fraudulent sale of his goods to B. and delivered poiffession of some of them in his life-time, and the reft coming to the hands of his ad- ministrator, it was held in an action brought by B. for those goods, that the administrator could not plead the statute of 13 Eliz. nor maintain the poiffession of the goods even to satisfy creditors. Yelv. 196. Heaven and Load. Cre. Jas. 270. S. C.

But if a man makes a deed of gift of his goods in his life-time, by covin, to ouf his creditors of their debts yet after his death the vendee shall be charged for them. Th. Eliz. 1 1 H. 8. 34. 3 Eliz. 45. 5 Eliz. 9. 6 Eliz. 29. 41 Eliz. 54. 5. 97. C. 65. And. 95. Executor gran- d. Yelv. 197. Cre. Jas. 271.

Where by special verdict it was found, that A. being poiffessed of divers goods to the value of 250 l. by covin, to defraud his creditors, made a gift of his goods to his daughter, upon condition, that upon payment of 202. it should be void, and died; and that J. S. intermeddled with the goods; after which the daughter took poiffession of them by force of the gift, and then administration was granted to J. S. of all the goods, &c. of A. and in an action against him as executor, it was held, that the gift was apparenly fraudulent within the 13 Eliz. and that by his intermeddling, before administration granted to him, he became an executor de jure tort, and lia- ble as such; and that the law continued the poiffession in him from the time of his intermeddling to the time of granting administration. Cre. Eliz. 810. Beld and Stanhope. 2 And. 172. S. C.

If A. makes a bill of sale to B. a creditor, and after- wards to C. another creditor, and delivers poiffession at the time of the fale to neither, and after C. gets poiffession of them, and B. takes them out of his poiffession, C. can't maintain trefpofs, because the firit bill of fale is fraudu- lent against creditors, and fo is the fecond; yet they both bind A. and B.'s is the elder title, and the naked poiffession of C. ought not to prevail against the title of B. that is prior, where both are equally creditors, and poiffession at the time of the bill of sale is delivered over to neither. Trin. 1756. Baker and Lind. Per Holt Ch. J.

If a gift be made to deceive one creditor, it is void against all the creditors of the party within the statute. Mor. 615.

4. Other statutes relating to frauds, and cafes determined upon them.

Stat. 1 Ric. 2. cap. 9. No gift or feoffment of lands or goods shall be made by fraud for maintenance; and if any be made, they shall be held for none. And the differens shall have their recovery against the first defibors.
as well of their lands as of their double damages, without regard to such alienations, so that the deficiencies commence their suits within the year after the deficiency; and the same in every plea of land, where such feoffments are made by fraud, where the feoffors take the profits.

Stat. 4 Hen. 4. c. 7. The deficiencies mentioned in the fourth year by the sheriff shall be made against the third deficiency during his life, so as such deficiency take the profits at the time of the suit commenced. And as to other suits in plea of land, the defendant shall commence his suit within the year against the tenant of the freehold at the time of the suit, and said suit shall be brought, and the suits at the time of the suit commenced.

Stat. 11 Hen. 6. c. 3. In all manner of suits founded upon novel dignities, the deficiencies shall have their recovery against the defendants or their feoffees, so as they, against whom the suit shall be brought, take the profits.

Stat. 3 Hen. 7. c. 4. All deeds of gift of goods made of trust, to the use of the persons that made the same, shall be void.

Stat. 29 Car. 2. c. 3. (intituled, An act for prevention of frauds and perjuries,) 1. All leases of freehold or terms of years, or any uncertain interest in any lands, tenements, or hereditaments, made by persons held, leased for any one year, or by part i., and not put in writing and signed by the parties making the same or their agents thereby authorized by writing, shall have the force of leases at will only, and shall not either in law or equity be taken to have any greater effect; any conveyance for making farther grants of the same or any part thereof, nor the grant of any estate in the same, shall be void.

2. Except leases not exceeding the term of three years from the making, whereupon the rent referred shall amount unto two-third parts at least of the improved value.

Stat. 3. No leases, ealties, or intereleys, either of freehold or terms of years, or any uncertain interest, not being copiable or customary interest, of lands or hereditaments, shall be alligned, granted or surrendered, unless it be by deed or note in writing, signed by the party or their agents thereby authorized by writing, or by operation of law.

3. No action shall be brought whereby to charge any executor or administrator upon any special promiss to answer damages out of his own estate, or whereby to charge the defendant upon any special promiss to answer for the debt or default of another, or to charge any performing of any agreement, made by a person held fee simple, for marriage, or upon any contract or sale of lands or tenements or any interest therein, or upon any agreement that is not to be performed within one year from the making, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be made, writing, and signed by the party or their agents thereby authorized by writing, or by operation of law.

Stat. 17. No contract for the sale of goods, for the price of 10l. or upwards, shall be good, except the buyer accept part of the goods, or give something in earnest to bind the bargain, or that some note in writing of the bargain be made and signed by the parties to be charged by such contract, or by their agents lawfully authorized.

The plaintiff declares, that in consideration the promiss to marry the defendant, he promised to marry her at the death of her late husband, but the defendant refused so to do, and has since married A. B. which the lays to her damage 1000l. and upon such an affirmity obtained a verdict for 200l. The defendant moved in arrest of judgment, that this promiss is not good in law. But after argument it was held, that this is not within the class of deficiencies, and plaintiff is not limited only to contracts in consideration of marriage; and that the cafe in 3 Lev. 411. has been contradicted by latest resolutions. The defendant having married another person, has disavowed himself to perform the promiss, and therefore the plaintiff cannot apply to the fififinal court to have his deficiency recovered, nor does he regard the damages here. Stran. 34. Hil. 3 Gen. 1. Cork & Bailey.

The plaintiff married the defendant without any previous settlement of her estate, which was a very confi-

derable personal estate. Quarrels happened between them soon after the marriage, and the exhibited her bill here, to oblige him to settle her own estate to her separate use; setting forth, that upon his addressing her, she inflicted on having the entire disposall of her own estate, and drew up a short writing with her own hand to that purpose; that he was not present, and refused to give her her own premises of advising with council, and having writings more at large prepared; that the frequently demanded of him to execute such writings, which he constantly promised, as soon as satisfied by council, but delayed it till the married him; that he promised to try it, but refused to give her off of her promise, and he answered her by another letter, that he thought it very reasonable she should have the disposall of her own estate, and that he never intended the contrary, but that the should command her own fortune as he pleased.

The defendant denied he signed such agreement in writing, and as to any parol promiss, he pleaded the statute of frauds and perjuries, 29 Car. 2. c. 3.

It was infilled on for the plaintiff, that the court frequently compels the execution of promisses not solemnized according to that statute, where fraud and trick appear, and that the court will not receive the promiss, unless made by written instrument, or the promiss be proved by two witnesses, as in the case of marriage, as it is here by the marriage, which was the consideration of that promiss. But Parker Lord Chancellor allowed the plea, and said this was a breach of promiss, which is a forti of injury that this court does not take cognizance of or take cognizance of or as no breach of promiss, and that there is no real real of settlement; he had impounded and had not this, as it might have made it a proper case for equity; but here is nothing of any such decrees: the marries him on his word and promiss, without writing, and that is the very case the statute intended. To say therefore the agreement is to be proved in this court, because performed in part by the marriage, is to break the very words and intention of the statute, which has put this very case, and says it shall not be binding.

The plaintiff afterwards amended her bill by a further charge, that in order to induce her to marry him without a previous settlement, and to secure the performance of his promiss in executing it afterwards, he promised to take the facrament on the marriage accordingly; that after the marriage he wrote a letter, wherein he promised to make such settlement, and that he was ready to sign the writings according to her desire, and that as part of the agreement was the facrament on the marriage, but says he did it in compliance with a custom established in the Romish church (of which he was a member) of receiving the facrament on their marriages, and not to give any facation to this promised agreement. And as to the letter, he doth not remember the particulars, but doth not either perform the promiss or not to sign any writings; it only related to some proposals he had made of fettling a sum of 1500l. on her, and which he did soon after. He then pleads the statute of frauds and perjuries again.

Lord Chancellor: The case is very much altered now, from what I was at first. Then it flowed purely on the parol promiss before marriage, upon which there was no colour to relieve the plaintiff. But such parol promiss on marriage is sufficient consideration, to support a settlement made agreeable to it after marriage. This has been settled in many cases. The promiss is to establish a promiss in writing after a marriage. Now here is great evidence of such a promiss made in writing after marriage; he doth not deny his writing, that he was ready to execute the writings as he declared; but avoids it by saying, they referred to promiss made in writing before marriage, which related to the marriage and her fortune, and he never defayed any such settlement, it doth not appear when he did it; and I am very jealous he did it since the amended bill. His answer to the charge of receiving the facrament in consideration of his promiss, is not at all satisifiable. He might have had no occasion to promiss the facrament, but on that account; and though he might receive it in compliance with the custom of his church, yet that is very consistent with his Layings held of that solemn act of devotion, to testify his sincerity.

Therefore
Therefore let the plea stand for an answer. Stran. 326.
Mich. 6 Gen. 1. Countys Desaguer of Mountague v. Max-
well. 
S. agreed to fell an estate in land to O, and wrote to him to deliver the title deeds to O, be having agreed to 
dispose of it to him. Afterwards S. sold this estate to 
D. who had notice of this transaction: O. brought a bill 
against S. and D., insinuting, that the letter brought 
the cause out of the statute of frauds and perjuries. But 
Lord Chancellor held it not, because the agreement 
does not appear in it. Stran. 426, Easf. 7 Gen. 1. Sec-
good v. Neal.

The defendant before a chariot, and when it was 
made refused to take it; and in an action for the value, 
it was objected, that they should prove something given 
in earnest, in note in writing, but there was no de-
lever of either of the goods. But the Chief Justice 
ruled this not to be a case within the statute of frauds, 
which relates only to contracts for the actual sale of 
goods, where the buyer is immediately answerable, with-
out time given him by special agreement, and the seller is 
to deliver the goods immediately. Stran. 506. Hil. 6 

There was a parallel agreement for a lease of twenty-
one years, upon which the lessee entered, and ejoined 
for five years, and then the Earl brought a bill against 
him to oblige him to execute counter-part for the 
reversion. The lessee pleaded that, whether that 
lease held the statute of frauds and perjuries, which on argument was overruled, the 
agreement being in part carried into execution. 

By Hall Ch. Juflice, if A. promise B. being a 
forger, if it B. cure D. of a wound, he will fee him 
paid; this is only a promise to pay if D. does not, and 
therefore it ought to be in writing by the statute of 
fruds. But if A. promise in such cafe, that he will be 
B.'s paymaster, whatever he shall decease; it is imme-
diately the debt of A. and he is liable without writing. 
Lord Raym. 920.

Affirmation of a traderman's goods as a security for 
money borrowed to buy those goods; where it shall be 
valid, though the goods remain to be sold in the traderman's 
pollifion. 
Lord Raym. 286.

Leaving goods sold in execution to be delivered by 
the defendant, not found. Lord Raym. 725.

In consideration that the plaintiff would let his horse 
to j. S. &c. is within the statute: otherwise it had 
been in consideration that he would let J. S. ride the 
horse. Lord Raym. 1085.

To pay by instalments, that the plaintiff 
will forbear to sue a debtor, is within the statute. 
Lord Raym. 1087. Stran. 873.

5. In what court the fraud is cognizable; and in what 
causes the wrong-doer is further punishable than by 
making void the fraudulent act.

It is clearly agreed, that the court of Chancery had 
always an original jurisdiction in relieving against frauds, 
and that at this day it is the only court where matters of 
 fraud are properly cognizable. 2 Fern. 261, 2.

But it hath been doubted, whether a court of equity 
could give relief on the statutes which make conveyances 
and dispositions fraudulent against purchasers and credi-
tors, being introductory of new laws; but it is now set-
tled, that such relief may be proper in equity, and that 
directing an issue to be tried at law is only discretionary 
in the court. 

A. recovers a judgment against the defendant's father, 
and the plaintiff (the thief's bailiff) levied 4 l. of goods in 
pollifion of the defendant's father; the defendant 
brought a crover against the plaintiff, pretending the goods 
to be his, because the landlord had leased them for rent, 
and sold them to him; but on evidence the sale was 
proved fraudulent, and that the father was in possession 
all along, and paid taxes for the farm and goods, &c. 
and therefore the judge gave direction to the jury to try 
for the delivery of the goods; but because he had not proved 
a copy of the judgment, as it was held to be ought, for 
Vol. II. No. 80.
covenent or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, mentioned in the flature, and being privy and knowing of the same, or any of them, shall writing and willingly putting in writing, maintain, justify or defend the same, or any of them as true, simple and done, had or made bona fide, and upon good consideration, or shall affign or alienate any the lands, tenements, goods, leafes, or other things menitioned in the flature, to him or them conveyed, or any part therefrom, shall freely and for better of one year's value of the said lands, tenements and hereditaments, leafes, rents, commons, or other profits of or out of the same, and the whole value of the goods and chattels, and also so much money as are or shall be contained in such covenant, or shall be conveyed to one moiety whereof to be held in the Queen's Majesty, her heirs and successors, and the other moiety to the party or parties by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance; bonds, suits, judgments, execution, leafes, rents, commons, profits, charges, and other things aforesaid, to be recovered in any of the Queen's courts of record, by action of debt, bill, plaint or information, wherein no effion, protection or wager of law shall be admitted for the defendant or defendants, and also being thereof lawfully convicted shall suffer imprisonment for one half year without bail or mainprize.

In London op. 4. vide, now maintain, justify and defend apud L. of a fraudulent gift of goods, made by A. to the defendant to defraud the plaintiff of his debt; the defendant faith, that A. gave these goods to him at C. bona fide, and that he justified the gift there, and traverse the justifying at L. and ruled to be no plea; for 3 E. 3. Ed. refirns common informers to bring their actions only in the proper county where the offence was done; yet that does not extend to a party grieved, but that he may inform in what county he pleases, for he is not a common informer. 

Frau legis. If a person having no manner of title to a house, procure an affidavit of the service of a decla-

Fresbourn. Signifies a person who fights with others in order to gain a fortune.

Freehold. (Franchum.) In some places they claim as a free-hold, more or less ground beyond or without the fence. In Man. Engl. 2. par. 41, it is said to contain two foot and a half, viz. Et totam bosiem vacat. Brentwood cum frank bode, et diuorum cubiculorum sedidum. Maitland's Antiq. vol. 1. p. 52. 3.

Free-hold. (Libera capella.) In the opinion of some is a chapel founded within a parish, for the service of God, by the devotion and liberality of some good man, over and above the mother church, to which it was first for the parochioners to come or not come, and endowed with money and other property, the income of which is their own.

Fraus legis. If a person having no manner of title to a house, procure an affidavit of the service of a decla-

Freere. Sit. Lib. 2. cap. 4. 3. Free chapei of St. Martin le Grand, 3 Ed. 4. cap. 4. and 4 Ed. 4. cap. 4. See, Cowell, ed. 1777.

Freehold. See Freehold.


Freehold. See Freehold.

Freere. (Franchum bacellum, that is, freres liberi.) Signifies that ellate in copyhold lands, that the tenure is 1000 miles, or so, over the land, and that one of her husband, for her dower, according to the custom of the manor. (Kitchen, fol. 102.) As at Orleton in the county of Hereford, the relief of a copyhold tenant is admitted to her free-bench, that is to all her husband's copyhold lands, during her life, at the next court after her husband's decease, before the deed of settlement, cap. 1. 3. hath these words, Confirmatis eto in partibus illius, quod uxor maritemus defunturam bakenen francoe bancum juum de terris Secumamun, & tenent summae deiti.
cation of a statute merchant, until he be satisfied the debt, "coria al liberum tenementum fist, and affigntus fuis.

And fol. 73. the fame may be read of a tenant by

right; the meaning is, not that they are freeholders, but as freeholders for their time, that is, until they have gathered profits to the value of their debt. Freeholders in the ancient law of Scotland were called Milties. Skene de verbor. fuga, verb. Milties. Doctor and Student, That the possession of land after the law of England, is called Milties. 12 M. & C. 74. 75.

No man to be put out of his freehold, without being brought to answer, 9 H. 3. ft. 1. c. 29. 3 Ed. 1. c. 24. 25 Ed. 3. ft. 5. c. 4. 28 Ed. 3. c. 3. Nor be compelled to answer for his freehold without the King's warrant, 54 Ed. 3. ft. 22. 15 Ric. 2. c. 16. 16 Ric. 2. c. 17. 6 Ric. 3. c. 21. Littitudes.

Freeholders, Are such hold any freehold eftate. By the ancient laws of Scotland, freeholders were called Milties; and freehold, in this kingdom, hath been sometimes taken in opposition to villegage, it being lands in the hands of the tenant, to the use of tenants, by certain tenure, who were always freeholders, contrary to what was in the possession of the inferior people, held at the will of the lord. Lambrard.

Freeman, (Libere hom.) is one distinguished from a slave, who are born or made free. See London.

London, as any other place, having no monopoly paid for carriage of goods by sea; or in a larger sense, it is taken for the cargo, or burden of the ship. Lex Mercat.

Where a ship goes from one port to another, and there unloads, and then goes over to another place, but in her passage, before her second unloading, is lost, the owner shall recover for freight, but from the time of the loading to the unloading, and nothing for the second loading; for if a ship be lost before unloading, no freight shall be paid, but every one must bear his part of the loss; and this is the reason that mariners lose their wages in such cases. Sid. 253. Hill. 16 & 17 Car. 2. B. R. Annu.

If a merchant in put more things than were conditioned, in such case the mayer may take what freight be pleases. Mal. Lex Merc. 99.

If a ship be freighted by the great, suppose 200 tons, for the carriage of goods: and the said sum of 500l. is to be paid, aloth the ship were not of that burden. Mal. Lex Merc. 100.

If the like ship of 200 tons be freighted by the ton, and full laden, according to their charter-party, then freight is to be paid for every ton; otherwise but for so many as the said lading in the name was. Mal. Lex Merc. 100.

If a ship of 200 tons be freighted, and named to be of that burden in their covenant, and, being freighted by the ton, shall be found to be less in bigness, there is no more due to be paid than by the ton, for so many as the said deck did carry and brought in goods. Mal. Lex Merc. 100.

If the like ship be freighted for 200 tons, or thereabouts, this addition (or thereabouts) is within five tons commonly taken and understood, as the moiety of the number of 10, whereof the whole number is compounded. Mal. Lex Merc. 100.

If the like ship be freighted by the great, and the burden of it is not expressed in the contract, yet the sum agreed upon is to be paid without any cavillation. Mal. Lex Merc. 100.

If freight be agreed upon for the commodities laden, or to be laden, for a certain price for every pack, bale, butt, and pipe, &c. without any regard to the burden of the ship, but to give her the full lading: no man maketh doubt but that the same is to be performed accordingly. Mal. Lex Merc. 100.

If freight be contracted for the lading of certain cattle, or the like, from Dublin to Wigt-Cliffer, if some of them happen to die before the ship's arrival at Wigt. Cliffer, the whole freight is become due, as well for the dead as the living. Mal. 250.

If freight be contracted for the transporting of women, and they happen in the voyage to be delivered of children on shipboard, no freight becomes due for the infants. Mal. 256.

If goods are sent on board generally, the freight must be accordingly to freight for the like accustomed voyages. Mal. 257.

If goods are brought into a ship secretly against the mayer's knowledge, the same may be subject to what freight the mayer thinks fitting. Mal. 252.

For more learning on this subject, see 13 Vin. Abr. iii. Freight.

French. King William 1. called The Conqueror, being a native of Normandy in France, caused the laws of this realm, in his time, to be written and pleaded in the French language. But by flar. 36 Ed. 3. c. 15. it is declared, "That all pleas which shall be pleaded in any courts whatsoever, before the King's judges whatsoever, or in his other places, or before any of his other ministers whatsoever, or in the courts and places of any other lords whatsoever within the realm, shall be pleaded, defended, answered, debated, and judged in the English tongue, and not in French."

It seems, feys, there is another Hawkins, to have been always taken, that appeals are not within this statute, but that they are to be arraigned, and the plea of the defendant is to be read in French, in the same manner as anciently; and thus, continues the featant, I have often known it done in many other cases: but upon what reason this difference between appeals and all other prosecutions is grounded, I have never heard. 2 Hawk. P. C. 308. See English.

French goods and merchandise. French ships are liable to 5l. per ton duty, 12 Car. 2. c. 18. fol. 17. 12 & 14 Rich. 2. c. 2. & 3.

French goods liable to 25l. for every hundred pounds value, 4 W. & M. c. 5. sect. 2. & 7 & 8 Will. 3. c. 20.

French or pearl barley, to what duties liable, 22 Car. 2. c. 13. sect. 3.

Addition duty is not to be paid according to the oath of the importer, but according to the value in the book of rates, 11 Geo. 1. c. 7. sect. 3.

No woolen goods of France to be imported into any port in the Levant seas, 32 Geo. 2. c. 34.

Frenchman, (Francigena,) was heretofore wont to be said for every man of France. Bron. lib. 3. tracts. 2. cap. 15. See England.

Frencllesman, Was the Saxon word for him that we call an outlaw, and the reason might be because upon his exclusion from the King's peace and protection, he was denied all help of friends after certain days. Nam justicii et amici sui summa. lib. 3. tract. 2. cap. 12. num. 1. whole words are these, Tamen honestum Angli (utEEEEEE) & aliis nomine antiquissimi fiet nominari, f. frencllesman, & sic obdatur quod justicii amici, & unde fi quis talius solum usi solum, &ius cfrumusans, &ius cfrumusans, ipse suasus fieri potest, vel secuturur, edem pueta pueta dies, quod caritatem autem, ita frase sacra orarum, mea quae cfrumusans summa fuit & viva, nisi RomanusCare manu sui gratia.

Frensnte, Was a muld exacted of him, who harboured his outlawed friend: 'Tis derived from the Sax. frend, amiral, and sotte, mulde. Cowell, edit. 1727.

Freske, Fresh water, or rain, and land-flood. Charta Antiqu. in Sommer de Getechia, p. 132.

Frescf diffinum, (Frifca diffifum, from the French fris, 1. recentis, and diffif, a pellifum ejusce.) Signifies such a diffisum as a man may seek to defeat of himself, and by his own words, without the help of the King or judges. Britton, cap. 5. and its use is as is not above fifteen days old. Britton, lib. 4. cap. 5. writes at large of this matter, concluding that it is arbitrary, and so doth Britton, cap. 65. But cap. 43. he feemeth to say, That in one cafe it is a year. See him also, cap. 2.

Frescf fine, Is that which is levied within a year past. Wills. 2. cap. 45. Anne 13 Ed. 1.

Frescf force, (Frifca foris,) Is a force done within forty days, as seems by F. N. B. fol. 7. for if a man be distrest of any lands or tenements within any city or borough, or deferted from them after the death of his ancestor,
since he, or after the death of his tenant for life, or in tail; he may, within forty days after his title accrued, have a bill out of Chancery to the mayor, &c. See the rest there, and Old Nat. Br. fol. 4.

Freed fuit, (Recenti incausis) Is such a present and earnest money, as is, for the purpose of securing the future offens of the causes, committed or discovered, until he be apprehended. And the effect of this in the pursit of a felon is, that the party pursuing shall have his goods again, whereas otherwise they are the King's. Of this see Stanw. Pl. Cr. lib. 3, cap. 10. & 12, where he treated, at large, with great labour, it is to be accounted freth, and what not. And the same author in his first book, cap. 27, faith, That froth fuit may continue for seven years. See Coke's Rep. lib. 3. Ridgeway's cafe. Fright fuit feemeth to be either within the view or without; for Mensual faith, That upon frott suit within the view, trespassers in the forest may be attached by the officers purfuing them, though without the limits and bounds of the forest. Cap. 10. per tonum. Cowell. It seems to be has been sancabolently, that to make a freth fuit, the party ought to have raised a hue and cry with all convenient speed, and also to have taken the off- ending party at this day, and seems to be feasible, that if the party hath been guilty of no gross neglect, but hath used all reasonable care and diligence in inquiring after, pur- fuing, and apprehending the felon, he ought to be allowed to have made sufficient fright suit, whether any hue and cry were given or not, and whether such offender be taken by means of such pursuit, or without any affittance from it. 2 Haccl. P. C. 169. See Duc. & Cry.

Fretum Britannicum, The frights between Dover and Calais.

Fretum, Fright money, Acquitarii factiis fret- tis, & secundum quod maritimi curandum nuncio prohibe pojunt quod erit debita de fretto. — Clasw. 17 Feb. 16. m. 6.

Frat or Frater, (Lat. frater, Fr. frere) An order of religious persons, of which, there are reckoned the principal branches, (Stat. 1 Hen. 4, cap. 17.) viz. Minor, Grey friars, or Franciscans, Augustinians, Dominics, or Black friars, and White friars, or Carmelites, from which the rest deflect. See Zachius de Repub. Eccles. pag. 380. and Lyndwood, tit. de Relig. Dominus, fol. 1. verbo Sancti Augustini.

Fratres Obereferuentes (From the Latin) Is an order of Franciscans, which are Minoris, as well the Observant at the Conventual and Capuchines. Zach. de Repub. Eccles. tradit. de Regular, cap. 12. Thence we find mentioned anno 25 Hen. 8. cap. 12. They are called Observant because or they are not combined together in any cloister, conven- t, or corporation, as the Conventuals are; but only tie themselves to observe the rites of their Order more strictly than the Conventuals do; and upon a furliness of zeal separate themselves from them, living in certain places, and companies of their own chuch; And of these you may read Hopjohnian de Orig. & Propriet. Monachus, fol. 28. cap. 38.

Friburg or Fribourg, (From the Saxon frith, i.e. pox, and borg, i.e. fuburgo.) Is the same with freth, the one being in the Saxons time, the other since the Conquest; wherefore, for the understanding of it, read Fright pledge, and the laws of King Edward set out by Lombard, &c. 1439. In these words it is obvious, that, summa & maxima securitas, per quern sumus fata, frateriniur solvitur, viz. ut unguifque flabilitat, & fet fiducias, securitatis, quam Angli vacuo (incoherenter) jis tamen ierro- recemus dictum eadem (tienammatale) quod sumat latine dictis, & habet minimum numerum, &c. Every man in this king- dom was allowed to hold a fright, and to be pursued through ten families, who were pledged or bound for each other to keep the peace, and if any offence was done by one, the other nine were to answer it; that is, if the criminal fled or suppose, they had thirty days allowed to apprehend him; if he was not taken in that time, then he was the frater, (that is, the principal pledge) of the ten, should take two of his own number, and the chief pledges of three neighbouring freth, with two others out of each of these frith, in all 12 men, whereof four were to be the chief, and the other eight were to be of the better sort, and those were to purge themselves and their frith, of the forfeiture and penalty, which they solicited, as if he could not do, then the principal pledge, with the other eight whom he did belong, was to make full satisfaction; but afterwards it became difficult to get the three neighbouring freth to join with the other, and therefore those other nine made oath that they were not guilty, and that they would bring the criminal to judgement if he should be taken. Brudin mentions Fridenburgum. lib. 3. trad. 2. cap. 10. in the words Archiepiscopius, episopi, comites & barones & amnes qui habent fectis sectis, tel & teum, & hujusmodii lib- eratesses, milites fuis & propriis servientes, armigeres, &c. desperiores, & pinixeres, camerarist, capitis, pablis, Jus fide friburgi bohara dehent. Lem. & jih, Jus armigeres & illis fide fereanteiis; quod si qui forificent, is domini fui habent eos aduationem, & non habenterant, jucund pro eis forific- faturam. Et sic observandum erit de omnibus allis qui sunt de aliocibus mancipiis. Where we learn the reason, why great men were not combined in any ordinary team, because they were not permitted to have the benefit of fright suit, and for their mendicant friars, no less than the ten were one for another in ordinary team. See Skene, verbo Friburg. Fiate writes it friburg, and uthe for the principal man, or at least for one of the dozen, lib. 1. cap. 47. of their team, parte pofer, annual, in Hen. 2. fol. 83. But Spedman says, The practice was difference between frie and frith, saying, The firt signifies liber securitas, or securitate; the otner pacis secures.

Friboll and Fribolbell, (from the Saxon frith, pac. fes. fedis, cathedra. a feth, locus.) A sort, chaff, or place of peace. In the charter of immunities granted to the church of St. Peter in York, by Hen. 4. confirmed, An. 5 H. 7, thus,— Quod si aliquid, ut supra spiritus agitata, diabolus ausu quosqusum capare presumpserit, in cathedra lapideae justa auterlo, quod Anglici vacuo trid- follo, i.e. cathedra quiecedatina vit pacis; jous tam fregi- tosly fociis facile ademinturi, habet nullo juis juis et secunolo pacis nomus claudatibus, sed apud Angles forificaturo, eft, fimne emenda, vocabulo. Of these there were many others in England, but, the most famous at Beverley, which had this inscription, Hac fide lapideae tridfollocie dicitur, i.e. pacis cathedra, ad omnem que fingis populo personam tutam prefat, & decem gentes percutiat, dicatur. And this signifies also a palace, which is usually a privileged place.

Fributwe quod Fertuit: Tis a marl paid by him who defere the army: From the Saxon fyrh, expedi- tis, and, veite, multa.

Friends man. See Recorded man.


Fright, A frethman: From the Saxon, freed, liber, and luffin, progenit. Cowell, edit. 1727.

Fringes. Penalties on selling, exporting or importing foreign fringes, 13 & 14 Car. 2. c. 13. or importing gold and silver fringes, 66 & 67 Will. 3. c. 39. & Ann. c. 26. sect. 66. 15 Geo. 2. c. 20. sect. 7. Exporter of silk fringes, what to be allowed, 8 Geo. 1. c. 15. f. 1.


Frispect, It deduced from the French friper, inter- preted as if that (cewth up and cleaner old appalled fell again) It is used for a kind of broker, in flat 1. jac. c. 21.

Frisites, Uncultivated land. Et de communijs publica in frisit & dominicis fuit. Monaff. 2. em. pat. 56.

Frit. A wood, from the Saxon, frith; pass for the English, where a wood is a range of trees; and they made them fastaries. Cowell, edit. 1727. See Frithe.

Fritheborh. Pacis violatio, the breaking of the peace. Leg. Ethelred. cap. 6. See Frithe.

Fritgerher. Inter legem presteramum Renembrembunum, cap. 48. & 50. 3 republica testamenti, qui tibiique dicitur, habebus tavis in tavo alcasis etre legem, autorum.
F R E.

tem, &c. Mr. Sower thinks it a fort of jubilee, or yearly meeting for peace and friendship, from Sax, frith, peace, and year, not for office or fraternity. See Fridge, Fridgeholme, The fame which we now call a Guildhall, or a fraternity or company. Conwel, edit. 1727.

Fridehannum. One who is a fraternity or company. Conwel, edit. 1727.

Fridgild is mentioned in the records of the Country Palatine of Clefder: Per fritimote, J. Stennel Arm., clamores capro amovitur de villa de Otton que eft in fidea femina & manuum de Aifard infora ferfarata de mer 10 ful, qua Cnites Cofrida ante confectionem curie pradit. 33, 44, Pl. in Itrin. apud Celt. 14 Hen. 7.

Fritcheon and Fritcholde. Among the custom of the abbey of Saint Edmionbury, formerly declared by the abbot, prior, and convent, 17 Jul. Novemb. 1288. signifies plain or even, not fried with bacon intermixed. Conwel, edit. 1727.

Fruit and fruit trees. Offence of barking, 37 Hen. 8. c. 6. fol. 4. Taking up, or otherwise spoiling, 43 Eliz. c. 7. The water measure of fruit ascertained, 4 Ann. f. 1. c. 15. Cutting down fruit trees, how punished, 1 Geo. 2. f. 1. c. 48. 6 Geo. 1. c. 16. See Trees, Wood.

Fruygul, an old Saxo word, which signifies the first payment made to the kindred of a slain person, in recompense of his murder. Leg. Edmond, cap. ultime.


Fruylas terce, Uncultivated and defart ground. Mon. tom. 2. p. 337.

Fruylas trettan, To break up new ground, and reduce it to fruylas, into new broke land. Conwel, edit. 1727.

Fruylas, A wood, or woody ground. Domestay. Fruylas, (from the F. freifte) A breaking down or demolishing, also a plowing or breaking up. Mon. tom. 2. p. 394.


Fruylasum, A place where shrubs, or great herbs with big thicks grow. Mon. tom. 3. p. 92.

Frying pans. See Iron.

Frying. Sir Edward Coke (on Litt. fol. 5. b.) explains it, a plain between two woods, a lawn. Caesar uses it for a wood. Caesar, in his Britian, for an arm of the sea, or the space between two lands, from fridew, which his sons refers to the English fridew. Smith (in his England's Improvement) makes it signify all hedge-wood, except thorns. Conwel, edit. 1727.

Fryinghall, (from the Sax. frith, i. e. pan, and dris, fulkier) A freedom from giving security of the person, taking the name from the river, frykberg, or de bode. Fryikhof, fritichof, & frykthe. 4 Psal. 64. 4. Rot. 24. Conwel, edit. 1727.


F U G

Furting of wheels, Is perhaps what we now call the binding of wheels, i.e. fitting and fastening the fellos or pieces of wood that conjointly make the circle upon the felines, which on the top of the wheel are set, and at the bottom into the hub.—In folitus pro fritime quoque rerum loco annis vii. denar. —Porchat. Antiq. p. 574. Conwel, edit. 1727.

Funge or Fungare, (derived a fex) In the reign of Edward the third, the Black Prince of Wales having Acquisitum granted him, had liberty to make fongs or finge upon the subjeds of that Ducedom, viz. twelve-pence for every five, called hentmyth. Rot. Parl. 25 Ed. 5. 'Tis probable our heart-mony took its original from here.

Fyl. By flt. 43 Eliz. cap. 14. All faggots to be fold shall contain in compacts, before the knot of the bond, twenty-four inches of a fife; and every faggot ficked within the bond shall contain full three feet of a fife, except only one ficle to be but one foot long, to stop or harden the binding.

Stat. 9 Ann. cap. 15. All billets (except those made of beech, by 10 Ann. cap. 6.) that lie exposed in public places, where they are usually bought or fold, shall be aflied and cut, or marked in manner following; that is to say, all billets of what scantling or denomination soever, that are not in length three feet and four inches, and be of the following dimensions.

Sel. 2. And if they shall not be thus aflied and marked, then on information to a justice of peace, mayor or other head officer, he shall call before him fix good and lawful men of the town, and shall swear them truly, and inquire what is the fame of good and sufficient aflied; and if they shall peremptorily declare that any of them is not sufficient, the fame to be deficient, shall be forfeited, and be delivered to the overiers to be by them distributed to the poor.


<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A Single</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>A Call</td>
<td>10</td>
<td>2</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>A Troth</td>
<td>13</td>
<td>0</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>2 Call</td>
<td>15</td>
<td>0</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>3 Call</td>
<td>18</td>
<td>1</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>4 Call</td>
<td>21</td>
<td>1</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>5 Call</td>
<td>23</td>
<td>3</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>6 Call</td>
<td>26</td>
<td>0</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td>7 Call</td>
<td>28</td>
<td>0</td>
<td>32</td>
<td>32</td>
</tr>
<tr>
<td>8 Call</td>
<td>30</td>
<td>0</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>9 Call</td>
<td>32</td>
<td>0</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>10 Call</td>
<td>33</td>
<td>2</td>
<td>38</td>
<td>38</td>
</tr>
</tbody>
</table>

Every billet commonly called.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11 Call</td>
<td>35</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>12 Call</td>
<td>36</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>13 Call</td>
<td>38</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>14 Call</td>
<td>41</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>15 Call</td>
<td>44</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>16 Call</td>
<td>46</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>17 Call</td>
<td>47</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>18 Call</td>
<td>48</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>19 Call</td>
<td>49</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>20 Call</td>
<td>50</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Futter, (Fuge, from the French fure, furger) Tho' it be a verb, yet it is used substantively, and is two-fold; futter in fuit (in fuites) when a man doth apparently and corporally fly, and futter in leg (in legs) when being called in the county, he appeareth not, until he be outraised; for this is flight in interpretation of Lw. Staud. Pl. Cor. lib. 3. cap. 22.

Fuga rataeolum, A drove of cattle. See Streare.

Fugata, Signifies a chase, and is all one with chasea. Cebert Antiquus imperatoris Moloni de Graec, —Principi H I good
A merchant of London departing the realm, to the inten-
tive to live freely from the penalty of the law, and out of
his due obedience to the Queen, and not for any mer-
chandise, was resolved by all the justices except two,
to be no contempt to the Queen; for merchants were ex-
cepted out of the statute of 5 Ric. 2. cap. 2. and by the
Common law merchants might pass the seas without
licence, tho' they were not to merchandise. 3 Hift. 180.
For he was learning on this subject, see 13 Vin. Abr. tit.
Fugitives.

Fugitives goods, (Bona fugitivorum) Are the proper
goods of him that fleeth, which after the flight lawfully
found, do belong to the King, or lord of the manor.
5 Car. 2. See Fine, Dollar.

Fugitive, (Fugitive.) Furn. Du Fregis.

Fugitive, (Fugitivus.) See Fugitive.

Fugitive's land, Fulling and returning clap, Pe-
nalities on exporting them, 12 Car. 2. c. 2. 13 & 14
Car. 2. g. 9 & 10 Wil. 3. c. 40. 6 Geo. 1. c. 31. f. 32.
Fullum aquae, A stream of water, a fiam, such as
comes from a mill. Cowell, ed. 1727.

Fumage, (Fumagium,) Dung, or manuring with dung,
Et sunt quieti de fumagio, & miremari cariendo, &c.
Charta Rich. 2. Priorat. de Hortland, pat. 5 Ed. 4.
part 3. m. 13. But indeed fumagium was properly
found in the stock, of which saumagium came from every
house that had a chimney or fire-earth. Cowell, ed. 1727.

Fumadors or Fumadores, Are pick-hands garbed
false, hanged in the smoke, and pretiéd; so called in
Italy and Spain, whither they are carried in great numbers.
See mention in flat. 13 & 14 Car. 2. c. 28.

Fumator, The founder of a church, college, hospit-
al, or other public benefaction. This title in the old
religious houses was equivalent to patron: For it was not
only given to the first actual founder, but continued to
the de-bear and knighs, who held the fee of the fire or
incumbrances of such monasteries, and by such usage
had the patronage or advowson of them. And after
the extinction or long intermission of this title, any person
could prove his descent from the first founder, it was
affirmed by the religious to the name and honour of their
founders. Cowell, ed. 1727. See Kimchil's Silbarion
in Panditides.

Fanditides, Used for pioneers, in Pat. 10 Ed. 2.
m. 1.

Funds. The general fund ellablibed for making
good defciences, 1 Ann. 8. c. 13. 3 Geo. 1. cap. 7.
Fund for paying off Exchequer Bills, 7 Ann. 7.
7ett. 27.

Surplus of annuity funds may be charged with defci-
cies of another year, 8 Ann. 8. c. 13. 7ett. 29.

The aggregate fund, 1 Geo. 1. c. 8. 8ett. 8. 15. &c.
3 Geo. 1. c. 8. 8ett. 25. 5 Geo. 1. c. 3. 7ett. 22.

The sinking fund, 5 Geo. 1. c. 3. 7ett. 66.

Part of the flock of the three companies to be re-
deeemed by the finking fund, 7 Geo. 1. c. 5. 7ett. 39.
Appropriation of the finking fund, 8 Geo. 1. c. 20.
7ett. 29.

The forfupplies of the finking fund appropriated, 9 Geo.
1. c. 3. 7ett. 34.

Addition to the aggregate fund, 1 Geo. 2. 8. c. 2. 8ett.
17.

Supply to the aggregate fund, 20 Geo. 2. c. 3. 7ett. 58.

For relief of the legates of St. Joseph, out of
his legacy to the finking fund, 20 Geo. 2. c. 2.

The sinking fund charged with annuities in discharge
of navy bills, &c. 22 Geo. 2. c. 23.

Annuities granted out of the finking fund, 13 Geo.
2. c. 16.

His Majesty may borrow money on the credit of the
and-tax, 4 Geo. 3. c. 2. 8ett. 35.

Arms to be sold in this case, 2 Geo. 3. c. 1. 2ett. 25.

Surplus of duties on licences and new fump duties ap-
propriated, 30 Geo. 2. c. 19. f. 30.

Certain duties carriage to the finking fund, 32 Geo.
2. c. 27. 7ett. 4.

Annuities granted on the finking fund, and certain
annuities consolidated, 4 Geo. 3. c. 18.

Funeral
F U R

Funeral charges. A person died in debt, and 6oo/. was laid out in his funeral; decreed the fame should be a debt, payable out of a trust eftate, charged with payment of debts. The executor, being a man of great estate and reputation in his county, and buried there; but had he been buried elsewhere, it seemed his funeral might have been more private, and the court would not have allowed it. Trin. 1691. Ch. Proc. 27. Offey v. Offey. The executor determined of 700/. for mourning, the question was, if it should come out of the whole estate, or out of the legatory part only; it was infifted, that there had been no direction by the will, or if the will had directed, that the eftates of the funeral should not exceed such a sum, there the deduction mufT have been allowed. 3 Cow. 166; but when the beneft had been extorted by the will, mufT come out of the legatory part, and not to letter the orphanage and endowment part. Mich. 1691. 2 Fern. 240. Deakin v. Backly. Executor is not liable to pay for funeral expenses, unless he consented; per Hott Ch. J. 12 Med. 256. Mich. 10. W. 3. Ann.

Settlements for separative maintenance of the wife shall never extend to funeral charges, and tho' he made a will, (according to a power given her) and an executor, and gave severall legacies, but there was no residuum for the estate, he being a man of great estate and reputation, subject to the payment of debts was made liable to the funeral charges of the wife. 9 Med. 31. Trin. 9. Gent. at the Rolls, Bertie v. Lord Chelneyford.

In bifhechis no funeral expenses are allowable against a creditor, except for the coffin, ringing the bell, parish, and a few other things. 30 Hott. 1. Salt. 296. Trin. 5 W. & M. B. R. Shelley's case. Ten pounds is enough to be allowed for the funeral of a man in debt; per Hott. Baron Powell in his circuit would allow but 111. 6d. as all the necessary charge. 30 Hott. 1. Salt. 296. Trin. 5 W. & M. B. R. Shelley's case.

Furtee, feu Castigación, & Follis, (i.e. gallowes and pit.) In ancient privileges it signified a jurisdiction of punishing felonies, that is, men with hanging, women with infamy; of which law, take this notable example of the records of Rochester church in the time of Gilbert bishop there, who flourished under Richard the Firf, anno 1200.

Item due mulieres condonat in villam de Suffiiffe, que forcer fucus, callatis panes in villa de Cristo deunde, & fe-

satis sunt eas homines viujdem villa de Cristo deunde, quamum panum faticcio aportovorum, ufque in villam de Suffiiffe, & bif capitae funtur & incarceratae, & habantur judiciwm fium in curia de Suffiiffe, ad pertandam calidum ferum, quamum una fuit fecula, & altera damnata, una fuit barata, & altera damnata. 1020. 60. 2. Ann.

In ancient privileges it signified a jurisdiction of punishing felonies, that is, men with hanging, women with infamy; of which law, take this notable example of the records of Rochester church in the time of Gilbert bishop there, who flourished under Richard the Firf, anno 1200.

Furtee, feu Castigación, & Follis, (i.e. gallowes and pit.) In ancient privileges it signified a jurisdiction of punishing felonies, that is, men with hanging, women with infamy; of which law, take this notable example of the records of Rochester church in the time of Gilbert bishop there, who flourished under Richard the Firf, anno 1200.

Furtee, feu Castigación, & Follis, (i.e. gallowes and pit.) In ancient privileges it signified a jurisdiction of punishing felonies, that is, men with hanging, women with infamy; of which law, take this notable example of the records of Rochester church in the time of Gilbert bishop there, who flourished under Richard the Firf, anno 1200.

Furtee, feu Castigación, & Follis, (i.e. gallowes and pit.) In ancient privileges it signified a jurisdiction of punishing felonies, that is, men with hanging, women with infamy; of which law, take this notable example of the records of Rochester church in the time of Gilbert bishop there, who flourished under Richard the Firf, anno 1200.

In ancient privileges it signified a jurisdiction of punishing felonies, that is, men with hanging, women with infamy; of which law, take this notable example of the records of Rochester church in the time of Gilbert bishop there, who flourished under Richard the Firf, anno 1200.
G A I

Furf and Fandong, (Sax.) Time to advise, or take counsel, viz. De quibusquisque impulcitur aliquis furf & fandong habet. Leg. H. i. cap. 46.

Nuttif, A kind of wood, which dyers use, and is brought from Barbadoes, Jamaica, &c. mentioned in Stat. 12 Car. 2. cap. 18.

A. A sudden leave derived from the King, as Prince, to try, condemn and execute thieves and felons within such bounds or district of an honour, mayor, &c. Cowell, edit. 1727.

Furr, See Pomum.


Ffrippings, An offence or trespass, for which the fine or compensation was referred to the King's pleasure, in the laws of Hen. I. cap. 10. Spelman would read it ffredding, and interprets it treafure-trove, but indeed the word is truly ffredding or ffrearding, and signifies properly a going out to war, or a military expedition at the King's command, which, upon refusal or neglect, was punished with a fift-wite, or multlet at the King's pleasure. Cowell, edit. 1727.


Fyrtruite, The same with Fyrfult, viz. a multlet for deserting the army. Cowell, edit. 1727.  

G.

G A S C L I, (Gabella, gallegium, saxon gafel, alias gaffi, i.e. cattle.) Hath the same significacion amongst the authors, that gackle hath in France. For Mr. Camden, in his Brit. pag. 213. speaking of Walesford, hath these words, Continuatu 270 bagari, i. demit, reddates novum libros de gablo. And pag. 228. of Oxford there, Hac urae reddendo pro falsina & gablo, & alitis confuetudinibus, for annage, regis quod omnia, & sex librorum multi, comitum &e. Agera decern librorum. Gabella, as Cognass defines it De Conf. Burgund. pag. 119. ob vectigal quod solvitur pro bonis mobilibus, id est, pro iis quae vanabunt, distinguiquing it from tributum, quia tributum est proprius quod sibi velit principis solvitur pro rebus immobiliis. The Notes, in his Comment de suo assitiones, faith thun. cited 2. c. 12. fol. 213. Here note, for the better understanding of ancient records, flatures, charters, &c. that gabel = gavel, gabellum, gabelletum, gabelletum, and gavellutation, do signify a rent, custom, duty or service, yielded or done to the King, or any other lord. But that gafel did as well extend to money, as to other things in kind, is very plain by that record in Danufday-Buke, in Windsor in Berkshire, where 'tis said, Rex Wili- liemus rex Windesoro in Dominices, Rex Edw. tenet ibi xxi. bides, &c. Et adijus jas in villa C. Hage v. mi- nis; cuhi jas xxi. quatuor de gablo & de alitis exunct xx. fald. And hably, in the same book in somefe- fiorus, it is thus expresed in the title of Terra Regii, (which observe) Rex tenet cedra (I suppose it is that Cedera, so famous for its cheere) Rex Edw. tenet, numquam gelavit, nec fecit quod bides jas ibi, in Dominice, &c. xx. lacum xvii. car. & vili. gabellatores redd. xvii. et fefte feven gabellatores did pay seventeen shil- lings, and from their paying of rent were termed gabellat- ores. It feems probable, that this gabout is to be dif- tinguished from a rent or payment made upon contract or bargain, and hath relation to such a one as was im- ploied by one power and will of the Lord. And these different forms of words that are mentioned in Danufday- Book under several expreffions, according to the nature of them; where sometimes it is written, that one reddit to such a one so much, without any other addition: And this, I believe, was rent upon agreement and contract, as it be judged pertinent in a third reddit de gablo, so much. When gabel is mentioned without any addition, then it usually signifies the tax on fells, proper excellencies, but afterwards it was ap-

plied to all other taxes, as gabelle de vint. &c. Cowell, edit. 1727.

Gallaturres, Those that paid gable, rent or tribute, Dunfday.

Gallard (Gabella, gallegium, Gabula.) The head, or chief, of the exent or part of a house. The gable-head, the gable-end, &c. Quadrans portioni terre.—extra gabula multandini ad fictae in latitudine. Paroch. Antiqu. pag. 201. —Quæ demus ftabi in iter gabula tumultum tenentis. Certaini leges posteriores. Ibid. pag. 286. See Keneven's Glossary, p. 272. See also King's Glossary, III. 347. This gabol, or antiquity, does contain en eijt brief navera judgment devinct ce quæ Gabriel alia sti fay fo cone. Plutonia, fol. 358. a. that is, till the day of doom; never. Cowell, edit. 1727.

Gabolthum temenium, Rent paid in money. Selden of Tiber, pag. 341.

Gabolhugil, In a Saxon word, signifying the pay- ment, or rendering of tribute or custom. Also it sometime denotes usury. Cowell, edit. 1727.

Gabolland or Gabolland, Terra ecstallis, Land liable to tribute or tax. The Saxon Dictionay calls it rent land. See Cotgrave.

Gabulicium (Gabella) Signifies a pawn or pledge, and is derived from the French gage, that is, pignari dare. Glanvill, lib. 10. c. 6, latit. Quandque sint libres pro nuncio in vendum, quandoque res immobiles; and a little after that, Thus quod aut redeat res quodque ad terminum, quandoque fubit termes; ita quandoque inviolactur ad aeternum. Another readeth, gableteum non. And thenaul the word gage be retained as it is a subfahitive, yet as it is a verb, use hath turned the g. into a w. so that it is often written wage, as to wage deliverance, that is, to give fe- cular thing that shall be delivered: For if he who was disfrained, being sued, hath not delivered the cattle that were disfrained, then he shall not only avow the difference, but gage deliverance, that is put in sureties that he will deliver the cattle disfrained, F.N.B. fol. 74 & 67, yet in some cases he shall not be tied to his securitie, as if the cattle died in the pound. Kitchen, fol. 145; or he if he doth not deliver the cattle the fundo for. Terre a Ly. To wage law, see Law; and also see Hagiugol.

Gadero deliverance, See Gage.

Gager deliey. See Wago, and Wager of law.

Gagers. See Gagger.

Gagilage (Lat. Wagingium, i.e. actus plagiari, vel plagia, et placatio, i.e. Saxon gagegear, i.e. the grain or crop of tilled or planted ground,) Signifies the draught-oxen, horses, wain, plough, and furniture, for carrying on the work of tillage by the bauer fort of stockmen and vill- ians; and sometimes the land itself, or the profit rafed by cultivating it. Braten, lib. 1. cap. 9. (speaking of a tenant) For tis in his hand, a margin, a margin, a margin, minis, &c. et se resf rutrant, quod salum non pintis eis esse wagingium suam. And again, lib. 3. tract. 2. c. 1. Miles & libra homin non amicissibur nisi jessment medium delecti, jessment quod delicii sicut magnum vel parvum & salvo contemputa est: Mercator non nisi jamenti merendiae sua, & villanum non nisi jamenti wainingo suae. For an- ciently, as it appears both by Magna Chart, cap. 14. and other books, the villain, when amerced, had his wainingo free, to the end the plough might not stand still: And the law, for the same reason, does still allow, a like privilege to the husbandman, that his draught horses and oxen are not in many cases disfrainable. This in Hustin, i. cap. 6. Anno 3 Ed. 1. is called gannoire, and again, cap. 17. and in Magna Charta, cap. 14. it is called gaine- age. In the Old Nat. Brev. f. 177. it is termed gainer. In these words, the writ of Aiel was praecept, &c. quae reddat unum bonum terre & unum bonum maris, &c. that is, he shall do the equivalent of a thing that lieth in gainer. This word was used only concerning arable land, because that they had it in oc- cupation, had nothing of it, but the profit and fruit raised by their own pains towards their hurrafore, nor any other title, as at the present, in the same land, in the same famishing, fol. 12. is used for a folk-men, that hath such land in his occupation. In the 3d. chapter of the Grand Cognosse of Normandy, geignors are Agri-
G A M

G A M
celar, qui terras commodum puffidat. And Britton with
take or till, fol. 42 & 65. Sym. Synat.
part. 2. tit. Recoveries, sect. 3, hath these words, A
crincip quod reddat litium non in bena marifci. 13 Ed.
3. fol. 3. nor de jure terrae, because of the incor-
ranti; for a jilus is a piece of land, some times con-
taining an acre, or seims of more extent. It lieth not of a garden, cottage or
croft. 14 Ed. 13. 8 Ed. 6. 3. 22 Ed. 4. 13. De
virgata terrae, &c. for they be not in demeine, but in
guin, &c. Lastly in the statute of disfrances in the Ex-
chequer, Anno 15 Hen. 3., are these words, No man of
religious order, or other such as, &c., be disfrayed by his beats that gain
the land. Cowell, edit. 1727. See Wainage.
The villain, countryman, or ploughman was fined or amerced for his
offences, Jactum janius, i.e. faving all his
plough-geer and necessary implements of husbandry, which if disfrayed or seized for such fines or impositions
would disable him from carrying on his employment of
agriculture, contrary to the fundamental liberty of sub-
jects, which was so to be mulcted, or fined, or amerced,
as should punish them, but not break them, or undo them.
Cromeyr, (Fr. Gymnere,) Tillage or tilling, or the
profit raised of tilling, or of the beasts used therein.
Cowell, edit. 1727.
Captane, (Wof. 1. cap. 6. & 17.) Signifies the same
with Captan.
Coffa, A galley, or swift ship. Mat. Pacif. calls it
3. tom. pag. 688. Et in quiete inventam unam sacerdotem
seipsum sanctam, in ecclesia memoriam, in loco
discessit la Galley.
Coffani, Whopl-Coffle in Westminster. Cowell,
edit. 1727.
Coffa, Wealwicci in Northumberland. Ibid.
Coffa, Wellingford in Berks. Ibid.
Coffeti, Mr. Smoother was of opinion, that they were
vix galilis; but Knighton doth not mention the word in that
kinds, viz. In quator praelia acta fuit dominii Calabri-
us, &c. cum multis Galliis, 1.e. with many Welshmen.
COffen. Rogues to be sent to the galleys. Stat.
39 Elia. c. 4.
Coffinghains, Wlde hole or brecces so called, be-
cause used by the Goffagens. Cowell, edit. 1727.
Coffin, Or伪造, or covell.
Coffani, (Fr.) Signifies a kind of fish, worn by the
Gnus in dry weather; mentioned in the flat. 14 &
15 Hen. 8. c. 9.
Coffin, Cambria, (Fr. jambiere,) Military boots,
or defensive for the leg. Cowell, edit. 1727.
Coffeater, (Gambussanum,) A horseman's coat used
in war, which covered the legs; or rather a quilted coat.
Cowell, edit. 1727.
Coff. Before we take notice of the statutes made for
the preservation of the fish, it may be necessary to ob-
serve how the Common law fixed linen, which de-
pends upon the difference made between tame and wild
animals.
The tame animals, such as horses, cows, sheep, &c.
are such creatures, as by reason of their frugiferous and
universall motion do not have, or use no care for the
fish, but generally keep within the same pastures and
pastures; and may be easily purfued and overtake, if by accident
they should escape; and therefore the owner hath the
same kind of property in them as he hath in all other
Vol. II. No. 81.
inanimate chattels, and for the violation thereof may
bring an action of trespass. 2 Bac. Abr. 512.
Hens and chickens are tame; fo peacocks, like other
domestick fowl, are tame by nature. Off. Esq.
1 Rel. Abr. 5. 18 Hen. 8. 2. So several forts of dogs
are tame, as the maltes, bound (which comprehends
greyhounds of several sorts), and Tonder; and for these a
person may sue upon action of seisin, without
alleging that they were thence. Cr. Eliz. 125. 1 Saund.
84. So a person may justify in sault and battery in de-
fence of his dog that is tame. Ryl. Est. 611. So A
replevin lechef of a ferret. Cr. Eliz. 126.
By this statute, all hares, foxes, &c. are
understood those which by reason of their swiftness or
ferilities fly the dominion of man, and in thefe no per-
son can have a property, unless they be tamed or re-
claimed by him; and as property is the power that a
man hath over any other thing for his own use, and the
ability that he has to apply it to the fulftation of his
being, when that power eafe, his property is lost; and
by confequence an animal of this kind, which after any fei-
zure escape into the wild common of nature, and afterts
its own liberty by its swiftness, is no more mine than any creature to
be wild, because I have it no longer in my
power or disposal.
Ca. 16. 4.
Hence it appears, that by the Common law every man
had an equal right to such creatures, as were not nat-
urally under the power of man, and that the mere cap-
tion or feizure created a property in them in, except in
the following cases. Cr. Eliz. 547.
1. By immediate manufipution, or saving them and
killing them; for in these cases they belong to such
person in the same manner as any other chattels, and can't
be violated from him, since the first seizure and caption
was sufficient to vell the property of them in him.
Ca. 16. 15. 6. By taking and taming them, or making
them belong to the owner, as do all the other tame animals
as long as they continue in this condition, that is, as
long as they can be confidered to have the mind of returning
to their masters; for while they appear to be in this state
they are plainly the owner's, and ought not to be violated;
and when they forake the houses and habitations of the
men, and betake themselves to the woods, they are then
3. Another way of gaining property in them is by in-
closure, and then the beasts must be underfoot to be
mine, as the proverb is. An fish in a fole ifle is safe, and they can
no more be taken and carried than fish that may be
taken out of the land; and therefore if I incline aet in a park or
paddock, conies in a field or warren, they become my
own, that no man ought to kill or take them away; now
since in this case, 'tis the inclosure only that retains them,
and if I have the conies, or the property in the conies, and
in their natural liberty, therefore the party is liad to have a right
as he hath to any other profits there included, and a distinct
and independent right in every animal. March 49.
4. The King, as an acknowledgment of his dominion
over the seas and great rivers, by his prerogative has a
property in some animals under the denomination of royal
creatures, as flurgeon, whales and swans, all which are
the natives of seas and rivers. Ca. 16. 6.
On these reafons and difficulnes of the Common law,
we may now fee how the law flands with regard to
the seafands of the game, within the several fla-
tutes made for the prefaceion thereof.
First it is clear, that if a man pursue deer, hares or
conies out of his lands, or the lands of another into
mine, and there takes them, they are the hunter's and
not mine, because I never had any original property by
inclining them into this, as the word is. 35 Jac. 2. But it
is said, if a man flies his hawk at a pheasant upon his
own ground, and the hawk pursues the pheasant into another's
warren, the owner of the hawk can't justify the entering
the warren and taking the pheasant. 38 Ed. 3. 10. 12
Hen. 8. 10. 2 Rel. Abr. 507. Pap. 162.
If a man pursues conies, and comes on my ground,
I may force them, because they are indeed my property
by the inclosure; but if he hunts them out of my ground,
they are in the condition of natural liberty, and then I can't
I take
take them away from the hunter, for then the property is in no man; but damages I may have against the hunter for his hunting and breaking of my inclosures. Salk. 556.

5 Mod. 375.

But where a man hunts conies in my warren, or deer in my park, and the warrenor pursue them, he may take them; for the park or warren is an establishment by the publick to be protected; and for all the rest not thereunto committed, in which no man hath a civil right, is under the regulation of the publick; now in parks and warrens, officers are established by authority to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the warren, and therefore all that is done by the officers; for, as long as he is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the owner. 12 Hen. 8. 9. 2 Bac. Ab. 613, 614.

Alfo the Common law warrants the hunting of ravenous beasts of prey on another's ground, such as foxes, wolves, badgers, &c. so that the party in pursuance thereof through the grounds of another is subject to no action whatsoever; but it hath been resolved, that the hunting and killing such noxious animals must be done in the ordinary and usual manner; and that therefore the digging for a badger is unallowable, and the party subject to an action of trespass, 7 Leiz. 462.

A warrenor or keeper of a park may justify the killing of dogs and cats, as well as other vermin, which he finds disturbing the game in those places. Cro. Jac. 44. 3 Leiz. 28. con. 1 Rot. Abr. 357.

A man can't have an action of trespass on the common, for another man shooting into his ground, because they are not the other's than what they are included; so that no violation arises to the property of one man by the befts of another, but the conies being in their natural liberty may be lawfully killed by the owner of the field. 5 Co. 104. Cro. Eliz. 547. Mor. 420. 421. 422. 423. Law. 355. 456. A action of trespass may be brought for taking a man's deer in a park or chase, or of conies in his warren, because the law takes notice that they are included, because there are the proper inclosures for that purpose; and consequently those befts are not in their natural liberty, and therefore the property is in the plaintiff. March 49. Gath. 174. Raff. Ent. 650. Rr. 93. but 7 Co. 17. con. and see Cro. Car. 553.

In an action of trespass, Quare clausum fugit, et demais istius le plaintiff capit & apererauis, they shall be intended to be included after a verdict; because where a verdict is found of them, and the plaintiff has proved that verdict must be intended to be true; therefore the deer must be intended to be included, as to be under the plaintiff's power; otherwise he could not have property according to the verdict. Salk. 536. 5 Mod. 375.

But if in trespass, Quare duas damas fujus le plaintiff in quaedam clasem dicit le plaintiff, vacat le park, capit et apererauit, the defendant demars generally; this hath been ruled to be ill; Because the court will not intend them to be tamed or included; and in befts, that are in their natural liberty, the plaintiff hath no property; for being only a place called a park, it can't be understood to be a place. 3 Leiz. 277.

Any person, upon his own frank tenement, may erect a dove-houfe; nor can he for such building be indicted in the leet; this was a matter often controverted, because the pigeons and doves were to be accounted as tame animals; but the courts have held, that these were not the same; and then whosoever did erect such houfes, were answerable for the damages; and because they were not liable to every man's action, to avoid multiplicity of suits, it was formerly held, that they were indigible in the leet; but the contrary opinion prevailed, because it was allowed the lord of the manor to prevent him, or prevent any person to erect a dove-houfe; but no person could raise himself, or authorize another to create a nuisance; besides, these animals are rather to be accounted free nature; and by conquence, the only remedy any person had for the damage sustained by the birds feeding on his ground, was to kill them, and take them to himself; which was the proper relief according to the Common law, inasmuch as the birds were accounted no man's property. 2 Rot. Abr. 138. Pap. 421. Cro. Jac. 382. Gath. 259. Cro. Eliz. 548. 1 Rot. Rep. 136, 200. 2 Rot. Rep. 3, 30. 5 Co. 104.

Thus it appears by the Common law, that a property in those living creatures, which by reason of their twif- tedness did not belong naturally under the power of man, was gained by the mere capture or seizure of them; but as by this toleration persons of quality and distinflion were deprived of their recreations and amusements, it was thought necessary to make laws for preferring the game from idle and indigent people, who by their los of living from this sport, were frightened to pursue it. Pursuits were mighty impoverisht. 2 Bac. Abr. 615.

1. Statutes concerning game-keepers, and the qualifications to kill game.

2. Statutes concerning the game in general, with estates determined upon them.

3. Statutes concerning the several kinds of game, with estates determined upon them.

1. Statutes concerning game-keepers, and the qualifications to kill game.

By Stat. 15 Ric. 2. 1. r. 1r. 13. it is enacted, That no layman which hath not lands or tenements of 40s. a year, nor clergyman if he be not advanced to 10l. a year, shall have or keep any greyhound, hound, nor other dog, or beare, that shall use any nets, arch-pipes, nor cords, or other engines for to take or destroy hares, hares, or conies, or other gentlemens game, upon pain of one year's imprisonment; and that the justices of peace have power to inquire [in their terms] and shall inquire of the offenders in this behalf, and punish them by the pain aforesaid. See the qualifications for killing conies, deer, hares, partridges, &c. in the next division of this title.

By Stat. 22 & 23 Car. 2. 2. 25. felt. 2. it is enacted, That all lords of manors, or other royalties, not under the degree of an esquire, may from henceforth by writing under their hands and seal, authorize one or more game-keeper or game-keepers within their respective manors or royalties, who being thereto authorized, may take and seize all such guns, bows, greyhounds, fettng dogs, lurchers, or other dogs to kill hares or conies, ferrets, foxes, or other such wild or tame beasts, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person or persons, who by this act are prohibited to keep or use the same: And moreover, that the said game-keeper or game-keepers, or any other per- son or persons (being thereto authorized by warrant under the hand and seal of any justice of the peace of the county, division or place) may in the day-time search the houfes, out-houfes, or other places of such any such person or persons by this act prohibited to keep or use the same, or within their proper ground shall be entitled to have or keep in his or their custody any guns, bows, grey- hounds, fettng-dogs, ferrets, coney-dogs, or other dogs to destroy hares or conies, hares, tracemels, or other nets, lowbells, arch-pipes, fiares, or other engines aforesaid, and the same, and every or any of them to seize, detain and sell, and dispose of the same as they shall think fit for their own right, or royalty where the same shall be found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree." And by felt. 3 of the said Stat. it is enacted, "That all and every person and persons not having lands and ten- ements, or some other eftate of inheritance, in his own or his wife's right, of the clear yearly value of 100l. per annum, or for term of life; or having leave or leaves of 99 years, or for any longer term, of the clear yearly value of 150l. other than the fon and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases or warrens,
and are hereby declared to be persons, by the laws of this 
realm, not allowed to have or keep for themselves, or 
any other person or persons, any guns, bows, grey- 
hounds, setting-dogs, ferrets, coney-dogs, lurchers, 
hayes, nets, lowbells, hare-pipes, gins, snares, or other 
engines aforesaid, but shall be, and are hereby prohibited to 
have the same upon pain of the law; and the name of such 
person shall be entered with the clerk of the peace; such 
entry to be made and viewed without fee, and a copy 
thereof to be granted by the clerk of the peace, upon 
payment of 1s. and in case any other game-keeper, 
who shall not be otherwise qualified to kill game, shall 
kill any hare, peafant, partridge, moor, heath-game or 
gruze, or if any game-keeper, or other person not qual- 
ified in his own right to kill game, shall fall or expose 
to sale, any hare, &c. the offender shall incur such pe- 
asalties as are inflicted by the 5 Ann. cap. 14. upon hig- 
lars, carriers, inn-keepers or vichuellers, for buying or 
felling of game; such forfeitures to be recovered as pre- 
ferrable by the said act. 

Sect. 4. 5 & 6 Will. & Mar. c. 23. feft. 3. Every con- 
vable, headborough and tithingman, being authorized by 
warrant of one justice of peace, shall enter into and 
search for dangerous poisons, ferrets, or any other 
engines for punishment of deer-keepers in such 
manors, &c. as are appointed by the acts 3 & 4 W. & M. c. 10.) the bacons of suspected persons 
not qualified; and in case any hare, partridge, peafant, 
pigeon, fift, fowl or other game, shall be found, the of- 
fender shall be carried before some justice of peace; and 
if such person do not give a good account how he came 
by such game, or the danger of his doing so, the justice, 
produce the party of whom he bought the fame, or 
some other credible person to depofe upon oath 
such fale thereof; he fhall be convicted by the justice of 
fhuch offence, and shall forfeit for every hare, partridge, 
fift or other game, any form not under 1. and not ex- 
ceeding 20s. to be adefertained by the justice, one moiety 
thereof to the informer, and the other moiety to the 
poor of the parish where the offence was committed, 
to be levied by diftablons and fale of goods, by warrant of 
the justice; and for want of diftablons the offender fhall 
be committed to the county gaol, for the foufe correclion, for any time not 
exceeding one month, and not less than ten days, there- 
to be whipt, and kept to hard labour ; and in cafe any 
person not qualified shall keep or ufe any bows, grey- 
hounds, setting-dogs, ferrets, coney-dogs, hayes, lurch- 
ers, nets, tunnels lowbellas, hare-pipes, snares, or other 
engines for punishment of deer-keepers in such 
manors, &c. as are aforesaid, he fhall be convicted to the 
same penalties as are to be inflicted upon the 
persons who shall be found to have any hare, par- 	ridge, fift, fowl or other game, as aforesaid; and if any 
person produced shall not before the justice give evidence 
of the infubordinaclion of his act, being of the 
same manner as the perfon first charged, and fo from 
perfon to perfon until the firft offender be discovered.
judgment, 1. That it was not faild, that the defendant is not qualified by estate to hunt, without incurring the penalty of the act; for if he be, he might hunt by law. But to this it was replied by the court, that hunting is a trade of a man of the inferior rank, and therefore not a party to hunt another's ground; and therefore it is not material, how the person is qualified, in the case of an inferior trader, as to his estate. Then it was moved, that the plaintiff having declared, con ter foramin statuti, this goes to the whole, and therefore it is faild; for the trefpafs is by an act of the party, and not by another's act or failure. But to this Holt Chief Justice answered, that if an act of parliament increases the penalty, or deprives the party of the benefit of the Common law, there he ought to conclude contra foramin statuti. But if a man brings an action for such an offence, and for a thing that is an offence only at Common law, and concludes contra foramin statuti, though in grammar this goes to the whole, yet the court will refer it only to the offence that is prohibited, &c. by the statute, and it shall be punished as to the offence at Common law. And he referred it to the case of Page and Harwood, Allen 43. 45. It is held, that if the party there is no statute, then the contra foramin statuti shall be allowed. And he cited a case in Vent. 103. where a brought an action for withdrawing his wife contra foramin statuti; and because there was no statute, this was adjudged unpunishable. But in this case the act of Holt & Allen does not create a new penalty, but is a restitution of the Common law; and therefore the party has no need to declare contra foramin statuti; and therefore it will be the better way hereafter to omit the contra foramin statuti in such cases. And if the plaintiff declares that the defendant was an inferior trader, he shall have full recovery. The law is declared, contra foramin statuti, where there was no need of it, without doubt it shall be unpunishable. And therefore judgment was given for the plaintiff, &c. &c. And in Eager term it was absolutely given for the plaintiff.

Lord Rom. 149. Carth. 382.

By the 5 Geo. enr. cap. 4 sect. 2, it is enacted, "That if any person, gentleman, carman, innkeeper, victualler, or alehouse-keeper, shall have in his or their custody or posses-
sion, any hare, pheasant, partridge, moor, heath-game or grouse, or shall buy, sell or offer to sell any hare, pheasant, partridge, moor, heath-game or grouse, every such higler, &c. and for every of such, and for every person who buy or sell any hare, pheasant, partridge, moor, heath-game or grouse, for whom such a person or persons are convicted of the same, shall forfeit for every hare, pheasant, partridge, moor, heath-game or grouse, the sum of 5l. one half to the informer, and the other half to the poor of the parish where the offence was committed; and if upon view, or upon the oath of one or more credible witnesses, shall be convicted of the same, so that forfeit for every hare, pheasant, partridge, moor, heath-game or grouse, the sum of 5l. one half to the informer, and the other half to the poor of the parish where the offence was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the judge of the county, or other justices of the peace before whom such offender or offenders shall be convicted, rendering the overplus (if any be), the charge of disclaiming being first deducted; and for want of dis-
claim, the offender or offenders to be committed to the house of correction for the first offence for the space of three months, without benefit of bail or recognisance; and for every such other offence for the space of four months; pro-
vided that such conviction be made within three months after such offence committed; and that if any certisvari shall be allowed to remove any conviction made, or other proceedings of any person in respect of any thing that was done in this case, either by the several courts at Westminster, upon any pre-
tence whatsoever, unless the party or parties, against whom such conviction shall be made, shall, before the allowance of such certisvari, become bound to the person or persons prosecuting the same, in the sum of fifty pounds, with such sufficient sureties, as the justice or justices of the peace, before whom such offender shall be convicted shall think fit, with condition to pay unto the officer or officers per respirando, or per procedendo, for such conviction or procedendo granted, their full costs and charges, to be ascertained by their oaths; and that in default thereof, it shall be lawful for the said justice or justices, or other, to proceed for the due execution of such conviction, in such manner as if no such certisvari had been awarded. See flat. 28 Geo. c. 1, 2, 3, 2. hereafter inferred in this division."

Sec. 3. And for the better discovery of such higher, carman, carrier, innkeeper, alehouse-keeper and victu-
aller, shall offer to buy or sell any hare, pheasant, partridge, moor, heath-game or grouse, if it is convicted. That any person, that shall destroy, fell or kill any hare, pheasant, partridge, moor, heath-game or grouse, and shall within three months make discovery of any higher, carman, carrier, innkeeper, alehouse-keeper, or vic-
tualler, that hath bought or sold, or offered to buy or sell, or had in their possession, any hare, pheasant, par-
tridge, moor, heath-game or grouse, so that any one or more of such should be convicted of such offence in manner as aforesaid, such discoverer to be discharged of the pains and penalties hereby enacted for killing or selling such game as aforesaid, shall receive the same benefit or advantage, as any other party who had in his or her possession, by virtue of this act, for such discovery and information.

Sec. 4. And it is further enacted, "That if any per
son or persons, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting-degs, hares, beagles, hounds, hares, tortoils, or any other engine to kill or destroy the game, or shall keep any person or persons, for the purpose of killing the game, or of the offender's goods, by warrant under the hand and seal of such justice or justices, before whom such per
son or persons shall be convicted, as aforesaid, and for want of such distress, the offender or offenders shall be sent to the house of correction for the space of three months, and that such may and shall be lawful to and for any of her Majesty's justices of the peace in their respective counties, ridings, cities, towns corporate or liberty, and the Lords and Ladies of his, her, theirs, or any of their respective manors, within the said manors, to take away any such hare, pheasant, partridge, moor, heath-
game or grouse, or any other game whatsoever, from any higher, carman, carrier, innkeeper or victualler, or any other person or persons not qualified by the laws to keep the same under his or her own hand and seal, to impair his or her game-keeper or game-keepers upon his or her own lordship or manor, as aforesaid, to kill hare, pheasant, partridge, or any other game whatsoever, if the game be killed by distress or sale of the offender's goods, by warrant under the hand and seal of such justice or justices, before whom such person or persons shall be convicted, or for want of such distress, to kill or take the same for the use of such Lord or Lady, afterwards fell or dispose thereof, to any person or persons whatsoever, without the consent or knowledge of the Lord or Lady of such manor or manors that hath given such power or authority in manner as aforesaid; and having formally convicted of the same, to the use of such Lord or Lady of any manor, and upon the oath of one or more of such Majesty's justices of the peace, as aforesaid, upon such conviction, such game-keeper shall be committed to the house of correction for the space of three months, or there to be kept to hard labour.

Sec. 4. Not qualified by the laws of this realm. The de-
defendant was convicted by Sir Henry Battleman, a justice of the peace of Middlesex, for unlawfully keeping a lutcher
lurcery, and a gun to kill and destroy the game, New:

exiguitas qualifications per leges bajus regni ad hoc facendant,

corpora formar statuti in buncmodi causa editi et proeli.

And this conviction being removed into the King's Bench by certiorari, was quashed a general rule will not apply.

because it was only averred generally, that he was not

qualified, and did not aver that the defendant had not the

particular qualifications mentioned in the statute as to
degree, elate, &c. Lord Raym. 1445.

And it was said by the defendant, that he was not a person authorized by

a lord (or lady) of a manor to kill game for his life.

And he certainly alleged, that he was not being a person qualified according to law, and so

on, it had been enough; but the qualifications being di-

finitely and generally mentioned, the omission of one is fatal.


there was a conviction for keeping a greyhound; reciting that one William Towe came and informed, that the de-

fendant being a person not qualified to keep a greyhound, did

evertheless keep one at such a place, and therewith killed several hares; and that he being summoned did appear,

and was admitted to have done nothing in excess, and therefore the justice convicted him.

It was objected, that the justice should let out, why the defendant was not a qualified person, as that he is not the

son of an esquire, nor has 1000 a year in his own or his

wife's right; for he ought not to make himself the sole judge

of the law, when the case was so weighty, and it was un-

seemful to think the conviction would be good, having

followed the words of the statute, and that if the defen-

dant was qualified, he ought to have sworn it before the

justice, being summoned for that purpose.

Eyre J. started an objection on this point. It was not the

question to be decided, whether a person be of a sufficient

age to keep a greyhound, or chiefly the opinion of the

witnesses; for the conviction runs, that the witnes-

sew as sworn fact, that the defendant being a pergon

no way qualified, did such a day keep a greyhound; so

that it appears, the witnesses have given the law to the

justice, and take upon them to judge of the defendant's

qualifications, and the justice is only made use of as an

infrument, to reduce the opinion of the witnesses into a

conviction.

By Parker Ch. J. The being not qualified

should be the conclusion of the justice, and not the words

of the witness; for he ought not to swear generally a man is

qualified, and at a particular time, it is not good:

This is only an invention, to support a conviction in general terms, which would be bad if the particular

facts were alleged. Pratts J. Where the justices have a

funnary jurisdiction, and no appeal lies (as in this case),

we must keep them up firstly to the law, and I should

be glad if we could make them fret out the whole parti-

cularly.

The case was adjourned; and afterwards Pen-

gelly ferjeant mentioned two cases, 2d. and Hopyard, 8.

22 Ann. there was "not being qualified, licenc'd, or au-

thorized to keep any game" and it was qualified.

The other was the same term, and qualified, because no qua-

lifications were mentioned. And towards the end of the

term this conviction was qualified; and the principal rea-

don declared to be, because the witnesees had taken upon

themselves to judge of the qualifications.

Ser. 66.

Shall keep or use any greyhounds, setting-dogs, hares, lurchers, 

ferjeant, or any other thing than greyhounds, or "qualifi-

ced game." The defendant was convicted on 5 Ann. c. 14.

for using a greyhound in killing four hares, per quod be

forfeited 20. — Rehe v. excepted to the conviction, that

the act of parliament had only given the justices jurisdiction to con-

vict, but not the power of one another. The offences, whereas this was upon his own confession, which he

admitted the justices had no power to take; and it follows in

the act, that the person so convicted shall forfeit, which

word so is relative to the former method by oath of one or

more credible witnesses: and he put the common usage upon the matter, as the opinion of a poor person, which

must be uncomplain of the churchwardens over the justices; the justices

Vol. II. No. 81, having jurisdiction only in that manner. Sed per curiam, (prater Eoy J.) The conviction must be confirmed. The intent of mentioning the oath of one witeness was only to direct the justices, that they should not convict

on this evidence. Suppose the confession had not been before the

justices, but before two witnesses, who had admitted, it that would be convining him on the oaths of witenesses,

and yet the evidence would not be so strong as this.

By the Civil law, confession is esteemed the highest evi-
dence, and in some cases, though there are one hundred

witenesses, the party is tortured to death. Hence the

justices had a better evidence than the oath of any single

witeness, and it is a monstrous thing to say that a better

form of evidence shall not do. Eyre J. conlices, thought

there was no occasion to carry this art of parliament so far,

as the disjunctive keep, or use, so that the bare keeping a

lurcher was sufficient; and for this reason the confes-

sion of one witeness is sufficient, and that it ought to have been a conviction upon that statute.

The conviction was confirmed. Sirans, 546. Hil. 9 gen. 1. v. Gage.

Conviction on 5 Ann. c. 14, for keeping a lurcher to destry game, not being sworn the Mr. Eyre excepted,

That it is not shown he made use of the dog to destroy

game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that

manner. Sed per curiam; The statute 5 Ann. c. 14, shall be disjunctive, keep or use, so that the bare keeping a

lurcher was sufficient; and for this reason the convi-

sion of one witeness is sufficient, and that it ought to have been a conviction upon that statute: And in that case a diference was taken as to keeping a dog, which could only be to destroy the game, and keeping a gun, which a man might do for the defence of his house. The conviction was confirmed.

Sira, 496. Hil. 8 gen. 1. v. Thel.

The defence was confided in the peace of office for keeping a gun, contrary to 5 Ann. c. 14, and it was ob-

jected, that a gun is not mentioned in that statute, and though there are many things, for the bare keeping of

which a man may be convinced; yet they are only such as can only be used for destruction of the game, whereas a gun is peculiarly for defence of a house, or for a farmer to shoot crows. Et contra it was said, that a gun is men-

tioned in 22 & 23 Car. 2, cap. 25, and considered there as an engine; and the 5 Ann. giving the words other

engines, still be therefore to be included the gun, Sed per curiam, The statute 5 Ann. c. 14, shall be disjunctive, keep or use, so that the bare keeping a gun was an engine as is within that statute: And in that case a diference was taken as to keeping a dog, which could only be to destroy the game, and keeping a gun, which a man might do for the defence of his house. The conviction was confirmed.

Sira, 1698. Trin. 11 gen. 2. v. Gardiner.

Conviction on 5 Ann. c. 14, for keeping a gun not being qualified; and exception was 'taken by Mr. Faw-

kerley, that there was not a reasonable fummon, for it was made on 5 October to appear the same day, which

might be impossible upon account of distance, or the fum-

mons being ferved late, and his witenesses might not be

together on so short a time; then it is to appear upon parceI,

parceI, whereas there are two parishes mentioned before, for the man may have gone to one, whilst they were

convincing him at the other. Sick. 181. Wtjur cert.

The defendant appeared at the time and made defence, so that cures all defecals in the summons. Et per curiam; The answer is right. Then it was objected, that the statute requires the conviction to be by justices of the county where the offence was committed, and that does not appear in this case. Et per curiam; That must appear, or else they have no jurisdiction. Et per curiam, It does, for they distribute part of the penalty to the poor of the parish of Gobfield in co. Kent, infra quarn parceI, effigiam praed. eummmium fuit. And the justices are justicesthe county of Kent, and file themselves fo. Depositions being given it was qualified 4 per curiam.

Their jurisdiction must appear otherwise than out.

Strange moved to quash an indictment for killing a hare, this not being a matter indelible, the statute of 5 Ann. cap. 14. appointing a summary proceeding before justices of the peace, and cited R Erick. v. barnett. Tit. 1 Geo. 1. by act of parliament for keeping of alehouse was quashed, because the statute 3 Car. 1. cap. 3. had directed a particular remedy. *Et per curiam*; The indictment must be quashed. Stram. 679. Hil. 12 Geo. 1. King v. Buck.

By fl. 9 Ann. cap. 25. sect. 2, it is enacted, That if any person, or chesphonant, partridge, moor, heat-game, or grouse, shall be found in the shop, houfe, or possession of any person or persons whatsoever not qualified, in his own right, to kill game, or being intitled thereto under forme person so qualified, the same shall be adjudged, deemed and taken to be an exposing thereof to fail within the true intent and meaning of the above statute 5 Ann. And by fl. 28 Geo. 2. c. 12. sect. 1. If any person or persons whatsoever, whether qualified or not qualified to kill game, shall fail, expede or offer to fail, any hare, chesphonant, partridge, moor, heat-game, or grouse, any such person or persons being intitled to or having right, to kill game for every such offence be subject and liable to the same forfeitures, pains and penalties, as are inflicted by the said recited act upon higlars, chapers, carriens, inn-keepers, victualers or ale-house-keepers, for buying, tellng or offering of game to fail. And if any person or persons whatsoever, or any person or persons being intitled to or having right, to kill game or grouse, shall be found in the shop, houfe or possession of any pooleter, saleman, filmocker, cooke, or pastry-cook, the same shall be adjudged, deemed, and taken to be an exposing thereof to fail, within the true intent and meaning of this act, and the said recited act, or any other act; which said forfeitures shall be recovered, and such penalties inflicted, by such means, and in such manner, and from and within such time, and shall be applied to such uses as are prescribed by the said recited act, or by any other act or acts, for the preservation of the game.

By fl. 28 Geo. 2. c. 19. sect. 1. Where any person shall, for any offence against any law in being for preservation of the game, be liable to pay any pecuniary penalty upon conviction before any justice of peace; it shall be lawful for any other person either to proceed to recover the said penalty as aforesaid, or to sue for the same by action of debt, or on the cafe, bill, plaint or information, in any court of record at Weyminster, and the plaintiff, if he recovers, shall have double costs.

2. Provided, that all suits to be brought by force of this act, shall be brought before the end of the next term [by fl. 26 Geo. 2. cap. 2. action must be brought before the end of the second term] after the offence committed; and that no offender shall be prosecuted for the same offence both by the way prescribed by this law, and by the way prescribed by any of the former laws; and that in case of any second prosecution, the person doubly prosecuted may plead in his defence the former prosecution pending, or the conviction or judgment thereupon. Debt on Geo. 1. cap. 19. for the penalty of 30 l. by using a hound to destroy game. And after a verdict for the plaintiff the judgment was arrested for 5 Ann. cap. 14. for not the word hound of the latter, and the words other engines come after nct., &c. are capable only to animate things, and this being a penal law cannot be extended. The statute 22 & 23 Cor. 2. c. 25. has indeed general words, or any other dogs to destroy game, but this is not a conveyance of the whole statute. Stram. 1132. Hil. 13 Geo. 2. Hunter v. Wilkes.

By fl. 2 Geo. 3. c. 19. sect. 5. It shall be lawful for any person whatsoever, to sue for and recover the whole of the penalty mentioned in the foregoing act of 8 Geo. 1. for his own use, by action of debt, or on the cause, bill, plaint, or information, in any of His Majesty's courts of record at Westminster, wherein no eftain, wager of law, or more than one imparlance, shall be allowed; and wherein the plaintiff, if he recovers, shall have his double costs; and that no part of the said penalty, re-

covered in any such suit or action, shall be paid, or applied to or for the use of the poor of the parish wherein such offence shall be committed; any law or usage to the contrary notwithstanding.

Sect. 6. Provided always, and be it enacted, That no person shall find any paparellers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto his peace, but do flee, or defend themselves; although the warrerener, or his affillant, do kill such offenders, they shall not be troubled upon the same.

Sect. 1 Hen. 7. c. 7. When information shall be made of unlawful hunting in a warren by night, or with painfull face or eyes, the the King of which shall amount to the peace, of any person suspected, he may make a warrant to bring such person before himself, or any other of the said council or justices; and if such person shall conceal the said hunting, or any of his accomplishments, it shall be felony; but if he confess, it shall be but a fine of forty shillings for each offense, and Lord Coke's Commentary on it in a New Treatise on the Law of the Game, lately published, pag. 9—16.

Sect. 3. 15 T. c. 13. sect. 2. If any person shall in the night-time enter into any grounds included, and used for keeping of conies, and be driven out, take, or kill any conies; he shall, on conviction at the suit of the King or of the party, at the affiyes or telfions, on indictment, bill, information, or otherwise, forfeit 10 l. to the party grieved, or treble damages and costs, at the election of the party; and find sureties for his good bearing for seven years, or continue in prifon till he does.

Sect. 5. If any person not having lands or heredita-
ments of 40 l. a year, or not worth in goods 200 l. shall use any gun or bow to kill conies, or shall keep any ferts or coney-dogs (except he have grounds included for that purpose); for the breach of this act at large, and Lord Coke's Commentary on it in a New Treatise on the Law of the Game, lately published, pag. 9—16.

Sect. 7. That this shall not extend to any grounds to be included and used for conies after the making of this act, with liberty to change the bounds of the same, on any reasonable conditions, and in such manner as shall be thought fit, not exceeding one month.

Sect. 22 & 23 Cor. 2. c. 25. If any person shall at any time enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, whether it be included or not; and there shall chase, take, or kill any conies; and shall be thereof convicted in one month after the offence, before one justice, by confession, or oath of one witness, he shall yield to the party grieved treble damages and costs, and be imprisoned three months, and after, till he find sureties for his good bearing.

Sect. 6. If any person shall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies (except the owner or possessor of the ground, or persons employed by them); on pain that the offender, on conviction in one month after the offence, before one justice, by confession, or oath of one witness, shall be thereof convicted in one month after the offence, in such case injured such damages, and in such time as shall be appointed by the justice, and over and above pay down presently to the overers for the use of the poor of the said hunting not exceeding 10 l. as the justice shall appoint; which if he shall do, he shall be justly committed to the house of correction for such time as he shall think fit, not exceeding one month.

Sect. 7. If any person shall be found or apprehended feiting or use any fairs, or other like engines, and shall be thereof in like manner convicted, he shall give
to the party grieved such damages, and in such time as the justice shall appoint, and pay down presently to the over- 
seer for the use of the poor such fum not exceeding 10s.,

Sel. 4. Upon the borders of Warrens] But if they are out of the Warren, no person hath any property in them, and a man may kill them if they eat up his corn; but no action lies against the owner of the War-

en. 5. 6. 7. 8. 9.

So a person that hath a right of common may kill them, when they are out of the Warren, and destroy the common; but he cannot have an action on the case against the Lord, for that would be to create a multiplicity of actions. See Eliz. 45. Cro. Juc. 195. Cro. Cot. 3.

A commoner cannot kill the conies which are upon the common. 12 B. Dict. 126. 2 B. 2 B. 227.

Lord's of the forest may make coney-burrows. 1 Etbu. 107. These suits for killing a man's conies in his close. Ed. Raym. 250.

Judges of peace cannot affize a fine certain for killing of rabbits in a private Warren, Ed. Raym. 151. Information in nature of a Demand is not to be filed at the instance of a private procurator for setting up a Warren. Ed. Raym. 1499. See the Journal preceding case at full length, in A New Treatise on the Laws of Game, lately published, page 21—42.

By 58 Geo. 1. c. 22. commonly called the Black Act, if any person be armed and dispossessed, shall appear in any Warren or place where conies are usually kept, or unlawfully rob any such Warren; or (whether armed and dispossessed or not) shall refuse any person in custody for such offence, or procure any person to join him therein; he shall be guilty of felony without benefit of clergy. See Stat. 5 Geo. 3. c. 14. sect. 6. Whereas there are many thousands of acres of ground in this Kingdom, which are unfit for cultivation, and yet the same are capable of rendering great profit, by the breeding and maintaining conies, as well to the owners of such lands, as to a multitude of industrious manufacturers, who gain their livelihood by working up coney wool: And whereas a great part of the said land is already used as Warrens, in the breeding and maintaining conies, but, because divers disorderly persons, neglecting their own lawful trades, have betaken themselves to the taking, killing, and stealing of conies, in the night-time, whereby the owners and occupiers of such Warrens are greatly disconsolated, and many furnish invenis have been induced to destroy such Warrens, and others have been deterred from flocking other lands, to the great prejudice of the manufacturers of this kingdom: And whereas the provisions already fulfilled have, by experience, been found insufficient for the effectual preservation of conies in Warrens: For remedy thereof, Be it further enacted, That if any person or persons shall, from and after the first day of June 1765, willfully and wrongly, in the night-time enter into any Warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed, and shall then and there willfully and wrongly take or kill, in the night-time, any coney or conies, against the will of the owner or occupier thereof, or shall be aiding and affisting therein, and shall be convicted of the same before any of his Majesty's Justices of oyer and terminer, or general gaol delivery, for the county where such offence or offences shall be committed; every such person and persons so offending, and being thereof lawfully convicted in manner aforesaid, shall and may be transported for the space of seven years, or suffer other such felony punishment by whipping, fine, or imprisonment, as the court shall think fit, and shall, in their discretion, award and direct.

Sel. 7. Provided always, and be it enacted, That no person, who shall be convicted of any offence against this act, shall be liable to be convicted for any such offence under any former act or acts, law or laws, now in force.

Sel. 8. And whereas great mischief and damage has been, and still may be, occasioned by the introduction of co-

ties upon the sea and river banks in the County of Lin-

cols, or upon the land or ground within a certain distance from the said banks: For remedy thereof, Be it enacted by the authority aforesaid, that nothing in this act con-

ained shall extend, to prevent any person or persons from killing and destroying, or from taking and carrying away, in the day-time, any conies that shall be found on any sea or river banks, erected, or to be erected, for the preservation of the ad-

joining lands from being overflowed by the sea or river waters, so far as the flux and reflux of the tide does or shall extend, or upon any land or ground within one furlong distance of such sea or river banks; but that it shall and may be lawful to and for any person or persons, to enter upon any such banks, land, or ground as aforesaid, within the said county of Lincoln, and to kill, de-

stroy, take, and carry away in the day-time, to his or their own use, any conies so found upon any such banks, land, or ground as aforesaid, within the said county, be or they doing as little damage as may be to the owner or tenant of such banks, land, or ground; any thing in this or any other act contained to the contrary notwith-

standing.

Sel. 9. Provided also, That no person or persons shall be obliged to make satisfaction for any damages that may be occasioned by such entry, unless such damages shall exceed the value of the conies slain.

Dor. Stat. Weff. 1. 3 Ed. 1. c. 20. If treffapers in parks be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years imprisonment, and after the fine be made, at the King's pleasure (if they have whereof), and then shall find good sureties, that after they shall not commit the like trespass: and if they have not whereof to make fine, after three years imprisonment, they shall find like sureties; and if they cannot find like sureties, they shall abjure the realm. And if none fine be made within the year and day, the King shall have the fine.

Treffapers] This is, when a man either chafeth in a park, or endeavours to kill some of the game thereof. 2 Etbu. 199.

In parks] This act is to be understood of a lawful park only, whereunto three things are required: 1. A liberty, either by grant or prescription. 2. Inclosure by pale, wall or hedge, and 3. Beasts savages of the park. 2 Etbu. 199. See this statute, and Lord Coke's Commentary upon it at full length, in A New Treatise on the Laws for Preservation of the Game, lately published, page 34—47.

Stat. 21 Ed. 1. 2. 2. If any forester or parker shall find any treffapers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to fland unto the peace, but do continue their malice, and disobeving the King's peace do free, or defend themselves with force and arms; altho' such forester, parker, or their affillants, do kill such offenders, they shall not be troubled upon the fine.

Stat. 1 Hen. 7. c. 7. When information shall be made, that any person is hunting in any forest or park, by night, or with painted clothes, to any other of the king's forests, or to a justice of the peace, of any person to be suspected thereof, he may make a warrant to take the person, and to have him before the maker of the warrant, or any other of the said council, or justices of the peace; who may by their discretion examine him of the said hunting, and of the said doers in that behalf: And if the said person willfully conceal the said hunting, or any person with him defecive thereby, that then the same conceal-

ment be, against every such person so concealing, felony. But if he shall then avow the truth, and all that he shall be examined of, and know in his heart, if the said offences of hunting by him done, shall be but trespasses fenceable at the next general seisions. And if any rescues or disobeyance be made to any person having authority to execute the warrant, by any person which so should be arrealted, so that the execution of the warrant thereby be
be not had, then the said rehus and doleourse shall be felony. And if any person shall be convict of any such hunting in any woods, walled parks, or gardens, or public walks, on pain of 12s. 4d. a month, to him who shall sue by act of debt; or the justices in seions may call before them any persons suspected, and examine them; and if they be found in default, may commit them till they have found surety for payment of the forfeiture to the King; and shall have the tenth part of such forfeiture for their labour.

Stat. 5 Eliz. c. 21. sct. 3. If any person unlawfully break or enter into any park impaled, or any other seeral ground closed with wall, pale or hedge, and take, or bear with him, or allow to be borne, or have, or take or kill, any deer within such park, &c. or shall take away any hawks, or the eggs of them, unlawfully out of the woods or ground of any person, (not having lawful authority to do) and thereof be convicted as aforesaid, he shall likewise suffer imprisonment for three, or seven years, and after the said three months expired, shall find sureties for his good behaviour for seven years; or else remain in prison until he find such sureties during the said seven years.

Sect. 4. Provided, that this act extend not to any park or inclosed ground, to be made and used for deer, without the grant and licence of the Queen.

Sect. 5. It shall be lawful for the party grieved to take his further remedy against all such offenders for his damages, and to recover the treble value of the same, as well before justices of oyer and termers, justices of affize, and justices of peace, as elsewhere in any other the Queen's courts of record; and upon satisfaction of the treble damages, or upon the confession thereof by the party, before the justices in open seions, it shall be at the liberty of the party grieved, to release the forfeiting party, from the act.

Sect. 6. The justices of oyer and termers, justices of of affize, and justices of the peace, and gaol delivery in their seions, shall have power to inquire, hear and determine the offences aforesaid, as well upon indictments taken before them, as by bill of complaint, information or any other action.

Sect. 7. If any person shall be bound before any of the justices to the Queen, for his good abearing for seven years, according to this act, and the party so bound within the seven years come before the justices of peace of the county, where the offence was committed, in open seions, and there confess the same; and of his own accord, and freely the party grieved according to this act; the justices may within the seven years discharge the recognizance and the party.

Stat. 3 Jac. 1. cap. 13. sect. 2. If any person shall unlawfully enter into any park, or inclosed ground with ground inclosed with wall, pale, or hedge, and used for the keeping of deer or conies, and unlawfully hunt, chase, take, or lay any deer or conies within such park or grounds, against the will of the owners, and thereof shall be convicted at the suit of the King or the party, he shall suffer imprisonment of three months, and shall pay to the party treble damages and costs, to be ascribed by the justices before whom he shall be convicted, and shall find sureties for his good abearing for seven years, or else shall remain in prison until he find such sureties during the said seven years.

Sect. 3. The justices of oyer and termers, justices of of affize, justices of the peace and gaol delivery in their

G A M

G A M

eniors shall have power to inquire, hear; and determine the said offences by examination of the offenders, and to award process as well upon indictments taken before them, as by bill of complaint, or other action.

Sect. 4. It shall be lawful to the party grieved to take his further remedy against such offender for his damages, and to recover the treble value of the same, as well before the justices of oyer and termers, justices of affize, and justices of peace and gaol delivery in their seions, or in the courts at Westminster, and upon satisfaction of the treble damages to the party, or upon the acknowledgment thereof before the justices, it shall be at the liberty of the party grieved to release the forfeithip of the good behaviour at any time within the seven years.

Sect. 5. If any person not having hereditaments of the yearly value of forty pounds, or not worth in goods two hundred pounds, shall use any gun, bow or cross-bow to hunt or shoot deer within the kingdom, or shall keep hounds, or bear or shoot for the deer, hares, hares' backs, or bucks, on pain of 12s. 4d. a month, to him who shall sue by act of debt; or the justices in seions may call before them any persons suspected, and examine them; and if they be found in default, may commit them till they have found surety for payment of the forfeiture to the King; and shall have the tenth part of such forfeiture for their labour.

Stat. 5 Eliz. c. 21. sct. 3. If any person unlawfully break or enter into any park impaled, or any other seeral ground closed with wall, pale or hedge, and take, or bear with him, or allow to be borne, or have, or take or kill, any deer within such park, &c. or shall take away any hawks, or the eggs of them, unlawfully out of the woods or ground of any person, (not having lawful authority to do) and thereof be convicted as aforesaid, he shall likewise suffer imprisonment for three, or seven years, and after the said three months expired, shall find sureties for his good behaviour for seven years; or else remain in prison until he find such sureties during the said seven years.

Sect. 4. Provided, that this act extend not to any park or inclosed ground, to be made and used for deer, without the grant and licence of the Queen.

Sect. 5. It shall be lawful for the party grieved to take his further remedy against all such offenders for his damages, and to recover the treble value of the same, as well before justices of oyer and termers, justices of affize, and justices of peace, as elsewhere in any other the Queen's courts of record; and upon satisfaction of the treble damages, or upon the confession thereof by the party, before the justices in open seions, it shall be at the liberty of the party grieved, to release the forfeiting party, from the act.

Sect. 6. The justices of oyer and termers, justices of of affize, and justices of the peace, and gaol delivery in their seions, shall have power to inquire, hear and determine the offences aforesaid, as well upon indictments taken before them, as by bill of complaint, information or any other action.

Sect. 7. If any person shall be bound before any of the justices to the Queen, for his good abearing for seven years, according to this act, and the party so bound within the seven years come before the justices of peace of the county, where the offence was committed, in open seions, and there confess the same; and of his own accord, and freely the party grieved according to this act; the justices may within the seven years discharge the recognizance and the party.

Stat. 3 Jac. 1. cap. 13. sect. 2. If any person shall unlawfully enter into any park, or inclosed ground with ground inclosed with wall, pale, or hedge, and used for the keeping of deer or conies, and unlawfully hunt, chase, take, or lay any deer or conies within such park or grounds, against the will of the owners, and thereof shall be convicted at the suit of the King or the party, he shall suffer imprisonment of three months, and shall pay to the party treble damages and costs, to be ascribed by the justices before whom he shall be convicted, and shall find sureties for his good abearing for seven years, or else shall remain in prison until he find such sureties during the said seven years.

Sect. 3. The justices of oyer and termers, justices of of affize, justices of the peace and gaol delivery in their

deer
GAM

GAM

Oath of one witness) This must not be upon the single oath of the informer; and a conviction was qualified for that reason; divers convictions having been quashed for the same reason before. *Ld. Raym.* 1454. *Stran.* 316.

Proceeded in 12 months after the offence] A conviction being returned on a *certiorari*, the objection was, that the conviction appeared to be a year after the day of the information. But it was held sufficient that the information be prosecuted within a year after the *Act*; for that it is a good commencement of the suit, and it is from that the computation is made in all such cases. 1 *Salk.* 383.

But by the Black act, this prosecution may be commenced at any time within three years after the offence. *Wounded, taken or killed thirty pounds* Where several persons charged, they shall forfeit each 30l. and not one sum of 30l. for all. 1 *Salk.* 182.

Leved by diffrefs] Tho' the fale of the goods is not mentioned in the statute, yet, nevertheless where the law gives a diffrefs for a publick benefit, the officer may fell. 1 *Salk.* 579.

By warrant from the justices Altho' the confable is not appointed to execute this warrant, nor is he so much as named in the clause; yet he is bound to obey the warrant, and is indifpensible if he does not. But he need not return to the warrant, merely to diffrefs; for that is not required, and it may be necessary to keep it for his own justification; but he must either return the warrant, or certify what he has done upon it. 1 *Salk.* 381.

One third part to the informer] The penalty need not be distrubuted by the conviction, viz. 10l. to the informer, 10l. to the poor, and 10l. to the party grieved; for the judgment in such cases seldom mentions a distribution; it is enough to say, that he is convicted, and has forfeited 30l. according to the statute. 1 *Salk.* 383.

Sufficient diffrefs If the justice finds there is nothing to distrain, then he must make a record thereof, and make an adjudication for corporal punishment; but the offender is not to pay part, and suffer corporally for the refuse. *Ld. Raym.* 545. 1195. 6.

The defendant was committed for want of diffrefs; and the warrant set forth, that it had been certified to the justice by the confable, that there was not sufficient diffrefs. It was objected, that there ought to have been a warrant to levy, and a return to that, that there was no diffrefs; it may be the confable only told him so. But by the court, the warrant was well enough; and the word certified imports to be in a legal manner. *Stran.* 263. *See all these cases at full length in A New Treatise on the Laws of the Game, lately published.* p. 90—136.

*Stat.* 5 *Gen.* 1. *cap.* 15. *selt.* 1. *No certiorari shall be allowed to remove proceedings concerning any matter in the act 3 & 4 W. IV. & M. cap. 101. unless the party convicted shall before allowance of such certiorari, and at the same time that security is given for payment of costs, become bound to the justice before whom such conviction was made, with forfeitures to be approved of by the justice, in the penalty of thirty pounds for each offence, with condition to prosecute such certiorari with effect, and to pay such justice the forfeiture due by such conviction, to be distributed as the statute directs, or to render the personal convicted to such justice in one month after the conviction shall be confirmed, or a *procedendo* granted; and in default the justice may proceed to execution as if no certiorari had been awarded.*

*Selt.* 2. After confirmation of any conviction on the said statute by any superior court, and delivering the rule to the justices, whereby such conviction hath been so confirmed, such justice may proceed against the party convicted with all the proceedings had before granted. *Selt.* 3. Any person sued for any thing done in pursuance of this act, or of the said act of 3 & 4 W. IV. & M. cap. 10. may plead the general issue, and if a verdict be had against him, the defendant, &c. the defendant shall have treble costs.

L I

Vol. II. No. 82.
Sel. 6. Every person convicted by virtue of the said statute shall, before he be discharged out of custody, become bound to the person against whom the offence was committed in fifty pounds, with condition for his good behaviour, and not to offend in like manner, and on a refusal to appear, such person shall be committed to the county gaol till such bond be given; and if such person after his becoming bound be convicted of any matter in the said statute, the bond shall be forfeited and the penalty recovered, with costs, in any court at Wignallers, where such penalties shall be distributed in the same manner as the forfeitures are such. If he or she be convicted, he or she shall forfeit fifty pounds for each day so killed, &c. to be levied by diffrets, and distributed as the forfeitures in the said act are to be, and for want of diffrets he shall be imprisoned three years, and be sent in the pillory two hours in some market-day in the town next the place where the offence was committed, by the chief or under-officers of such town.

Sel. 5. If the keeper or other officer of any forest, &c. where deer are usually kept, shall be convicted on the statute of 3 & 4 W. & M. cap. 10. for killing and taking away any deer, or any being killed without contradiction the owner or person chiefly intrusted with the custody of such forest, &c. he shall forfeit fifty pounds for each deer so killed, &c. to be levied by diffrets, and distributed as the forfeitures in the said act are to be, and for want of diffrets he shall be imprisoned three years, and be sent in the pillory two hours in some market-day in the town next the place where the offence was committed, by the chief or under-officers of such town.

Sel. 6. If any person shall pull down or destroy the piles or walls of any park, &c. where any deer shall be kept, without the consent of the owner or person chiefly intrusted with the custody thereof, and on the oath of one or more witnesses, before one justice of the county where the offence is committed, he shall be subject to the forfeitures by the act 3 & 4 W. & M. cap. 10. inflicted for killing one deer.

The defendant being brought up from Quatreto by balbuc corpus, it appeared upon the return, that he was committed for deer-dealing, as the statute of the 3 W. & c. 10. directed, not having sufficient diffrets; and that it was done by one justice under the statute of the 5 G. And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the justice, and therefore the justice could not proceed to execution: For the statute gives to the justice a jurisdic tion after confirmation, which he had not before; and therefore he ought to have tried every thing requisite to found his jurisdiction upon. But by the court; We take notice of our own records, and by them it appears that the prosecution is unreasonable: And the statute doth not give the justice a new jurisdiction, but only revives his old one, which was suspended by the certiorari. And the defendant was remanded. Str. 203.

Stat. 5 Geo. 1. cap. 28. sect. 1. If any person shall enter any park or other enclosed ground, and there being no sufficient dace to be levied, or to kill any deer there, without the consent of the true owner or person intrusted with the custody of such park, &c. or shall be aiding therein, and being indicted for such offence before any judge of gaol delivery in the county wherein such park, &c. shall lie, and be convicted thereof by verdict or confession, he shall be sent to some of his Majesty's plantations in America for seven years; and the court before whom he shall be convicted, or any subsequent court, shall have power to transfer such offender by order of court to the use of any person who shall contract for the performance of such plantation.

Sel. 2. Nothing hereof shall repeal any former law made for the punishment of deer-dealers, and when any offender shall be punished by force of this act he shall not be prosecuted by force of any other law.

Stat. 9 Geo. 1. cap. 22. sect. 13. Any prosecution for any offence against the statute 3 & 4 W. & M. cap. 10. may be commenced within three years from the offence committed.

Sel. 17. If any venison or skin of a deer be found in the custody of any person, and it shall appear that he bought it of one that might justly be suspected to have unlawfully killed or taken it, and that the venison does not produce the party of whom he bought it, or prove upon oath the name and place of abode of such party; then the person who bought the same shall be convicted of such offence by any one justice of peace, and shall be liable to the penalties for killing a deer, by Stat. 3 & 4 W. & M. cap. 10. See title Wiltshire Act.

Stat. 9 Geo. 1. cap. 22. sect. 7. If any person who shall hereafter be convicted of unlawful hunting, killing, wounding or taking deer in any enclosed forest or chase where deer are usually kept, shall during the continuance of the act 9 Geo. 1. cap. 22. [which see in Wiltshire Act] be guilty of a second offence of the like nature, and shall thereof be convicted upon information or information; such person shall be transported to one of his Majesty's plantations in America for seven years: And if he shall return to Great Britain or Ireland within the said seven years, he shall be guilty of felony without benefit of clergy.

Sel. 9. The offender may be tried for such second offence before the justices of affize,oyer and terminer, or gaol-delivery of the county or place where such second offence shall be committed, and the justice before whom such offender was convicted of such former offence, shall certify a copy of such conviction to the next quarter sessions of the county wherein such first offence was committed, to be kept amongst the records; and the clerk of the peace shall at the request of the preceptor, or any other in his Majesty's behalf, certify a transcript briefly containing the effect of the first conviction, which shall be a sufficient proof that such offender hath been convicted of such former offence.

Sel. 9. If any person armed with offensive weapons shall, during the continuance of the said act, come into any forest, chase or park wherein deer are usually kept, with an intent to pursue, hunt, take in toils, kill, wound, or take away any red or fallow deer, and shall there unlawfully bestow or wound any keeper or page of any such forest, chase or park, his servants or aidsants in the execution of their offices, and be thereof convicted; such person shall be transported to his Majesty's plantations in America for seven years; and if such person returns to Great Britain or Ireland within the seven years, he shall be liable to death.

Stat. 28 Geo. 2. cap. 19. sect. 3. Whereas the burning and destroying of gos, furze, and fern in forests and chases, doth destroy the cover necessity for the preservation of the deer and game there; therefore if any person, not having a right or legal licence to do the same, shall set fire to, burn, or destroy (or be aiding therein) any gos, furze, or fern in any forest or chase, without consent of the owner, or person chiefly intrusted with the custody of such forest or chase, or of some part thereof, and being brought before a justice, shall be thereof convicted by confession, or oath of one witness, or of two witnesses, or of three witnesses, be committed to some of his Majesty's plantations in America for five years, or not less than forty shillings, half to the informer, and half to the poor, and if not forthwith paid, to be levied by diffrets; and if no sufficient diffrets can be found, the justice shall commit him to the common gaol, for any time not exceeding three months, nor less than one month. See title Fifth.

Graves or Moor-games. Stat. 1 Jac. 1. c. 27. sect. 2. Every person who shall shoot at, kill or destroy, with any gun or bow, any gos, heath-cock or moor-game, shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to some of his Majesty's plantations in America for three months, unless upon conviction he pay to the churchwardens for the use of the poor, 20s. or, after one month after his commitment, become bound by recognizance with two footies in 20l. each, before two justices, not to offend again in like manner: The recogniz ance to be taken before the next fair.

Stat. 4 & 5 W. 3. c. 23. sect. 11. For the better preserving the red and black game of gosou commonly called cocks or heath-polls, no person whatsoever on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall presume to burn between February the first and the third day of May next, any green heath, furze, heath, furs, gos, or fern, on pain of being committed to the house of correction for any time not exceeding one month,
month, nor less than ten days, there to be whipt, and kept to hard labour.

Stat. 9 Ann. c. 25, s. 3. If any person whatsoever shall take or kill any moor, heath-game, or grouse, in the 20 l. an apiece, shall two justices, not to offend justice, on oath of one witness, forfeit five pounds, half to the informer, and half to the poor, by drittis; and for want of drittis to be sent to the house of correction for three months for the first time, and for every other offence four months.

15 & 17 Hen. 8. c. 10. No person or persons, of what estate, degree or condition they be, from henceforth shall trace, destroy and kill any hare in the snow with any dog, bitch, nor otherwise. And that the justices of the peace, within every shire, at every sessions of the peace, and in their several sessions, shall have authority and power to inquire of such offenders. And after such inquisitions found, the said justices of the peace, and stewards of leets, for every hare so killed, shall cett upon every such offender six shillings and eight pence, to be forfeited to their said Sovereign Lord, that shall be so found by the justices of peace in their seale, and the forfeitures found in every leet to be to the Lord of the leet.

Stat. 23 Eliz. c. 10. sect. 5. If any manner of persons shall hunt with spaniels in any ground where corn or other grain shall then grow (except in his own ground), at such time as any eared corn or grain shall be Growing therein, and be thereon trodden on, or offend justice, and be thereof convicted at the assizes, sejissions, or leet; he shall forfeit 40 l. to the owner of the corn; and if not paid in ten days, he shall be imprisoned for one month. And any justice may examine the offender, and bind him over to appear at the next sessions to answer the offence, and to pay the damage.

Stat. 1 &c. 27, sect. 2. Every person who shall shoot at, kill or destroy any hare, with any gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens, and be thereon to purge the poor 20 l. for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices, in 20 l. apiece, not to offend again in like manner. The recognizance to be returned to the next sessions. And every person, who shall trace or course any hares in the field, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 l. for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices, in 20 l. apiece, not to offend again in like manner. And every person who shall at any time take or destroy any hares, with hare-pipes, cords, or any such instruments or other engines, shall forfeit for every hare 20 l. in like manner.

Sect. 4. Every person who shall fell, or buy to sell again, any hare, shall, on conviction at the assizes or sejussions, or before two justices out of sejissions, forfeit for every hare 10 l. half to the poor, and half to him that will sue.

Stat. 23 & 25 Car. 2. cap. 25, sect. 6. If any person shall be found or apprehended setting or using any flairs, hare-pipes, or other like engines, and shall be thereon convicted, by confession, or oath of one witness, before one justice, in one month after the offence; he shall give to the party injured such damages, and in such time, as the justice shall appoint, and shall pay down presently to the overseers for the use of the poor, such sum not exceeding 10 l. for every hare, except he be thereon convicted, and shall pay the justice the full damage, which if he shall not do, the justice shall commit him to the house of correction not exceeding one month.

Stat. 9 Ann. c. 25, sect. 3. If any person whatsoever shall take or kill any hare in the night-time, he shall on conviction before one justice, on oath of one witness, forfeit 5 l. for every hare, and all the information, if any, to the justices, by drittis; and for want of drittis to be sent to the house of correction for three months for the first offence, and for every other offence four months.

By Stat. 9 Geo. 1. c. 22. commonly called the Black Act, if any person, armed and disguised, shall appear in any warren or place where hares are usually kept, or unlawfully rob any such warren, or (whether armed and disguised or otherwise) shall refuse any person in custody for either of the said offences, and shall not then have any certificate or warrant in any such unlawful act; he shall be guilty of felony without benefit of clergy.

Hawks and hawking. Stat. 34 Ed. 4. c. 22. Every person who findeth a faulcon, terrece, laver, or laneret, or other hawk that is left, he shall presently bring the same to the seire; and the seiriff shall make a proper record in all the good towns in the county, that he hath such an hawk in his custody; and if he is challenged in four months, the owner shall have him again, paying the costs: If he be not challenged in four months, the seiriff shall have him, making good all damages which be done by, or for him, if he be a simple man, but if he be a gentleman, and of estate to have the hawk, taking of him reasonable costs for the time that he had him in his custody.

Stat. 37 Ed. 3. c. 19. If any man flie any hawk, and the same carry away, not doing the ordinance aforefaid; it shall be done of him as of a thief, that flieeth a horfe or other thing. (That is, he shall be guilty of felony, but shall have his clergy. 3 Eliz. c. 8.)

Stat. 14 Hen. 7. c. 17. No manner of person, of what condition or degree he be, shall take or cause to be taken, on his own ground, or any other man's, the eggs of any fow, pheasant, hawk, or partridge, under 20 l. for every egg, or the price of the same, and all the cost of the same, for taking (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the King's will; half to the King, and half to the owner of the ground where the eggs were taken. And no man shall bear any hawk of the breed of England, called a parson, goلفohawk, tafel, laver, laneret, or faulcon; on pain of forfeiting his hawk to the King. And if he bring any of them over sea, or out of Scotland, he shall bring a certificate thereof from the officer of the port, or warden of the march; on the like pain of forfeiting the same to the King.

And the person that bringeth any such hawk to the King, shall have a reasonable reward of the King, or else the hawk for his labour. And no man shall take any ayre, faulcon, goلفohawk, tafel, laver, laneret, or saulcon, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed, or flay them for any hurt done them; On pain of ten pounds, half to him that will sue before the justices of the peace, and half to the King.

Stat. 5 Eliz. c. 21. sect. 3. If any person shall take away any hawks or their eggs, by any means unlawfully, out of the warren or ground of any person; and be thereof convicted at the assizes or sejissions, on information, bill, or information, at the suit of the King, or of the party; he shall be imprisoned three months, and shall pay treble damages; and after the three months expired, shall find securities for his good behaviour for seven years, or remain in prison till he do.

Stat. 23 Eliz. c. 10. If any manner of person shall hawk in another man's corn after it is eared, and before it is stocked; and be convicted at the assizes, sejussions, or leet; he shall forfeit 40 l. to the owner: And if not paid in ten days, he shall be imprisoned for a month.

Partridges and pheasants. Stat. 11 Hen. 7. c. 17. it is enacted, That no person, of what condition he be, shall take or cause to be taken, any pheasants or partridges, by nets, fnares or other engines, out of his own warren, upon the freehold of any other person, without the special licence of the owner or possessor of the same; on pain of 10 l. half to him that shall sue, and half to the owner or possessor, the ground where they shall be taken.

Stat. 23 Eliz. c. 10. If any person, of what estate, degree or condition soever, shall take, kill or destroy any pheasants or partridges in the night-time; and shall be thereof convicted at the assizes, sejussions, or leet; he shall forfeit for every pheasant 20 l. and for every partridge 10 l. half to him that shall sue, and half to the lord of the manor,
manor, unless such lord shall license or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any churchwardens of the parish at the rate of 10s. per day after conviction, he shall be imprisoned for one month. And moreover, besides such forfeiture and imprisonment, he shall give bond to some justice of the peace, with good sureties not to offend again in like manner for the space of two years.

Sed. 1. 1 Jac. 1. c. 27. Sed. 2. Every person who shall shoot at, kill or destroy any pheasant or partridge, with any gun or bow; or shall take, kill or destroy them with setting-dogs and nets, or with any manner of nets, snares, engines or instruments whatsoever; shall be liable to conviction before two justices, by confession, or oath of two witnesses, to be committed to gaol for 3 months, unless he pay upon conviction to the churchwardens for the use of the poor 20l. for every pheasant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20l. each, not to offend again in like manner. The recognizance to be returned to the next sessions.

Sed. 4. Every person who shall kill, or buy to sell again, any partridge or pheasant (except of the partridges and brought home from beyond sea), shall be liable to conviction at the assizes or sessions, forfeit for every partridge 10s. and for every pheasant 20s. half to him that will sue, and half to the poor.

Stat. 7 Jac. 1. t. 1. s. 1. Sed. 2. Every person whatsoever, who shall hawk at, destroy or kill, and carry off any hawk or dog, by colour of hunting, between the first of July and the last of August, shall, on conviction before two justices, by confession or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens for the use of the poor, 40s. for every hawk or dog, and 20s. for every pheasant or partridge which he, his hawk or dog shall take or kill.

Sed. 7. Every free warrener, lord of a manor, or freeholder feised in his own or his wife’s right, of 40l. a year liable of inheritance, or of the value of 60l. or worth in goods 400l. may take pheasants and partridges (in the day-time only) in his own free warren, manor or freehold, betwixt Michaelmas and Christmas yearly.

Sed. 8. Every person, who shall take, kill or destroy any pheasant or partridge, with setting-dogs and nets, or otherwise with any manner of nets, snares, engines or instruments whatsoever, shall, on conviction before two justices, by confession, or oath of one witness, be committed to gaol for three months, unless he forthwith pay to the churchwardens or overseers 20s. for every pheasant or partridge and further to become bound by recognizance of 20l. before one justice, that he shall not thereafter kill or destroy any pheasant or partridge. The recognizance to be filed at the next sessions.

Stat. 9. Geo. c. 25. If any person whatsoever shall take or kill any pheasant or partridge in the night-time, he shall, on conviction before one justice, on oath of one witness, forfeit 5l. half to the informer, and half to the poor, by day or night, by way of different, or be sent to the house of correction for three months for the first offence, and for every other offence four months.

Stat. 2. Geo. 3. c. 19. For the better prescription of this game in this kingdom, it may please your most Excellent Majesty, that it may be enacted and be it enacted by the King’s most Excellent Majesty, and by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that no person or persons, after the first day of June 1752, shall, upon any pretence whatsoever, take, keep, destroy, carry, sell, have, live, keep, or have in their possession or cornany, either pheasant or any partridge, between the 12th day of February and the first day of September in any year; or any pheasant between the first day of February and the first day of October in any year; or any heath-fowl, commonly called black-game, between the first day of January and the 20th day of August in any year; and to recover all manner of lands and game, between the first day of December and the 25th day of July in any year.

2. Provided always, that nothing in this act shall extend to any pheasant which shall be taken in the season allowed by this act, and kept in a mew or breeding place.

3. Provided also, that nothing in this act contained shall extend, or be construed to extend to that part of Great Britain called Scotland.

4. And be it further enacted by the authority aforesaid, that if any person perform for two years this act in any of the several said cafes, and shall be lawfully convicted thereof by the oath of one or more credible witnesses or witnesses; every pheasant shall, for every partridge, pheasant, heath-fowl, or grouse, so taken, killed, destroyed, carried, sold, bought, or found in his, her or their possession or use, contrary to the true intent and meaning of this act, forfeit and pay the sum of five pounds to the person or persons who shall inform or sue for the same; and it shall and may be lawful to and for any person or persons to sue and prosecute for, and recover the said penalty of five pounds, with full costs of suit, and if the suit is brought before any one of his Majesty’s courts of record at Westminster; and in such action or suit, no ejectment, warrant of law, or more than one impression, shall be allowed.

Pigeon. A lord of a manor may build a dove-cote upon his own land, parcel of the manor; but a tenant of a manor without the land of the lord has not the same privilege.

3 Stat. 248. But any freeholder may build a dove-cot on his own ground. 

Cra. El. 548. Cra. 3. 392. And it hath been adjudged, that erecting of a dove-house is not a common nuisance, nor preterable in the least. Cra. 4. 490. 491.

Stat. 1. 1 Jac. 1. c. 27. Every person who shall shoot at, kill or destroy any house-dove or pigeon with a y gun or bow; or shall take, kill or destroy the same with setting-dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20l. or, after one piece after his commitment, become bound by recognizance with two sureties, before two justices, in 20l. a-piece, not to offend again in like manner; the recognizance to be returned to the next sessions.

Stat. 2. Geo. 3. c. 39. sect. 1. If any person or persons shall shoot at, with an intent, or shall by any means whatever kill or take, with a wilful intent to destroy, any house-dove or pigeon, and shall be thereof convicted by the confession of the party offending, or the oath of one or more credible witnesses or witnesses, before one or more justices or justices of the peace of the county, city, town corporate, division, riding, or place (where a oath fuch justice or justices are hereby authorized to administer) whatsoever any such offence or offences shall be committed, or the party or parties offending shall be apprehended; and who shall be provided as aforesaid in such offense, shall, for every such offense forfeit and pay the sum of twenty shillings, to the person or persons who shall inform against, and prosecute to conviction, any such offender or offenders; and in case the money so forfeited shall not be forthwith paid on every such conviction, then shall and may be lawful for any justice or justices to commit any such offender or offenders, who shall be so convicted as aforesaid, to the common gaol of the county, or place where the party is convicted or apprehended, there to remain and be kept to hard labour for any time not exceeding three calendar months,
...and with

and 

and 

or 

Alfo 

certif

iti

witne

(res 

againft 

if 

pigeon-houfe, 

the 

their 

confequence 

Stat.

be 

like 

he 

other 

natural 

profecuted 

the

3. 

4. 

fuch 

every 

fuch 

dove-cote, pigeon-houfe, pigeon-chamber, or other place.

3. 

Provided 

that the 

they 

in 

that 

King's 

half 

of 

King, 

and 

to 

King, and 

half 

to 

of 

the 

Swan. 

Stat. 22 Ed. 4. c. 4. 

No perfon (other than the King's fon) unlefs he has lands to hold free of the value of five marks a year, fhall have any mark or game of fowl, unless for the fouling the fawns, or other laws, unlefs he fhall be liable to fenpay for the fame, to be conducted on with effect within the space of two calendar months after every fuch offence fhall be committed, and that when the perfon fhall fuffer imprisonments for default of payment of any penalty imposed under this act, fuch perfon fhall not be liable afterwards to pay fuch penality.

Swan. 

Stat. 22 Ed. 4. c. 4. 

No perfon (other than the King's fon) unlefs he has lands to hold free of the value of five marks a year, fhall have any mark or game of fowl, unless for the fouling the fawns, or other laws, unlefs he fhall be liable to fenpay for the fame, to be conducted on with effect within the space of two calendar months after every fuch offence fhall be committed, and that when the perfon fhall fuffer imprisonments for default of payment of any penalty imposed under this act, fuch perfon fhall not be liable afterwards to pay fuch penality.

Stat. 17 Hen. 7. c. 17. 

No perfon fhall take or caufe to be taken, on his own ground, or any other man's, the eggs of any fawn; on pain of conviction before the juftices of the peace of imprisonment for a year and a day, and fine at the King's will, half to the King, and half to the owner of the fawns.

Stat. 1 1 Jac. 1. c. 27. fet. 2. 

Every perfon who fhall take the eggs of any fawns out of the net, or wilfully spoil them in the net; and fhall be convicted there- of before two juftices, by confeffion, or oath of two witneffes; fhall be committed to gaol three months, unlefs he pay to the churchwardens for the ufe of the poor the half to the King, and half to the owner of the fawns.

Stat. 1 1 Jac. 1. c. 27. fet. 2. 

Every perfon who fhall take the eggs of any fawns out of the net, or wilfully spoil them in the net; and fhall be convicted there- of before two juftices, by confeffion, or oath of two witneffes; fhall be committed to gaol three months, unlefs he pay to the churchwardens for the ufe of the poor the half to the King, and half to the owner of the fawns.

It is fenfible to take any fawns that be lawfully marked, tho' they be at large, and to take fawns unmarked; if they be domestical or tame, that is, kept in a mote, or in a pond near to a dwelling-house, to fteal fuch is herein mentioned.

It is fenfible to take any fawns that be lawfully marked, tho' they be at large, and to take fawns unmarked; if they be domestical or tame, that is, kept in a mote, or in a pond near to a dwelling-house, to fteal fuch is herein mentioned.

So it feemeth of fawns unmarked, fo long as they keep within a man's manor, or within his private rivers; or if they happen to escape from thence, and be purfued and taken, and brought in again. But if fawns that are unmarked fhall be abroad, and fhall attain to their places within a certain precept or place. Deft. c. 156. 7 Ga.


No perfon, between the laft day of May and the laft day of August yearly, fhall take, or caufe to be taken, any wild ducks, mallards, widgons, teal, or wild geese, with nets or other engines, on pain of a year's im- 

prisonment, and of fo much as fhall be due by law to the half, and half to him that will fufe by action of 

debt: Alfo the juftices of the peace may inquire of, hear and determine the fame, as in cafes of trefpas.

Sect. 4. But any gentleman, or any other that may difpleafe the King, or be caufe to be taken, any wild ducks, mallards, widgons, teal, or wild geese, with nets or other engines, on pain of a year's im- 

prisonment, and of fo much as fhall be due by law to the half, and half to him that will fufe by action of 

debt: Alfo the juftices of the peace may inquire of, hear and determine the fame, as in cafes of trefpas.

Sect. 4. But any gentleman, or any other that may difplease the King, or be cause to be taken, any wild ducks, mallards, widgons, teal, or wild geese, with nets or other engines, on pain of a year's imprisonment, and of such as shall be due by law to the half, and half to him that will sue by action of debt: Also the justices of the peace may determine the same, as in cases of trefpafs.

No manner of perfon, from the first day of March to the laft day of June yearly, fhall take or destroy the eggs of any mallard, teal or other water fowl, on pain of a year's imprisonment, and of fo much as fhall be due by law to the half, and half to him that will sue by action of debt: Also the justices of the peace may determine the same, as in cases of trefpafs.

No manner of perfon, from the first day of March to the laft day of June yearly, shall, by day or night take or destroy any eggs of any kind of wild fowl, from any net or place for the county where they may chance to be laid by any of the fame wild fowl, on pain of imprisonment for a year, and to forfeit for every egg of a buffard 20 l. of a bitour or chovelard 8 d. and of other wild fowl (except crews, ravens, bolards, or other fowls used to be eaten) 1 d. half to the King, and half to him that will sue by action of debt: Also the justices of the peace may determine the same, as in cases of trefpafs.

Stat. 7 Jac. 1. c. 27. fet. 2. 

Every perfon who fhall fhoot at, Kill, or deftroy with any gun or bow, any mallard, duck, teal, or widgon, and the fame to be proved by the judgemen of two witnesses, who fhall be committed to gaol for three months, unlefs he pay to the churchwardens for the ufe of the poor the half to the King, and half to the owner of the fawns.


reciting, That whereas very great numbers of wild fowl of several kinds are destroyed by the pernicious practife of driving and taking them with hayes, tunnels, and other nets, in the fens, lakes, and broad waters, where bowls refert in the nature of a wild deftruflion, and that at the time, when the bowls alfo are fick and inftilling their feathers, and the fowl unfavourly and unwholesome, to the prejudice of them, and to the great damage and decay of the breed of wild fowl; it is therefore enacted, That if any perfon or perfon whatsoever, (between June 1. and October 1. yearly, at 10 Ga. c. 32.] fhall by hayes, tunnels, or other nets, drive and take any wild duck, teal, or widgon, or any other fowl, commonly re- 

puted water fowl, in any of the fens, lakes, broad wa- 

ters, or other places of refert for wild fowl in the mold- 

ling feaon, fuch perfon or perfon who fhall fo offend, and therefore, shall be convicted before any one or more of 

her Majesty's juftices of the peace, for the saufon, that fuch offence fhall be committed by oath of one or more 

creditable witneffes, fhall, for every wild duck, teal, or other water fowl fo taken as afoard, forfeit and pay the fum of five tholfings; one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish where fuch offence fhall be committed; the fame to be levied by diftreff and fale of the offender's goods, by warrant under the hand and feal of the juftice and ju- 

tices of the peace before whom the offender fhall be con- 

victed, rendering the overplus, (if any be) above the pe- 

nalty above mentioned as diftreff, and for want of diftreff the offender fhall be committed to gaol for one year, and for any time not exceeding one month, nor lefs than fourteen days, there to be whipped, and kept to hard labour; and the juftice or juftices of the peace, before whom fuch perfon or perfon offending fhall be convicted, fhall order fuch hayes, nets, or tunnels, that were used in driving and taking the said wild fowl, as afoard, to be fected and immediately deftroved in the preference of fuch juftices or juftices.

Cautions. It feems that by the Common law, the playing at cards, dice, &c. when prafticed innocently as a recreation, the better to fit a perfon for businefs, is not at all unlawful, nor punishable by a fentence whatsoever. 2 Bent. 175. 5 Mod. 1. 1 Salt. 100.

Alfo it is agreed, that a perfon who wins money at gaming, may maintain a special indebtedness affummoit for it; for the contract is not unlawful in itself, and the winner's 

venturing
venturing his money is a sufficient consideration to in-
title him to the action. 3 Lev. 118. 6 Mod. 128.
5 mod. 173. 1 Vent. 112.
But it seems to be the better opinion, that a general
indictus assault is not for money won at play, for
the contract is executory, and but a wager, which is
but a collateral promise; and this action will lie in
the coffee but where debt will lie, which must be on a contract
exceded, fully a labour done, or some other meritorious
cafe. 6 Mod. 128. Lott. 180. 5 Mod. 13, and
Carth. 336. S. P. where it is said, that the chief reason
of this opinion was, because the court would not con-
tenance gaming, by giving such an easy remedy for
money won at play; and for 3 Lev. 118, and 1 Vent. 175.
An indictment assault lies against him who holds
the wager, because it is a promise in law to deliver it, if
won. 5 Mod. 13. If upon a wager the money is de-
posited in the hands of a third person, and the determi-
nation left to two, and one of them refuses to deter-
mine the matter, no action lies on such a wager till the
adjudication, and the party may justify the detainer; but
if it happened that the wager became impossible to be de-
termined, as if the judges died, or the time was past,
then the wagers dissolve, and each party shall have his
money again.
2 Bat. Abr. 670.
And although gaming, in the manner as has been
said, may be lawful, yet if a person be guilty of cheating, as
by playing with false cards, dice, &c. he may be indicted
for it at Common Law, and fined and imprisoned ac-
cording to the circumstances of the cafe and heuineofs of
the offence. 2 Bat. Abr. 670.
Also all common gaming houses are nuisances in the
eye of the law, not only because they are great tempta-
ations to idleness, but also because they are apt to draw
together great numbers of disorderly persons, which can-
not but be very inconvenient to the neighbourhood.
1 Hawk. P. C. 198.
Also from the destructive and pernicious consequences which such meetings necessarily attend excessive gaming, both the
courts of law and equity have shown their abhorrence of
it. Hence in a cafe where A. came to the house of B.
and won of him 500l, which he carried away, and after-
wards won 1500l, more, which he had in his pos-
fession, which B. and his servant took from him by vi-
olence, and A. having brought an action of trespass, the
court of Chancery granted an injunction. 1 Vern. 489.
Sir Basil Forevraje v. Bret. 2 Vern. 71. S. C. where
the cause came to a hearing, and the defendant finding,
that the court inclined so strongly against him, submitted
to a proposition made by the counsel, which was after-
twards decreed as by consent; and on this occasion the
Lord Chancellor said, "I am glad to hear the express
cafe of Sir Cecil Bishop, and Sir Thomas Stagles, that came before the Lord Chief
Justice Hale in the King's Bench, upon a woman at a
horse-race, where Lord Hale declared, he would give
the defendant leave to impair from time to time.
So where one apprentice lost 100l at two
fights at Exeter, to which he was paid in ready money;
and for the other 50l. he gave his bond of 100l, penalty,
and on a bill to be relieved against it, the court of
Chancery decreed the bond to be delivered up and can-
celled, although the defendant insisted by his anwser, that
he was unwilling, and declined paying for so much, and
that he was precluded to the plaintiff. 2 Vern. 271.
1. Statutes concerning gaming, and cases determined upon
them.
2. Actions and pleadings.
1. Statutes concerning gaming, and cases determined upon
them.
Stat. 33 Hen. 8. c. 9. sect. 11. No person shall for
his gain, lucre, or living, keep any common house, alley,
or place of bowing, coting, cloth-cays, half bowl, tennis,
dicing-table or carding, or any unlawful game,
on pain of forty shillings a day.—But it was resolved upon
this clause, in the third year of Jac. 1. that if the goods
in an inn or tavern, call for a pair of dice or tables,
and for their recreation play with them, or if any neigh-
bours play at bowls for their recreation, or the like,
there are not within this statute; for alfo the games be
used in any inn, or tavern, or other house, yet if the
play be only for recreation, better or gain, but they play
only for recreation, and for no gain, and if any game
of the house, this is not within the statute, nor is such
person that plays in such house that is not kept for
lucre or gain within the penalty of that law.
Dow. cap. 40.
Sect. 12. Every person using and haunting any the said
houses, and there playing, shall forfeit five shillings
and eigthpence.
Sect. 14. And all and every justice of the peace, mayors,
thriftiers, and other head officers, may enter all such houses
and places, where such games shall be suspected to be
held; and as well the keepers of the same, as also the
persons that were resorting and playing, may take, arrest
and imprison, and keep in prison, until the said keepers have
found sureties to the King's use, to be bound by recogni-
tion or otherwise, no longer to use, keep or occupy
such house, play, game, alley or place; and also that the
persons there so found, be in like cafe bound thereunto, no more than the said
places shall be suspected to be kept; and if they shall not
make such search at the farthest once a month, if the
cafe so require, every such person offending shall forfeit
forty shillings for each month.
Sect. 16. No manner of artificer, handicraftsmen,
hunters, or gamekeepers, labourers, for the wharte
journeyman or servant of artificer, mariners, fishermens,
watermen, or any serving man, shall play at the tables,
tennis, dice, cards, bowls, billiards, croquet, logaring, or
any other unlawful game, out of Christmas; on pain of
twenty shillings; and in Christmas to play at the said
games only in their master's houses, or in their master's
preference; and also no person shall at any time play at
bowls in open places out of his garden or orchard, on
pain of five shillings and eigthpence.
Sect. 18. And where any the forfeitures above-men-
tioned shall be found within the precincts of any leet, the
said forfeitures shall be imputable to him that shall
foul in any of the King's courts, and elsewhere they
shall be half to the King, and half to him that shall
foul in like manner.
Sect. 22. But any master may licence his servant to
play at cards, dice, or tables with himself, or with any
other gentleman openly in his house, or in his presence.
Stat. 31 Eliz. c. 4. sect. 7. All persons to be punished
upon any flatute [that is, any statute then in force] for
using any unlawful game, shall be fined and prosecuted,
or otherwise heard and determined, in the general quarter
sessions or assizes of the county where the offence shall
be committed, or in the leet within which it shall happen,
and not in the county court, or the county court.
By stat. 16 Car. 2. c. 7. sect. 2. it is enacted, "That
if any person or persons of any degree or quality what-
ever, at any time or times do or shall, by any fraud, theft, cozenage, circumvention, deceit, or unlawful
devise, or ill practice whatsoever, in playing at or with
cards, bills, or other unlawful games, bowls, kettles, fishboards,
or in or by cock-fighting, horse-races, dog-matches or
foot-races, or other pastimes, game or games whatsoever,
or in or by bearing a share or part in the flakes, wager,
adventures, or in or by betting on the odds or hands of
such as do or shall play, act, ride, run or as offender,
without the licence of him to whom or themselves, or to
any other or others, any sum or sums of money, or other
valuable thing or things whatsoever; that then every per-
son and persons so offending as aforesaid, shall ipso facto
forfeit
forfeit and lose treble the sum or value of money, or other thing or things so won, gained, obtained, or acquired; the one moiety thereof to our Sovereign Lord the King, his heirs and successors, and the other moiety thereof to such person or persons thereof, at whose own free will, or within one year next after the said six months expired; and that the said forfeitures shall and may be used for or recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts at Westminster, wherein no effusion, protection, or favour, of any kind, or whatsoever, shall be given, acknowledged, or entered into for security or satisfaction of or for the said, or any part thereof, shall be utterly void and of none effect; and that the person or persons for so winning the said monies or other things, shall forfeit and lose treble the value of all such sums and sums of money, or other thing or things, whatsoever. Provided, and it is declared, that no recovery shall be had or obtained, or generally to be had, nor shall any of our Majesty's courts hold any action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, wherein no effusion, protection, or wager of law shall be allowed; and that every such plaintiff or plaintiffs, informer or informers, shall in every such suit or prosecution have and receive their treble costs against the person or persons offending and forfeiting as aforesaid.

And 3d. It is further enacted by the said statute, That if any person or persons shall at any time play at any of the said games, or any other game, or games whatsoever, (other than with and for ready money,) or shall bet on the sides or hands of such as do, or shall play therein, and shall lose any sum or sums of money, or other thing or things so played for, exceeding the sum or value of one hundred pounds, at any one time or meeting, without licence, warrant, or other ways, and shall not play down the same at the time when he or they shall so lose the same; the party and parties who lost or shall lose the said monies, or other thing or things played, or to be played for, above the said sum of one hundred pounds, shall have it in case be bound or committed, or otherwise liable to pay or make good the same, the said contract or contracts for the same, and for every part thereof, and all and singular judgments, statutes, recognizances, mortgages, conveyances, alliances, bonds, bills, specialties, promissory, covenants, agreements, and other acts, deeds and securities whatsoever, which shall be obtained, made, given, acknowledged, or entered into for security or satisfaction of or for the said, or any part thereof, shall be utterly void and of none effect; and that the person or persons so winning the said monies or other things, shall forfeit and lose treble the value of all such sums and sums of money, or other thing or things, whatsoever. Provided, and it is declared, that no recovery shall be had or obtained, or generally to be had, nor shall any of our Majesty's courts hold any action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, wherein no effusion, protection, or wager of law shall be allowed; and that every such plaintiff or plaintiffs, informer or informers, shall in every such suit or prosecution have and receive their treble costs against the person or persons offending and forfeiting as aforesaid.

In the construction of this statute the following opinions have been held; 1. That if the loser draws a bill for 120 guineas on his banker, who accepts the bill, to an action brought against the winner, the banker may well plead this statute; altho' it was objected, that the nature of the duty was altered, and a new contract created by the acceptance: and that it would endanger the credit of such bills, if they could be avoided on this account; but these reasons did not prevail for tho' it be in the nature of a new contract, yet it is founded on an illegal and toracious winning, to which the plaintiff is privy. 2. 344. Car. 356. 5 Mod. 175. 8 C. 2. But it is feard, that if the winner had assign'd this bill or note bond foile, upon good consideration, to a stranger, he had not been within the statute, not being privy to the bill, nor an honest creditor. 1 Salt. 345. 346. Car. 357.

3. Also it had been adjudged, that if a man wins above the sum mentioned in the statute at play, and the winner owes f. S. the like sum, who demands his money, and thereupon the winner tells him, that such an one, viz. the loser, was indebted to him, and that he would give him his bond for the money, which he accordingly does, it does not thereby exempt the said f. S. from being paid to the monies being won at play, he is not within the statute. 2 Mod. 279.

4. It seems to be the better opinion, that a person's losing 800l. at one meeting, for which he gives security, and 70l. more at another meeting, to the same person, is not within the statute; but if these several meetings were appointed to evade the statute, it might be otherwise. 2 Mod. 54.

5. But it hath been adjudged, that if A. and B. enter into articles to run a horse-race such a day for 100l. which is won by A. and further in the same articles, that on a subsequent day, A. should request B.'s errand, bring his horse to run against him for 200l. more, which B. never requests, tho' only 100l. is won by A. which is not above the sum mentioned in the statute, yet the contract being for more than 100l. makes the whole bargain void ab initio, and within the statute; which being made to prevent the use of excessive gaming, ought to be continued in the most extensive manner that can be to answer that end. 2 Ltv. 94. 1 Vent. 253. 8 C.

6. If A. wins a watch from B. of 10l. value, which is presently delivered, and allo 100l. for which a bond is given; this is not within the statute, which extends to cases where credit is given, to pay the said 100l. sum of money, or to pay above 100l. without any regard to what was lost in ready money; and here the watch is in the nature of ready money, and therefore not within the statute. 1 Ltv. 244. 1 Sle. 394. 8 C. 1 Salt. 345. 8 C. cited as law by Holt, Comment. 7.

7. It hath been adjudged, that if a person lores 60l. to one, and 60l. to another, at one sitting, or if he lores to each of three or four persons 50l. or any other sum not exceeding 100l. that this is not within the statute.

8. If two are at play at backgammon, and one of the players flirs a man, but does not move it from the point, upon which there ensues a wager of 100 guineas, viz. whether he who flour the man was obliged to play it, and the determination left to the groom- porter, who determines that he was not; this is not within the statute, for the money was not lost on the chance of the play, but on the right of the play, which was a collateral matter. 1 Salt. 344. 484. 487. 4 Mod. 409. 5 Mod. 1. Comb. 328. Sim. 572. 1 Lutw. 487.

Stat. 10 & 11 Will. 3. c. 17. sect. 1. All lotteries are declared to be public nuisances; and all grants, patents, and other licences for any lotteries are against law.

sect. 2. No person or persons shall expoe to be played, drawn or thrown at, or shall play, draw or throw at any lottery, either by dice, lots, cards, balls or any other numbers of figures, or any other way whatsoever: And every person who shall expoe to be played, drawn or thrown at, any such lottery, play or device, shall forfeit five hundred pounds, one third to the King, one third to the poor, and one third with double costs to him that shall sue in the courts at Westminster; and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided.

sect. 3. And every person who shall play, throw or draw at any such lottery, play or device, shall forfeit twenty pounds in like manner.

And by stat. 9 Ann. cap. 6. sect. 5. All judgments of the peace, mayors, constables and other civil officers, shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and shall not suffer or by writing or printing publish any such unlawful lotteries; with intent to have such lottery drawn, shall forfeit 100l. one third to the King, one third to the poor, and one third with full costs to him who shall sue in the courts at Westminster.

By the stat. 9 Ann. cap. 14. sect. 1. it is enacted, "That all notes, bills, bonds, judgments, mortgages or other securities or conveyances whatsoever given, granted,
granted, or entered into, or executed by any person or persons whatsoever, whether the whole or any part of the
affected or used for such conveyances or securities shall be for
any money or other valuable thing whatsoever won by
playing or playing at cards, dice, tables, ten-nim, bowls or
other game or games whatsoever, or by betting on the
falls or hands of such as do go at any of the games
aforesaid, or for the benefit of any such mortgage or
secured of for such gaming or betting, as aforesaid, or
lent or advanced at the time and place of such
play, to any person or persons so gaming or betting, as
aforesaid, or that shall, during such play, so play or
bet, shall be utterly void, frustrate, and of none effect, to
all intents and purposes whatsoever: And if such
mortgages, securities or other conveyances, shall be of
lands, tenements or hereditaments, or shall be such as
incumbent or affect the same, such mortgages, securities or
other conveyances, shall enure and be to and for the
use and benefit of, and shall devolve upon such person or
persons as should or might have, or be intitled to
such lands, tenements or hereditaments, in case the
said grantor or grantors thereof, or the person or persons,
so incumbering the same, had been naturally dead, and
as if such mortgages, securities or other conveyances
had been made to such person or persons so incumbering
the same; and that all grants or conveyances to be made
thereunto of such lands, tenements or hereditaments,
from coming to, or devolving upon such person or
persons hereby intended to enjoy the same, as aforesaid,
shall be deemed fraudulent and void, and of none effect,
to all intents and purposes whatsoever.

Sect. 2. And it is further enacted, That any person
who shall at any time or sitting, by playing at cards, dice,
table or other game or games whatsoever, or by betting on
the falls or hands of such as do go at, or play at, any of
the games aforesaid, lose to any one or more persons or
persons so playing or betting in the whole, the sum or value
of ten pounds, and shall pay or deliver the same, or any
part thereof, the person or persons so losing and paying,
or delivering the same, shall be at liberty within three
months then next to sue, for, and recover the money or
goods so lost, and paid or delivered, or any part thereof,
from the respective winner and winners thereof, with cost of
suit, by action of debt founded on this act, to be pro-
cured in any of her Majesty's courts of record, in
which actions or suits, no effinition, protection, wager of
law, peremptory or summary, or any other implication
shall be allowed; in which actions it shall be sufficient
for the plaintiff to allege, that the defendant or de-
defendants are indebted to the plaintiff, or received to
the plaintiff's use, the monies so lost or paid, or converted
the goods won of the plaintiff to the defendant's use, whereby the defendant's action accrued to him, according to
the form of this statute, without setting forth the special
matter; and in case the person or persons, who shall lose
such money or other thing, as aforesaid, shall not within
the time aforesaid, really and bona fide, and without covin and
collusion flee, and with effect prosecute for the money or
other thing, so by him or them lost and paid or delivered,
as aforesaid, it shall and may be lawful to and for any
person or persons, by such action or suit, as aforesaid,
to sue for and recover the same, and the value thereof,
with costs of suit against such winner or winners, as
aforesaid; the onemony thereto to the use of
the person or persons that will sue for the same, and
the other part shall be in the custody of the parish of the
parish where the offence shall be committed.

Sect. 3. And for the better discovery of the monies,
or other thing so won, and to be sued for and recovered,
as aforesaid, it is further enacted, That all and every
the person or persons, who by virtue of this present act shall
or may be liable to be sued for the same, shall be obliged and
compelled, upon oath, and, upon such further oath or
bills as shall be preferred against him or them, for discovering
the money and sums of money, or other thing so won at
play, as aforesaid.

Sect. 4. Provided, that upon the discovery and repay-
ment of the money, or other thing so to be discovered
and repaid as aforesaid, the person or persons, who shall
so discover and repay the same as aforesaid, shall be ac-
quitted, indemnified and discharged from any
other punishment, forfeiture or penalty, which he or they
might have incurred by the playing for, or winning such
money or other thing so discovered and repaid as afores-
aid.

Sect. 5. And it is further enacted, That if any person
do or shall, by any fraud or theft, coinage, circum-
vention, deceit or unlawful device or ill practice what-
ever, in playing at or with cards, dice or any the
games aforesaid, or in or by betting a share or part in
the stakes, wagers or adventures, or in or by betting on
the falls or hands of such as do go at, or shall play as
aforesaid, win, obtain, or acquire to him or them, any
other or others, any sum or sums of money, or other va-
luable thing or things whatsoever, or shall at any one
time or sitting win of any one or more person or persons
whatever, above the sum of ten pounds; that then every
person or persons so winning, by such ill practice as afo-
resaid, or winning at any one time or sitting, above the
said sum or value of ten pounds, and being convicted of
any of the said offenses, upon an indictment or infor-
mation to be exhibited against him or them for that pur-
pose, shall forfeit five times the value of the sum or sums
of money, or other thing or things so won as aforesaid; and, in
all other and further respects and cases of such
intended and intended, infamous, and fufler corporal punishment as in case of willful perjury, and such penalty to be recovered by such
person or persons as shall sue for the same by such action
as aforesaid.

Sect. 6. And whereas divers lawd and dilliqtet persons
live at great expenses, having no visible estate, profession
or calling to maintain themselves, but support those ex-
benses by gaming only; it is further enacted, That it
shall and may be lawful for any two of her Majesty's
justices of the peace in any county, city, or liberty what-
ever, to cause to come or to be brought before them, every
person or persons whatsover, playing or playing in
parish or parishes within their respective juris-
dictions, to whom they shall have just cause to suspect to
have no visible estate, profession or calling to maintain
themselves by, but do for the most part support themselves by
playing; and if such person or persons shall not make it
appear to such justices, that the principal part of his
or their expences is not maintained by gaming, that then
such justices shall require of him or them sufficient fur-
ties for his or their good behaviour for the space of twelve
months, and in default of his or their finding such secu-
curities, to commit him or them to the common gaol, there
to remain until he or they shall find such securities.

Sect. 7. And it is further enacted, That if such person
or persons shall keep or maintain in his or their houses, in
which he or they shall be so bound to the good behaviour,
at any one time or sitting, play or bet for any sum or
sums of money, or other thing exceeding in the whole
the sum or value of twenty shillings, that then such
playing shall be deemed or taken to be a breach of his or
their behaviour, and a forfeiture of the recognizance
given for the same.

Sect. 8. And for preventing of such quarrels as shall
or may happen on the account of gaming, it is further
enacted, That in case any person or persons whatsoever
shall assault and beat, or shall challenge or provoke to
fight, any other person or persons, by any note or
account of any money won by gaming, playing or betting at
any of the games aforesaid, such person or persons af-
fecting and beating, or challenging or provoking to fight,such other person or persons, upon the account aforesaid,
shall, being thereof convicted upon an indictment or infor-
mation to be exhibited against him, shall cause to be
assisted him or them to be answerable and liable to
forfeiture, to her Majesty, all his goods, chattels and per-
fonal estate whatsoever, and shall also suffer imprison-
ment without bail or mainprize, in the common gaol of
the county where such conviction shall be had, during
the term of two years.

Sect. 9. And whereas it is not in this act shall extend to
prevent or hinder any person or persons from gaming at
any of the games aforesaid, within any of her Majesty's
palaces of St. James or Whitehall, during such time as her
her Majesty, her heirs or successors, shall be actually resid- dent at either the said two palaces, or in any other royal palace, where her Majesty, her heirs or successors shall be actually resident, during the time of such reference; so as to furnish them not with unreasonable difficulties, where the other part of any of the said palaces, the freehold and inheritance whereof is or shall be out of the crown, or is or shall be in lease to any persons or persons, during such time as such freehold and inheritance shall be out of the crown, or such lease continue, and as such playing be for real and not only.

Upon a cause stated at nisi prius in an action by the plaintiff as indorsee of several promissory notes, it appeared that the notes were given by the defendant to one John Church, for money by him knowingly advanced to the defendant, and that the game gave the note and the defendant endorsed them to the plaintiff for a full and valuable consideration, and that the plaintiff was not privy to or had any notice, that any part of the money for which the notes were given had been lent for the purpose of gaming.

Upon this a question arose upon the statute 9 Ann. c. 15, sect. 1, which states, That all the words whereby or any part of the consideration is money knowingly lent for gaming, shall be void to all intents and purposes whatsoever, whether the plaintiff could maintain this action against the defendant. And after two arguments the court were of opinion he could not; for it is making the words of the endorsement committed to him, and in the courts (hall be to the defendant, and as such playing be for real and not only.

An action was brought for 151. won as a wager at horse-race. And upon a cause made and argued, it was determined, that the action would not lie; for 16 Car. 2. c. 7. has these words horse-racing, and a great many other words, which are not particularly mentioned in 9 Ann. c. 15, but are that all the general words other game or games. And the court feared to be of this opinion in Oates v. Collins, Trin. 6 Geo. 2. that it was never determined. See 1 Ven. 253. The defendant had judgment. Stran. 1159.

The plaintiff and defendant gamed together at toffing up in horse-race. And the plaintiff having won all the defendant's ready money, lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was insisted for the defendant, that by the statute 9 Ann. c. 16, the plaintiff could not maintain an action; for he must see all notes, bills, bonds, judgments, mortgages, or other securities or conveyances, given, granted, drawn, entered into or executed, for money knowingly lent and advanced to game with, are made void; and the borrowing on an agreement to pay, is a security. But the Chief Justice saith, this was not a case within the act, for there is the word contracted, as in the statute of usury, and the word securities, as it stands in this act, must mean laffing liens upon the estate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confirmed the act to written securities; for therefore the plaintiff obtained a verdict for 126l. Stran. 1220.

The plaintiff brought his action for 200l. as the lesor of so much by gaming. And the question was, upon 9 Ann. c. 14, which gives an action of debts at any time within three months against the debtor. Whether the defendant could be held to special bail; the defendant's counsel comparing it to the case of actions upon penal statutes, where no bail is ever required. But the court held, there ought to be special bail in this case, which is at the suit of the party grieved, and wherein the said de-

fendant is a debtor to the plaintiff. And the clause is to be considered as remedial. And therefore upon consideration, and talking with the other judge, special bail was ordered. Stran. 1079.

8 Gen. 1. c. 2. sect. 26. 37. Every person who shall keep any office or place, under the denomination of fates of houses, lands, advowsons, prebendations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money, or shall sell or expose to sale for any of them, by way of lottery, or by lost, tickets, numbers or figures, shall forfeit lawful, pernicious, or profane proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some public lottery; or shall deliver, or cause to be delivered, to the persons advancing such sums, to divide them to a share of the money so advanced, according to such proposals or schemes; or shall make, print, or publish any proposal or scheme of the like nature, under any denomination whatsoever, and shall be thereof convicted, on oath of one witness, by two justices where the offence is committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit five hundred pounds; one third to the King, one third to the informer, and one third to the poor; to be levied by diffrets and sale by warrant of such justices, and shall also by such justices be multiplied by ten, and divided among any twenty persons coming before the justices at any one time, and from thence till the said sum of five hundred pounds shall be paid; provided that persons aggrieved may appeal to the next quarter-fees. And every person who shall be adventurer in, or any way contribute on the account of any such fates, lotteries, proposals or schemes, shall forfeit double the sum of two hundred pounds, half to the King, and half to him that shall sue in the courts at Westminster.

Stat. 9 Geo. 1. c. 19. sect. 4, 5. If any person shall, by colour of any grant from any foreign prince or state, let any particular lotteries,Undertaking in the nature of a lottery under any denomination whatsoever, print, or publish any proposals for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery, and shall be convicted thereof, on oath of one witness, before two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by former acts against all foreign lotteries, forfeit two hundred pounds; one third to the King, one third to the informer, and one third to the poor; to be levied by diffrets and sale by warrant of such justices; and shall also by them be committed to the common gaol for one year, and from thence till the said sum of two hundred pounds be paid; Provided that persons aggrieved may appeal to the next quarter-fees. Stat. 2 Geo. 2. c. 28. sect. 9. Where it shall be proved on the oath of two witnesses before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the statute 33 H. 8. c. 9. the said justice shall have power to commit him to prison without bail, unless and until he shall enter into recognizance, with sureties or without, at the discretion of the justice, that he shall not from henceforth use or thereto go for an unlawful game.

Stat. 6 Geo. 2. c. 32. sect. 20, 29, 30. If any person shall sell, procure or deliver any ticket, receipt, chance or number, in any foreign or pretended foreign lottery, or in any clafs, part or division thereof, or in any undertaking in the nature of a lottery; or shall sell, procure or deliver any ticket, receipt, chance or number, in any clafs, part or division thereof, or shall sell, procure or deliver any complicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive any money for any such ticket, receipt, chance or number, or in consideration of any money to be reaped in any ticket or number, in any foreign or pretended foreign lottery, or in any class, part or division thereof, shall forfeit two hundred pounds; and shall be convicted thereof in the courts at Westminster, or on the oath of one witness before two justices where the offence shall be committed, or the offender shall be found, he shall forfeit two hundred pounds; one third to the King, one third to the informer, and one third to the poor; the

N

n

fame

Vol. II. N° 82.
fame (in case of conviction before the justices) to be levied by dirffers by warrant of such justices; and shall also be committed to the common goal for a year, and from thence till the two hundred pounds be paid: Provided that perffons aggrieved may appeal to the next quarter-fellonies.

Stat. 12 Geo. 2. c. 28. Selt. 1. If any perffon shall erect, set up, continue or keep any office or place, under the denomination of a fale of houfes, lands, adwowfons, preffentations to livings, plate, jewels, fhips or other goods, by any game, method or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wherefey, by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever; he shall, on conviction before any justice of the peace, (or mayor) on the oath of one witnefs, or view of such justice, or confeffion, forfeit two hundred pounds, by dirffers and fale, by warrant of one of the justices of the county or of the city wherein the offence shall be committed; which find forfeiture (after deducting reasonable charges of the prosecution) shall go, one third to the informer, and two thirds to the poor of the parish, except in Bath, where the faid two thirds shall go to the poor of the hospital there.

Selt. 2. The games of ace of hearts, faro, baffet and hazard, shall be deemed games or lotteries by cards or dice; and every perffon who shall set up or keep any of the fames, shall be liable to all the above mentioned penalitics for setting up or keeping any the games or lotteries in the manner aforesaid.

Selt. 3. And every perffon who shall play, fet at, flake, or punt at any of the faid games, shall forfeit fify pounds in like manner.

Selt. 4. Moreover, every fuch fale of houfes, lands, adwowfons, preffentations, plate, jewels, fhips or other goods, by any game, method or device of chance, depending upon any chance or lot, shall be void; and the fame being expoéed to fale in manner aforesaid, shall be forfeited to fuch perffon as fhall fuc the fame in any court of record or at the assizes.

Selt. 5. But if any perffon think himfelf aggrieved by any judgment of justice or of the fyne, or by any ap- peal to the next fefions, giving reasonable notice to the protector, and entering into a recognizance before fome justice of the peace, where the convifion was made, with two fureties, on condition to try fhuch appeal at fhuch next fefions; and if the convifion fhall be affirm- ed, the party appealing fhall pay to the protector treble cost.

Selt. 6. And no convidition shall be good by the fefions for want of form; nor fhall be removed by cer- tiorari, till after determination in the fefions.

Selt. 7. And if the offender fhall not have fufficient goods wherein to ley the penalitics, or fhall not immediate ly pay or give security for the fame; the judge or fome other perffon fo by him to be convicted may commit him to the common goal, not exceeding fix months.

Stat. 18 Geo. 2. c. 34. Selt. 1. No perffon fhall keep any houfe, room or place for playing, or fuffer any perffon within fuch place to play at roly-poly, or any other game with cards or dice, already prohibited by the laws of this land; and if any perffon fhall keep such houfe, or fuffer any perffon to play at roly-poly, or other game with cards or dice, prohibited by law, he fhall be liable to the penalitics and profecution as by the act of the 12 G. 2. c. 28.

Selt. 2. And if any perffon fhall play at roly-poly, or any game with cards or dice, prohibited by law, he fhall be liable to the penalitics and profecution as by the faid act of the 12 G. 2.

Selt. 4. And if any witnefs fhall neglect or refuse to appear upon committing, or fhall refuse to give evidence, or to attend upon the charge of forfeiture, he shall forfeit the dirffers, by warrant of the perffon infufing fuch commiting; and if he have not fufficient goods wherein to ley the fifty pounds, he fhall be committed to the common goal for fix months.

Selt. 5. No perffon, other than the plaintiff and defendants, fhall be incorporated from being a witnefs, touching any offence against the laws for preventing exe- cutive and deceitful gamings, by reason of having played, betted or played at any prohibited game.

Selt. 7. And no privilege of parliament fhall be al lowed to any perffon, against whom a profecution fhall be commenced, for keeping any, or committeng gaming houfe or place for playing at any prohibited game.

Stat. 25 Geo. 2. c. 36. Selt. 2. Whereas the mul- titude of places of entertainment for the lower sort of people is a great cause of thefts and robberies, as they are thereby tempted to spend their small falldance in riotous pleasures, and in that pursuit are put on unlawful meth- ods of supplying their wants and renewing their plea- sures: In order therefore to prevent the faid temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which is become too general over the whole kingdom, and is productive of much mischief and misery to the publick; be it enacted, That any houfe, room, garden or other place kept for publick dancing, mufick, or other publick entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof, without a licence had for that purpofe, from the laft preceding Michælmas quarter-fellonies of the peace, shall be held to be contrary to the county, city, riding, liberty or division in which fuch houfe, room, garden or other place is fittuate, who are hereby authorized and empowered to grant fuch licences as they fhall think proper; and any perffon who fhall be fett in keeping fuch houfe or fuch other place, and every fuch licence fhall be signed and sealed by the faid justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the fame; and no fuch licence fhall be granted at any adjournments of parliament; nor fhall any fuch licence or reward be taken for any fuch licence: And if fhall and be liable to and for any confatable or other perffon, being therefore au-thorized by warrant under the hand and feal of one or more of his Majesty's justices of the peace of the county, city, riding, division or liberty, where fuch houfe or other place is fittuate, to enter upon fuch houfe or place, and to feize every perffon who fhall be found therein, as well as that they may be dealt with according to law: And every perffon keeping fuch houfe, room, garden or other place, without fuch licence as aforesaid, fhall forfeit the fum of one hundred pounds to fuch perffon as fhall sue for the fame; and be otherwise punifhable as the law di rect in cafes of disorderly houfes.

Selt. 3. Provided, That in order to give notice what places are licensed pursuant to this act, there fhall be affixed and kept up in fome notable place over the door or entrance of every fuch houfe, room, garden or other place, or fite of fuch pig purpofes, aforesaid, an incifion in large letters in proper words following: videlicet, LICENSED PUR- SUANT TO ACT OF PARLIAMENT OF THE TWENTY-FIFTH OF KING GEORGE THE SECOND; and that no fuch houfe, room, garden or other place, or fite of fuch pig purpofes, aforesaid, be open for any of the faid purpofes, before the hour of five in the afternoon; and that the affixing and keeping up of fuch incifion as aforesaid, and the faid limition or restric- tion in point of time, fhall be inferred in, and made con- vincing by, proper and legal fuits; and in cases of either of the faid conditions, fuch licence fhall be forfeited, and fhall be revoked by the justices of the peace in their next general or quarter-fellonies, and fhall not be renewed; nor fhall any new licence be granted to the
s

fame penon or persons, or any other penon on his or their or any of their behalf, or for their use or benefit, directly or indirectly, for keeping any bawdy-houses, gaming-houses or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment.

Be it enacted, 67. That any person who shall at any time hereafter appear, act or behave him or herself as matter or mittler, or as the person having the care, government or management of any bawdy-house, gaming-house or other disorderly house, shall be deemed and taken to be the keeper thereof, and any person who shall give evidence against the defendant, or on behalf of the defendant in such prosecution, notwithstanding he or the shall not in fact be the real owner or keeper thereof.

Sect. 9. Provided nevertheless, That upon any such prosecution against any person for keeping a bawdy-house, gaming-house or other disorderly house, shall be removed by any writ of certiorari into any other court; but such indictment shall be heard, tried and finally determined at the same general or quarter-sessions or assizes, where such indictment shall have been preferred (unless the court think proper, upon cause shown, to adjourn the same); any such writ or allowance thereof notwithstanding.

Sect. 30. Gran. 2. cap. 24. sect. 14. If any person licensed to sell any sorts of liquors, or who shall fell or dispose of the same, for the purpose of fomenting disorder, or to the keeping of his or her apprentices; and shall be convicted thereof on confession, or oath of one witness before one justice, within six days after the offence committed, he shall forfeit for the first offence forty shillings, and for every other offence ten pounds, by detains by his or her aforesaid; but such justice, three-fourths of which shall be to the churchwardens for the use of the poor, and one fourth to the informer.

Sect. 15. And if any journeyman, labourer, apprentice or servant, shall game in any house, outhouse, ground, or apartment thereto belonging, wherein a like number of persons shall be placed; and complaint thereof shall be made on oath before one justice, where the offender shall be committed; he shall forfeit for the first offence forty shillings, and for every other offence ten pounds, by detains by his or her aforesaid; one fourth to the informer, and three fourths to the Overseers for the use of the poor; and if he shall not forthwith pay down the same, such justice shall commit him to the house of correction or some other prison of the place where he shall be apprehended, to be kept to hard labour for any time not exceeding one month, or as the justice shall Think proper.

Sect. 16. And any justice, unto whom complaint upon oath shall be made of any offence committed against this act, shall issue his warrant for bringing before him or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction; and if it shall appear upon oath or other satisfactory evidence, that any person within his jurisdiction can give material evidence on behalf of the prosecutor or of the person accused, and who will not voluntarily appear, he shall issue his summons to convene him to give his evidence, and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witnesses before him; and on his appearance, if
he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the publick prison for any time not exceeding three months.

Sect. 17. And no perdon charged on oath with being guilty of any of the offences punishable by this act, and which he shall require bail, shall be admitted to bail before twenty-four hours notice at least, shall be proved by oath to have been given in writing to the prosecutor, of the names and places of abode of the persons proposed to be bail for any such offender or offenders, unless the bail offered shall be sworn to the justice or justices, and he and they the shall approve of them; and every such off- fender and offenders, who shall be bound over to the gen- eral quarter-seffions of the peace, or gaol-delivery of the county, or town, wherein the offence charged on him shall have been committed, to answer any such of- fences punishable by this act, shall be bound to the general quarter-seffions of the peace, or, felonies of over and ter- miner and gaol-delivery which shall be held next after his, or her or their being apprehended, unless the court shall think it fit to put off the trial on just cause made out to them.

Sect. 18. And in all proceedings on this act, any perdon shall be admitted to be a witness, notwithstanding his being an inhabitant of the place wherein the offence shall have been committed.

Sect. 19. And the justice before whom any perdon shall be convicted upon this act, shall confine the con- victed to be drawn up in the form and to the effect fol- lowing:

To wit, B. E. it is remembered, that on this day of the in the year of our Lord reign, A. B. is convicted by me, one of his Majesty's Justices of the peace for the said county of or for the riding or division of the said county of (as the case shall happen to be) for and the said do adjudge him, or her, to pay and forfeit for the fame, the sum of Given under the day and year afterfigned.

The fame to be written upon parchement, and trans- mitted to the next seffions, to be filed amongst the records; and if any perdon shall appeal to the said seffions, the justices there shall, upon receiving the said convic- tion, proceed to call in the cause and determine the matter.

Sect. 20. And no croissor shall be granted, to remove any proceedings on this act.

Sect. 21. And if any perdon convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next seffions, and the execution of the judgment shall in such case be sus- pended; the perdon convicted entering into recognizance at the time of the conviction, with two sureties in double the sum he shall have been adjudged to pay, upon con- dition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said seffions; and the seffions shall award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appel- lant shall immediately pay the sum adjudged to be for- feited, together with such costs as the court shall award, or in default thereof shall suffer the pains and penalties by this act inflicted upon persons respectively who shall neglect to pay or shall not pay the forfeitures as shall be paid.

Sect. 22. And no perdon punished by this act, shall be punished by any other law.

2. Adition and pleadings.

In debt A. won 80l. at one meeting of B. and for which B. gave security, and then they appointed another meeting, and A. won 70l. more of it the question was, whether this was within the statute. The court was di- vided, which the plaintiff perceiving, discontinued his action; but the better opinion was, that it was not within the statute; tho' if it had been pleaded, that the several meetings were positively appointed to elude the statute, it might be otherwise. 2 Mod. 54. Hill. 27 Car. 2. C. B. 10. A. 14. A. 64. A. 202. A. 53. brings C. to B. who owed the debt, and B. gave C. a bond for the 100l. C. not being privy to the matter, accepted the bond, and afterwards put it in suit. The obigor pleaded the statute, but the plaintiff discharging the whole matter, the court were of opinion upon demurrs, that it was not a case within the statute; and for judgment for the plaintiff. 2 Mod. 278. Mich. 29 Car. 2. C. B. An't.

In debt upon articles for 100l. won at a horse-race, defendant pleaded the covemants, by which it was farther agreed, that the plaintiff, but the request of the defendant, would run his horse again, at another day and place for 200l. more, and then pleaded the statute; the plaintiff replied, that the defendant did not make such request. But upon demurrer the defendant had judg- ment. For though the statute allows the losing of a 100l. yet in the case the 100l. was not lost [before] a decedent's time ran for more. And though there was but 100l. actually lost, yet the contract being [origi- nally] made for more, it was void for the whole bad ab init. and can't be made good by the subfequent event. 2 Lev. 94. Mich. 23 Car. 2. B. R. Edgelwyk v. Ryn- feld. 278. Mich. 295. C. B. name of Helesworth, is not. When the precedent is introd. tho' the wagers are differnt, yet no part of the money is recoverable. 3 Salt. 175. cites Rynfield's case. The case of Edgelwyk v. Rynfild, cited 5 Mod. 352. in the case of Standhope v. Smith, is stated to have been upon articles of agree- ment concerning a horse-match, wherein the defendant was ordered to run four heats, at several days for 40l. each heat; and this was held by my Lord Hare to be but one agreement, though to be run at several times, and the defendant in that case had judgment. Indub. aff. lies not for money won at play, but there ought to be a special declaration; that was paid by two of the judges, that peradventure, by special pleading, a good replication may be made. Lutw. 180. Whitgrav v. Charny, S. P. because it wanted consideration; it being but executory. Per Hol Ch. 5 Mod. 14. in case of Walker v. Walker. 1 Salt. 23. Hare's case. S. P. 6 Mod. 129. Pajth. 3 Ann. B. R. Smith v. Acry, not- 40l. was ordered to run four heats, at several days for 40l. each heat. J. is there no way in the world to recover money won at play, but special affinmity. And the action should be brought upon the agreement of the patties. 'Tis true, when two agree to play for so much money, that is an actual promis; but if either win there is no paying the wager, without that a meritorious valuable con- sideration can raise a debt. Bid. 129. 12 Mod. 81. S. P. But for money flaked on a wager, it lies; being in a third person's hands, the winning the wager deter- mines the property. 3 Shaw. 82. contra v. S. Stern. 3 Lev. 118. contra. Eglin v. Lewis, 2 Vent. 140. contra. Coltheath. A general indistin- guish will not lie on a wager, or money won at play: But it must be laid by way of mutual promises specially, and so judgment was reversed. But the chief reason was, because the court would not countenance gaming, by gi- ving to easy a remedy: And though the precedent of Eglin v. Lewis was thrown, in which judgment was al- lirmed in camp. face, yet it would not prevail. Carth. 338. Jarque v. Colegrave. An express promise will support an action. Per Parker Ch. 10 Mod. 312. Pajth. 1. Geo. B. R.

In an action upon a note for money won at play, de- fendant pleaded the statute; and fet forth, that at one fitting he lost 80l. to the plaintiff, and 40l. more to W. But upon demurrer, judgment was given for the plaintiff; for the statute intends a remedy, where more than 100l. is lost to one person, and at one fitting; but if it be lost to several it is not within the act. 5 Mod. 351. Tern. 8 Ef. 3. B. R. Standhope v. Smith. As
As if A. lost 95l. to B. and B. refusing to play any longer with him, A. lost 10l. to C. at the same sitting, yet this last not defeat B. of the money which he lawfully won. 5 Med. 352. in the case of Sunnay v. Smith. This precedent, to lost being done in pursuance to and avoided the fault of the debt of 95l. B. may set out the fraud specially, and so avoid it. 12 Med. 258. in the case of Walker v. Walker. But Trin. 28 Car. 2. B. R. where A. had lost to B. at one fort of game 90l. and to C. at another fort of game 50l. and to D. at another fort of game 60l. and in an action of debt on bond brought for one of the fums, defendant pleaded the statute, and that he lost the several sums as above, at the same time; it was demurred to, because it did not appear, that the several winners were parties together, or in truft for one another, and that the statute only voids debt done, where they are parties or trusted for each other, and not to different gammeters. But it was adjudged for the defendant, the statute being to extended against play. 3 Keb. 671. Hadfun v. Malon.

In an action for money won at play, the first count was laid properly upon mutual promises, and the second count was cumque easim ad ludum pradictum jurisdict, &c. without a consideration; after verdict for the plaintiff, judgment was fiayd. Lord Reyom. 1034.

In an action brought for 80l. the defendant pleaded that he lost it to the plaintiff at play, and that at the time of the last mentioned, and to avoid the statute of gaming, &c. the plaintiff demurred; and adjudged a good plea since both the sums amounted to more than 100l. and were lost at one sitting; contra, if the 40l. had been lost by covin, to avoid the payment of the 80l. adjudged in C.B. Lord Reyom. 452.

The fatal of gaming may be pleaded by the acceptor of a bill of exchange payable to the plaintiff who was the winner. Lid. Reyom. 87.

The defendant was convicted on an information upon the gaming-act, which says that he shall forfeit five the value, to be recovered by a common informer, &c. without a consideration. And it was moved, that a fine should be set upon the defendant, if he refused to speak with the informer. Sed per curiam; All the judgment we can give is, good conviclus &c; and a new action must be brought upon that judgment for the forfeiture, which was thought sufficient to deter the offenders. In the case of the defendant was a lease broken, 162. 5 Med. 431. Cr. Cap. 504. Cr. Est. 362. The defendant was discharged without any fine or costs. Stran. 1048.

For more learning on this subject, see 14 Vin. Abi. tit. Gaming. See Lutter, Playes and Games.

Gaul, (Gaula, Fr. gols, i. e. cawsela, a cage for birds) Is used metaphorically for a prison, Cowl.

1. By what authority gaols are erected, to whom they belong, and who are to be the charge of repairing them.
2. To whom place offenders are to be committed.
3. At whose charge prisoners are to be carried to gaol; how they are to be set on work, and how maintained therein.
4. Of the offence of breaking gaol.

1. By what authority gaols are erected, to whom they belong, and who are to be the charge of repairing them.

Gaols are of such universal concern to the publick, that none can be erected by any lefs authority than an act of parliament. 2 Inf. 705. Hence the coroner is to inquire of the death of all persons whatsoever who die in prison, to lost end that the publick may be satisfied, whether such persons died of disease, or by the pleasant course of nature, or by some unlawful violence, or unreasonable hardships, put on them by those under whose power they were confined. 3 Inf. 52. 91.

Vol. II No. 83

Alfo all prisons and gaols belong to the King, altho' a subject may have the custody or keeping of them. 2 Inf. 100.

And in this purpose, by the 5 H. 4. cap. 10. reciting, "That divers contable[s] of castles within the realm, being signified justices of the peace by the King's commis- sion, had by colour of such commussion used to take people, to whom they bore evil will, and imprisoned them within the said castles till they have made fine and ransom, with the said contable[s] for their deliverance; and thereupon commisioned, that none may be imprisoned by any justice of the peace but only in the common gaol, saving to lords and others, which have gaols, their frances in this cafe."

And it hath been held, that the King's grant, since this statutes, to private persons to have the custody of prisoners committed by justices of peace, is void; and that the sheriff shall have the custody of all persons taken by virtue of any precept or authority to him directed, not-withstanding any grant by the King of the custody of prisoners to another person. 1 And. 345. 4 Ca. 34. 6. Co. 110. Cre. Eliz. 245. 830.

Alfo it is said, that none can claim a prison as a franchise, unlefs they have also a goa-delivery; and that therefore the dean and chapter of Westminster, tho' they have the custody of the Gatehouse prifon, yet as they have no goa-delivery, they must fend a kalenda of the prifon. S. to Newgate. 1 Salk. 343. Fars. 31. per Hilt. Ch. 1.

By the 14 Ed. 3. cap. 10. it is enacted, "In the right of the gaols, which were wont to be in ward of the sheriff, and annexed to their bailiwicks, it is affented and accounted that they shall be reipned to the sheriffs; and the sheriffs shall have the custody of the same gaols as before this time they were wont to have." And they shall put in such under-keepers for whom they will answer. This statute is confirmed by 19 Hen. 7. cap. 10.

By the 3 Ge. 1. cap. 15. None shall purchase the office of gaoler, or any other office pertaining to the high sheriffs, in the counties of Kent or York.

And a gaoler in fact, is as much punishable for a mist- demeanor in his office, as if he were a rightful gaoler. 2 Hatw. 134.

Altho' divers lords of liberties have the custody of pri- sons, and some in fee, yet the prifon itself is the King's property, and therefore it is to be repaired at the common charge. 2 Inf. 589.

But the matter is now regulated by the stat. 17 & 18 W. 3. cap. 19. by which it is enacted, "That it shall and may be lawful for the justices of the peace, or the greater number of them, within the limits of their com- mission, to purchase, upon a due examination of the grand jury, the said gaols, at the affile, great fees, and general gaoler. Delivery held for the said county, of the insufficient or in- conveniency of their gaol or prifon, to conclude and agree upon such sum or sums of money, as upon examination of able and sufficient workmen shall be thought necessary for the building, finishing or repairing a publick gaol or gaols, belonging to the thire or county wherefoer they are justices of the peace; and by warrant under their hands and seals, or under the hands and seals of the greater number of them, by equal proportion, to distribute and charge the sum to be levied for the uses aforesaid, upon the several hundreds, fums, and other divisions of the said county; and the justices of peace are hereby authorized and empowered at the general quarter-sessions, held for the respective division of the said county, to direct their warrants or precepts to high con- fiables, petty confiables, bailiffs, or other officer or offic- iers, as they shall think most expedient, for levyng and collecting the same. Revised and continued for seven years by the 10 An. cap. 14. and made perpetual."

And it is further enacted by the said statutes, sect. 2. "That if any sheriff shall refuse or neglect to pay his or their allowance, by the space of three months from the time thereof by the proper officer appointed to collect the same, or shall convey away his or their goods or estate, where-
by the sum or sums of money so afflicted can't be levied; then it shall and may be lawful to and for the said collectors, by warrant from any one of the justices of the peace present at the said general quarter sessions as aforesaid, to levy the sum so afflicted by distress and sale of the goods and chattels of such person so refusing or neglecting to pay; and the goods and chattels belonging to such person so found, the distress to taken, to keep by the space of four days at the costs and charges of the owner thereof; and if the said owner do not pay the sum or sums of money so rated or afflicted within the space of the said four days, then the said distress to be appraised by two or more of the inhabitants where the same shall be levied, and the said goods and chattels being sufficient, to be sold by the collector for payment of the said money, and the overplus of such fale, (if any be) over and above the sum so afflicted, and charges of taking and keeping of the distress to be immediately returned to the owner thereof; and the said justices of the peace are hereby authorized and empowered under their hands and seals, or under the hands and seals of the greater number of them, to constitute and appoint one or more sufficient persons or persons to be receiver of the money so afflicted; the said receiver first giving security to be accountable, when thereunto required, for all sums of money received or disbursements of funds expended by him, they shall have received under the hands and seals of the justices of the peace, or the greater number of them; and if the said receiver or receivers, high capable, petty capable or other officers, shall by the space of four days after demand refuse to account for all sums of money received by them in pursuance of this act; then it shall and may be lawful for the justices of the peace, or the greater number of them, to commit him or them to prison, there to remain without bail or mainprize, until he or they shall have made a true account, satisfied or paid such sum or sums of money as shall appear to remain in his or their hands; and the receipt of such receiver shall be a sufficient discharge to all high capable, petty capable or other officer or officers, paying their proportion of such alleviations, and the discharge under the hands and seals of the justices of the peace, or the greater number of them, at the aforesaid and general gaol-delivery, to such their receivers, shall be deemed and allowed as a good and sufficient release, acquittance or discharge in any court of law or equity, to all intents and purposes whatsoever; and the said justices of the peace are hereby authorized and empowered to covenant, contract and agree with any person or persons for the use of such aforesaid and general gaol-delivery, to such the said gaol or gaols. See 31 Car. 2 c. 19. under title County rate. 

Sect. 4. Provided, That this act be not any wise hurtful or prejudicial to any person or persons having any common gaol by inheritance, for term of life or for years; but that they shall have and enjoy the said gaols, and the profits, fees and commodities of the said, as they had or might lawfully have had before the making of this act, and as if this act never had been made.

Sect. 5. Provided also, that this act shall not extend to charge any person inhabiting in any liberty, city, town or borough corporate, which have common gaols for felons taken in the same, and comminations of affize or gaol-delivery of such felons, for any alleviation, to the making the common gaols or gaols of the respective thire or county.

And it is further enacted by the said statute, sect. 6. 4. "That the colonists or gaols of the common county of this realm, or the dominions of Wales, are situate upon any lands or hereditaments of or belonging to the King's Majesty, in right of the crown, that the said lands and hereditaments, with their and every of their appurtenances, shall not at any time be alienated from the crown, nor be suffered to be sold and used for the publick service and benefit of the county.

2. To what place offenders are to be committed.

By the 5 H. 4. cap. 10. it is enacted, 4. "That none shall be imprisoned by any justice of the peace, but only in the common gaol, faring to Lords and others, who shall receive him, and there the said distressed person, and that is only declaratory at the Common law. 2 Iust. 43.

But the court of King's Bench may commit any person to prison in the kingdom which they shall think most proper, and the offender so committed or condemned to imprisonment can't be removed or bailed by any other court or authority.

But by the 31 Car. 2. cap. 2. sect. 12. it is enacted, 4. "That no subject of this realm, being an inhabitant or refiant of this kingdom of England, dominion of Wales or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into any parts, garrisons, islands or places beyond the seas, which then were, or at any time hereafter should be within or without the dominions of his Majesty, his heirs or successors, and that every such imprisonment is by the said statute enacted and adjudged to be illegal; and that every suchdefect to imprisoned shall have an action of false imprisonment, &c. and recovering treble costs, and no other damages to be had or recovered than he shall be put in against the person making such warrant, who shall incur a præmun- nire.

And as prisoners ought to be committed at first to the proper prison, to ought not they to be removed from thence, except in some special cases.

To which purpose, by the said statute, 31 Car. 2. c. 2. sect. 9. it is enacted, 4. "That if any subject of this realm shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers, unless he be by a habeas corpus, or some other legal writ; or where the prisoner is delivered to the constable, or other inferior officer, to carry such prisoner to some common gaol; or where any person is sent by order of any judge of assize or justice of the peace to any common work-house or house of correction; or where the prisoner is removed from one prison to another within the same county, in order to a trial or discharge by due course of law; or in case of sudden fire or infection, or other necessity; upon pain that he who makes out, signs or counter-signs, or obeys or executes such warrant, shall forfeit to the party private one hundred pounds for the first offence, two hundred pounds for the second, &c. See 19 Car. 2. cap. 4. for imposing justices of the peace to remove prisoners in case of infection.

By the statute 11 & 12 Will. 3 c. 10. All murderers and felons shall be imprisoned in the common gaol, and the sheriffs shall have the keeping of the said gaol.

3. At whose charge prisoners are to be carried to gaol; how they are to be set on work, and how maintained therein.

By the statute 3 Jac. 1. cap. 10. sect. 1. it is enacted, 4. "That every person or persons that shall be committed to the common or usual gaol, within any county or liberty within this realm, by any justice or justices of the peace for any offence or misdemeanor, having means or ability thereunto, shall bear their own reasonable charges for so conveying or sending them to the said gaol, and for the expenses of their returns; and every such person or persons shall be bounded and requiring him by a habeas corpus, or some other legal writ, to the constable of the said gaol, and shall so guard them thither; and if any such person or persons, so to be committed, shall refuse at the time of their commitment, and foregoing to the said gaol, to defray the said charges, or shall not then pay or bear the same, the then such justice or justices shall order and require, and the sheriff, or the constable of the gaol, or his or their hand and seal, or hands and seals, give warrant to the constable or constables of the hundred, or constable or riving-man of the tithing or township where such person or persons shall be dwelling and inhabit, or from whence he or they shall be committed, or where he or they
they shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said persons, as, by the discretion of the said justices or judges of the peace, shall satisfy and pay the charges of such his coming or sending to the said gaol; the apprehension of which persons shall be taken or apprehended, the said taxation being allowed under the hand of one or more justices or judges of the peace, if there be such confinables or churchwardens there inhabiting, and in default of them, by four of the principal inhabitants of the said parish, township or tithe, where such offenders shall be taken or apprehended, or by the said justices, or their said taxation then, the justice or justices of the peace by which the said offenders shall be committed to prison, or any justice of peace near adjoining, shall and may give warrant as aforesaid, to the constable, tithing-man or other officer, there to disfrain the goods of any of the said persons, and the same shall fell the same, and that such person or persons as authorized shall have full power to disfrain, and by appraisement of four substantial inhabitants of the said place, to fell a sufficient quantity of the goods and chattels of the said person or persons for refunding, for the levying of the said taxation; and if any surplus of the money come by the sale thereof, the same to be delivered to the owner.

By statute 27 Geo. 2. c. 3. the expense of conveying poor offenders to gaol or the house of correction, shall be paid by the treasurer of the county, except in Middlesex.

By some opinions, a gaoler is compilable to find his prisoner's sufficiency; but as this is denied by others, and as there are several statutes which provide for the maintenance of prisoners, without supposing the gaoler any way obliged to it, it seems this opinion is not maintainable.

Stat. 8. 9 & 10 Eliz. c. 295. a. where Lord Coke says, that in the time of Henry the third, for the provision of poor gaols, and his virtuals, the defendant shall not wage his law, for he cannot refuse the prisoner, and ought not to suffer him to die for default of sufficiency; otherwise it is for tabling a man at large.

By the 14 Eliz. c. 5. sed. 37. it is enacted, "That it shall be lawful by the justices of peace of every thire within this realm, at their general quarter-fees of the peace to hold open within the same thires, or the most part of the said justices, being then present, to rate and tax every parish within the said thires, at such reasonable sums of money, for and towards the relief of prisoners, as they shall think convenient by their discretions, so that the said taxation and rate do not exceed above 6d. or 8d. by the week out of every parish; and that the churchwardens of every parish within this realin, for the time being shall every Sunday levy the same, and once every quarter of a year pay the high constables or head officers of the said towns, parish, hundred, riding, or wapentake within this realm, all such sums of money as their parish shall be rated and taxed, for and towards the relief of the said prisoners within their several parishes; and that the said high constables and head officers, and every of them, shall pay all such sums of money as to them is paid by the said churchwardens, at every general quarter-fees to be holden within the said parish thires, to such sufficient persons dwelling within the said gaol, as shall be appointed by the said justices in their said open quarter-fees, to be there ready to execute the said money, and the said кар: and that the collectors for the said prisoners shall weekly distribute and pay all such sums of money as they and every of them shall receive, for the relief of the said prisoners as aforesaid; upon pain, as well the said churchwardens of every parish, confinable and head officers of every hundred or wapentake, as also the said collectors appointed for the collection and contribution of the said prisoners, for making default as aforesaid, to forfeit the sums of money as aforesaid within the same thires, to the use of the Queen's Majesty, her heirs and successors, and the other mony to the relief of the prisoners.

Sect. 38. Provided, that the justices of peace within any county of this realm or palace, shall not intrust or entrust to the city, borough, place or town corporal, for the execution of any branch, article or sentence of this act, for or concerning any offence, matter or cause growing or arising within the precincts, liberties or jurisdictions of such city, borough, place or town corporate; but that it may and shall be lawful to the justices and judges of the peace, mayor, bailiffs, and other head officers of those cities, boroughs, places and town corporals, where there be justices or judges, to proceed to the execution of this act within the precincts and compass of their liberties, in such manner and form as the justices of peace in any county may or ought to do within the same appurtenant county, if our law or this act, or any law or thing in this act expresed to the contrary thereof notwithstanding.

See County rate.

And by the 19 Car. 2. cap. 4. it is enacted, "That the justices of peace of the respective counties, at any of their general seisions, or the major part of them then present, shall and may, if they think it needful so to do, may provide a flock of such materials as they shall think convenient, for the fitting the poor prisoners on work, in such manner and by such ways, as other county charges by the laws and statutes of the realm are and may be levied and raised, and to pay and provide fit persons to oversee and fet such prisoners on work, and make such orders for accounts of and concerning the premises, as shall be by them be thought needful, and for punishment of neglects and other abuses, and for bestowing the profits arising by the labour of the prisoners to fix on work for their relief, which shall be duly observed, and may alter, revoke, or amend from time to time, without the consent of this act; provided, that no parish be rated above the sum of money as by the week towards the premises, having respect to the respective values of the several parishes.

By the 22 & 23 Car. 2. cap. 20. sedd. 10. it is enacted, "That every under-archdr, gaoler, keeper of prisons or gaols, and executors of every person who shall be the same, and who shall be wholly or in part in trust or in possession of any manor or tenure, and every person or persons concerned therein, for committing by virtue of any writ or process, on any present whatsoever, shall permit and suffer the said prisoner or persons to sit at his and their will and pleasure to fend for and have any beer, ale, victuals and other necessary food, where and such provision there shall be to have and use such bedding, linen, and other things, as the said prisoner or persons shall think fit, without any purloining, detaining, or paying for the fame, or any part thereof.

By the 2 Geo. 2. cap. 22. it is enacted, "That the lords chief justices, lord chief baron, judges of assize, and judges of the peace, in their respective jurisdictions, and all commissioners for charitable uses, do their best endeavours and diligence to examine and discover the several gifts, legacies and bequests bestowed and given for the benefit and advantage of the poor prisoners in the said several gaols and prisons, and to fend for and any deeds, wills, writings, and books of account whencesoever, and every person or persons concerned therein, to examine and them upon oath to make true discovery thereof, (which they have full power and authority to do,) and to order and settle the payment, recovery and receipt of the same, when so discovered and ascertained, in such easy and expeditious manner as the several branch or branches of the future may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors, and that the lift or tables of such gifts, legacies and bequests, for the benefit of the prisoners in every gaol and prison respectively, fairly written, shall be likewise hung up in such gaols and prisons respectively, in some open room or place, to which the prisoners may have resort, on occasion shall require, without fee, and shall be regulated by
by the clerks of the peace of the respective counties and places in manner aforesaid.

4. Of the offence of breaking prison.

The offence of breaking a gaol or prison, by the Common law was no less than felony; and this whether the party were committed in a criminal or civil cause, or whether they were actually within the walls of the prison, or only in the custody of any person who had lawfully arrested him, or whether he were in the King's prison, or one belonging to a lord of franchise.


But now by the statute 1 Ed. 2. 2. 2. the severity of the law is relaxed, and the breaking of prison is only felony, as 2 Inf. 390. Stansdf. P. C. 31. Cr. Car. 210.

That the party who breaks from prison were taken on a coupr on an indictment or appeal, it is not material, whether that of which he is accused, was in truth committed or not, for there is an accusation against him on record, which makes the commitment lawful, be he ever so innocent. 2 Inf. 590. Hale's P. C. 109.

Alfo if an innocent person be committed by a lawful mittimus on such fuhipcion of felony, actually done by some other, as will justify his imprisonment, though he be neither indicted nor appealed, he is within the statute if he break the prison, for that he was legally in custody, and ought to have submitted to it till he had been discharged by due course of law. Hale's P. C. 3. 109. 2 Inf. 590. Dyer 99. 60. Crompt. 38. 83.

But if no felony at all were done, and the party be neither indicted or appealed, no mittimus for such a suppos’d crime will make him guilty within the statute by breaking the prison, for that his imprisonment was unjustifiable. Hale's P. C. 109. 2 Inf. 590. cont. 2 Leon. 1698.

Alfo if a felony were done, yet if there were no just cause of suppicion either to arrest or commit the party, and the mittimus be not in such form as the law requires, his breaking of the prison cannot be felony, because the lawfulnefs of imprisonment, in such case, depends wholly on the mittimus, which, if he be not according to law, the imprisonment will have nothing to support it. 2 Inf. 591. H. P. 109. but for this see Med. 80. 2 Hawk. P. C. 124. 5.

That there must be an actual breaking, for the words feloníce fregít prifonem, which are necessary in every indictment for this offence, cannot be satistofied without some actual force or violence; and therefore if the prisoner, without the ufe of any violent means, go out of the prison doors, which he finds open by the negligence or content of the gaoler, or if he escape thro’ a breach made by others without his privity, he is guilty of a misdemeanor only, and not of felony. 2 Inf. 590. Hale's P. C. 108. Stansdf. P. C. 31.

Nor will the breaking of prison, which is necessitated by any accident, happening without any default of the prisoner, as where the prison is fixed by lightning, or otherwise, without his privity, save him out to live his life, come within the statute. Plow. 139. 2 Inf. 590. Hale's P. C. 108.

Nor is it felony to break a prison, unless the prisoner escape. Keltw. 87. a.

That if the imprisonment be for any offence made capital by a subsequent statute, the breach of prison is as much within the act of Ed. 2. as if the offence had always been felony; but if the offence, for which a man is committed, were but a trespass at the time when he breaks the prison, and afterwards become felony by a matter subsequent; as where one committed for having dangerously wounded a man, who afterwards dies, breaks the prison before he dies, the fiction of law, which to many purpoſes makes the offence a felony ah inititis, shall not be carried so far as to make the prison-breach also a felony, which at the time it was committed was but a misdemeanor. Hale's P. C. 108. 2 Inf. 591.

Alfo it seems the better opinion, that if the offence, for which the party was committed, be in truth but a trespass, the calling it felony in the mittimus, will not make the breaking of the prison amount to felony; and that on the other side, if the offence were in truth a capital one, the calling it a trespass in the mittimus will not bring it within the statute; for the cause of the imprisonment is what the statute regards, and that is the offence, which can neither be likened nor increased by a mistake in the mittimus. But for this see 2 Hawk. P. C. 126.

That the breach of prison by a person attainted is within the statute, tho’ his crime doth not now require any judgment, because it hath been given already, whereby he is out of the strict letter of the statute, but clearly fall within the meaning of the words. 2 Hawk. P. C. 127.

That the offence of breaking prison is but felony, whatsoever the crime were for which the party was committed, unless his intent were to favour the escape of others who were committed for treason, for that will make him a principal in the treason. 2 Hawk. P. C. 127.

That he that breaks prison may be proceeded against for such crime before he be convicted of the crime for which he is committed, because the breach of prison is a distinct independent offence; but the sheriff’s return of a breach of prison is not a sufficient ground to arraign a man without an indictment. 2 Hawk. P. C. 127—8. But it is not sufficient to indict a man generally for having feloniously broken prison; but the case must be set forth specially, that it may appear that he was lawfully in prison, and for a capital offence. Hale's P. C. 109. 2 Inf. 591. See Piffon, Marbélles.

Gadler, Is the master or keeper of a gaol or prison. Cowell.

1. The duty and power of gaolers and keepers of prisons.

2. For what offences they shall forfeit their offices.

1. The duty and power of gaolers and keepers of prisons.

A gaoler is considered as an officer relating to the administration of justice, and is far under the protection of the law, that if a person threatens him for keeping a prisoner in safe custody, he may be indicted and fined, and imprisoned for it. 2 Rat. Abr. 76.

If a criminal endeavouring to break the gaol, affults the gaoler, he may be lawfully killed by him in the aftray. Jerk. 29. 1 Hawk. P. C. 71.

Besides the duties imposed gaolers by act of parliament, and the abuses for which by statute they are puished, they are also subject to the rigorous penalties of imprisonment, as also to the forfeiture of their offices, for gross and palpable abuses in the execution of their offices, such as suffering prisoners to escape, barbarously muffing them, Or. 9 Co. 50. Raym. 216. 2 Inf. 581. 8 Co. 44.

And by the 14. Ed. 3. cap. 10. "If any keeper of a prison or under-keeper, by too great dures of imprisonment, and by pain, make any prisoner that he hath in
GAO

his ward to become an appellee against his will, he is guilty of felony.

In the prosecution of this statute it is said to be no way material, whether the approbation be true or false, or whether the appellee be acquitted or condemned; but at law this offense was esteemed a misprision only, unless the appellees were hanged by reason of the appeal. 3 Stanea. P. C. 36. 3 H. 3. 95. 2 be.

GAR

And upon his coming in court, the court, if satisfied with the manner, and upon the persons who committed the frauds, is by the courts to which they more immediately belong, for any groths misbehaviour in their office, or contempt of the rules of such courts, and punishable by any other courts for defobeying writs of habeas corpus awarded by such courts, unless the court so declares at the day of commitment by such writs. 2 Henec. P. C. 151, and vide tit. Habeas Corpus.

By the 4 Ed. 3, cap. 10, reciting, That whereas in times past, theiffs and gaolers of gaols would not receive theiffs, perave accused, indited or found with the manner, taken and attached by the constables and townships, without taking great fines and ransoms of them for their receipt; whereby the said constables and townships have been unwilling to take theiffs and felons because of such extreme charges, and the theiffs and felons more encouraged to offend; it is enacted, 4 That the theiffs and gaolers of the common felons of felons for felony, without any thing being done against them at the day of commitment, by such writs. 2 Henec. P. C. 151.

And by the 8 & 9 Will. 3, cap. 27, it is enacted, 5 That if any martial or warden, or their respective deputy or deputies, or any keeper of any other prison within this kingdom, shall take any sum of money, reward or gratuity whatsoever, or for any service to procure, act, or be compell'd to, or permit any ease, and shall be discovered, or shall wrongfully or without cause do any thing whatsoever, or if the keeper of any other prison as afoaid, shall for every such offence forfeit the sum of 500 l. and his said office, and be for ever after incapable of executing any such office.

It hath been resolved, that a forfeiture by a gaoler who hath but a particular interest, as of him who hath custody of a gaol for life or years, does not affect him if he remain derer or reviver who hath the inheritance, but that upon such forfeiture his title shall accrue, and not go to the king. 2 Pub. 119. 2 Loe. 71. Raym. 216. 3 Loe. 284.

And by the 8 & 9 Will. 3, cap. 27, it is enacted, 6 That the offices of marshal of the king's Bench priso, and warden of the Fleet, shall be executed by the several persons to whom the inheritance of the prions, of prison-houses, lands, tenements and other hereditaments then belonging or appertaining respectively, in his or their respective care, or the keeper of any other prison as afoaid, shall for every such offence forfeit the sum of 500 l. and his said office, and be for ever after incapable of executing any such office.

3. For what offences they shall forfeit their offices.

It seems clearly agreed, that a gaoler by suffering voluntary eftapes, by abusing his prisoners, by extorting unreasonnable fees from them, or by detaining them in gaol after they have been legally discharged, and paid their full fees, forfeits his office; for that in the grant of every office it is implied, that the grante execute it faithfully and diligently. Co. Lit. 233. 9 Co. 5. 3 Mise. 131.

As where the king granted to the abbey of St. Alban to have a gaol, and to have a gaol-delivery, and divers perave were committed to that gaol for felony; and because the abbaye would not be at cost to make a deliverance, he had for a long time without making lawful deliverance; and it was resolved, that the abbe had for that cause forfeited his chancery, and that the same might be seized into the king's hand. 2 Loe. 43.

In the lady Broughton, keeper of the Gatehouse prison in Westminster, was informed against; and upon no guilty pleaded, she was found guilty; and her crime was extortion of fees, and hard usage of the prisoners in a most barbarous manner; and after she had by her counsel moved in arrest of judgment, and could not prevail, the had judgment given against her, nisi the fine was fixed one hundred marks, removed from her office, and the custody of the prison was at present delivered to the sheriff of Middlesex, till the dean and chapter should further order the fame. Raym. 216. 2 Loe. 71. Lady Broughton's case.

And by the 8 & 9 Will. 3, cap. 27, it is enacted, 7 That if any martial or warden, or their respective deputy or deputies, or any keeper of any other prison within this kingdom, shall take any sum of money, reward or gratuity whatsoever, or for any service to procure, act, or be compell'd to, or permit any ease, and shall be discovered, or shall wrongfully or without cause do any thing whatsoever, or if the keeper of any other prison as afoaid, shall for every such offence forfeit the sum of 500 l. and his said office, and be for ever after incapable of executing any such office.

It hath been resolved, that a forfeiture by a gaoler who hath but a particular interest, as of him who hath custody of a gaol for life or years, does not affect him if he remain derer or reviver who hath the inheritance, but that upon such forfeiture his title shall accrue, and not go to the king. 2 Pub. 119. 2 Loe. 71. Raym. 216. 3 Loe. 284.

And by the 8 & 9 Will. 3, cap. 27, it is enacted, 8 That the offices of marshal of the king's Bench priso, and warden of the Fleet, shall be executed by the several persons to whom the inheritance of the prions, of prison-houses, lands, tenements and other hereditaments then belonging or appertaining respectively, in his or their respective care, or the keeper of any other prison as afoaid, shall for every such offence forfeit the sum of 500 l. and his said office, and be for ever after incapable of executing any such office.

2. For what offences they shall forfeit their offices.

It is clearly agreed, that a gaoler by suffering voluntary eftapes, by abusing his prisoners, by extorting unreasonnable fees from them, or by detaining them in gaol after they have been legally discharged, and paid their full
Garth, in stat. 21 I. L. 2. cap. 10. Signifies the
duff, foul or uncleanness that is fevered from spice, drugs, &c.

Garling of bothbales, in stat. 1 R. 3. cap. 11. Is the sortillmg or cutting out the good from the bad. As garbling of spice is nothing but to purify it from the dross and impurities. It is a species of the word garble, or the garble from the Italian garbo, that is fine-cens, neat-cens; Trence probably we say. when we see a man in neat habit, He is in a boudoina garb. Cowell, edit. 1727.

Garter of spires, (mentioned in stat. 21 I. L. 2. cap. 19.) is an officer of great antiquity in the city of London, who may enter into any shop, warehouse, &c. to weigh and search drugs, spices, &c. and to garble the same, and make them clean.

Garriat, The word possibly is so printed by mistake for garriane; however it is signified, the baggage of an army. — Cum certum nefri efligient flarittis — carni (carni gueque (quod garcius appallamus) a tergo locaft. Wallingham in R. 2. pag. 242. Cowell, edit. 1727.

Garrow, (Fr. garcon.) A boy, a stripling, a grooms, Pla. Cor. 21 Ed. 1. Garis flode, grooms of the sttle to the King. Cowell, edit. 1727.

Garriiones and Carriniae, The baggage of an army, so called a Garriiones five militiam fanfti Wallingham, pag. 242. For gariones are thoseervants which follow the camp. Habet garcionem fuf parasitum femper attendantem. Ingulphus, pag. 886. Gart, Gardian, See Guard and Guardian.

Garterbace, (Fr. garebatrice,) A vambrace or armament of the kind. King Hen. 5. by charter dated to Junni 7 Regis granted to Sir William Bearecliff, concium atum de Ewe in Normandy. — Redendas dictis Regi & hereditatis suis apud cothram Raphamii namum garebatrice ad featum Saneti Gorgii fingsul annis, &c. Baronz, Anglgin, 2 part.

Garteba, (Gardanab,) A closet or a small apartment for hanging up clothes, being the fame with wardrobe. See 2 Inf. 255.

Gardia or Gardian, Is a word used among the scaldifs for the Lat. coelida, a guardianus, sec guardio, dicturn, &c. cui esulta cummillo of. Lib. Feeder. 1. tit. 2 & 11.

Gardian, See Gardlian.

Gare, is a coarse wool full of hairs, such as grow about the flanks of a sheep. Stat. 31 Ed. 3. c. 8.


Garnanunum, Yormuth. Cowell, edit. 1727.

Garienis lubius, The river Yare in Norfolk. Id.

Garielloii, but more truly GarvPELLII, is that fort of spice we call coves. Cowell, edit. 1727.


Garnetura, Garniture, furniture, provision, armament, and other implements of war. Mat. Par. fab. ann. 1520.


Garnith, As to garnith he is, that is, to warn the heir. 27 Eliz. c. 3.

Gastrophit, signification of the party in whole hands money is attacked, within the liberties of the city of London, so used in the herald of London's court, because he has had garnishment or warning not to pay the money, but to appear and answer to the plaintiff-creditor's suit. Cowell, edit. 1727. See Atramentum.

Gastrophitut, (from the Fr. garnir, to furnish, to provide with.) In a legal sense signifies a warning given to one for his appearance, for the better furnishing of the caufe and court; for example, One is sued for the due of certain evidences and charters, and faith, that the evidences were delivered to him not only by the plaintiff, but another also, and therefore prayeth, that that other may be warned to plead with the plaintiff, whether the conditions be performed or not; and in this petition

he is bid to pray garnishment. New Book of Entries, fol. 212. ed. 3. and Termis de la Ley, Cramp, Taur. fol. 311, which may be interpreted either warning of that other, or else furnishing of the court with parties sufficient throughly to determine the cause, because until he appear and join, the defendant is, as it were, out of the court, P. N. R. It is an embargo to court parties, not considered of all parties to the action. With this agrees Britain, cap. 258, where he faith, That contracts, fome be naked, and fome furnihed, and to use the literal figuratio of the word appurteiled, but a naked contract, iudicium pactum, giveth no action; and therefore it is nothing but to hold the court in suspense, which ought to be with these five forts of garnishments, &c. Howbeit it is generally used for a warning in many places, particularly in Kitchin, fol. 6. Garnijfer hcur court, is to warn the court; and reasonable garnishment in the court place intends reasonable warning, and again, fol. 283, and many other authors. And in the first fol. cap. 2. Upon a garnishment, or two nickels returned, &c. But this may well be thought a metaphor of the effect, because by the warning of parties, the court is furnished and adorned. Cowell, edit. 1727.

Garniture, (Garnijfera,) A furnishing or providing. See 2 ed. 1727.

Garnonna, A warren. Cowell, edit. 1727.

Garnumun, A fine or amerciament. See Demesnay; tis written in Spelmam's Gifft. Gentiana. See Garnum.

Garth, (Gartieran, in French jurist, i. pristifis for plurilatiris) Signifies in divers situations and elsewhere, a special garter, being the ensign of a great and noble order of knights, called Knights of the Garter, being of all others the most excellent. This high order, as appeared by Mr. Camden, 211, and many others, was first instituted by King Edwdr.d of the Third, in the 23rd year of his reign, upon good success in a skirmish, wherein the King's garter (as it is said) was used for a token. 'Tis true, Polydore Virg. gives it a more flight original, but his grounds, by his own confession, arise from the vulgar opinion; King Edwdr.d the Third (says he) after he had obtained many great victories; (the Kings of France and Scotland being both prisoners in the Letter of London at one time; King Henry of Castile the baffard, expelled, and Don Pedro restored by the Prince of Wales,) did, upon no weighty occasion, first ered this order in 1350. viz. He dancing with the Queen, and other ladies of the court, took up a garter that happened to fall from one of them, when, after a long time of finding it, and that ever it were long, he would make that garter to be of high reputation, and shortly after instituted this order of the Blue Garter, which every companion of the order is bound daily to wear, being richly decorated with gold or silver, and having there words fixt on it, Heu fuit qui casu, which is commonly thus interpretaded, Evil to him that evil thinketh; or rather thus, To him be it that evil thinketh. Furse in his Glory of Generosity, fol. 192, agrees with Camden, and more particularily sets down the victories by which this order was occasioned. See a very ingenious and elaborate Treatise on this Subject by Elias Athlone, Esq. This order consists of twenty-six martiall and heroicall nobles, whereof the King of England is the Sovereign, and the rest are either nobles of the realm, or princes of other countries, friends and allies of this kingdom, the honour being so great, that the Knights of other nations are defir'd, and thankfully accepted it. For the ceremonies of the chapter proceeding to the election, of the inverfite, and robes, infallations and vow, with all other matters concerning it, see Mr. Segar's Homer Military and Civil, flib. 2, cap. 9, f. 65, and the said Treatise by Mr. Athlone. The garter was a fine stiff cord in the form of the principal king of arms among our English heralds, created by King Henry VII. See Stat. pg. 584, and mentioned 14 Car. 2. cap. 32. See Herald.

Garth, A little backside or chafe, in the North of England. Alfo a dam or weaver in a river, for the catching of fish, vulgarly call'd a fiddle-garth. Cowell, edit. 1727.
GAV

Cawthorne. It is mentioned 13 R. 2, 2st. 1. cap. 19, and 17 Ric. 2, cap. 9, it is ordained, That no filler in Cawthorne shall UF any nett or engines to destroy the fry of fyf. and &c. that he is to signify one of ten open places where fish are caught. Cawsw. edit. 1727.

Cawse. See Carydsay.

Cawford. A governor of a county or city, whose office was only temporary, and who had jurisdiction only over the common people. Episcopvs utique Regis & Gaffall. Angliam. (I15a1) Clm)g;^mtn, &ca.build, devoted to de conceptione arumbium ac ad famen feminum, & heratorum, et aedificlum quod aeglerit. Samum de Gavelkind, p. 17.


Cawslud, Is by Mr. Lombard, in his Exposition of Saxon Words, verbo Terra de Scriptis, composed of three Saxon words, gves, eae, eae, omnibus cognatione proximi data. But Forfogen in his Replication of Declared Intelligence, c. 3, c. impum, Gavelkind, quod ab omnibus, quid sit, to give to each child his part. But Taylor in his History of Gavelkind, would derive it from the British gavel, a hold or a tenure, and conno et cennadolid, generatio et familia, and so gavel-tened could signify Tenura generationis, pag. 52. 

Cawvel, That yields rent or annual profit.-Si autem in gavelgeda, id es, in gabum redd. dente domo pagna paga, vel in glebore 30 sol, culpa judic. Leges leg. Regis Wulf-Sax. cap. 6.

Cawvelgiba, Cawvelgita. That is made by the lord, to be divided by the court, to divide land amongst the children, according to the statute of the Common Law. Camden, in his Britanniam, pag. 239, faith in express words, Cantania e lege Gulielmo Normanno fide dedere, ut patrisa divisiones illas effe sit. — Taylor, History of Gavelkind, that the land of the father is equally divided at his death among all his sons, and the land of the brother equally divided at his death among all his brethren, if he have no issue of his own. Kitchin, fol. 107.

Tractatus prius patriis succedendi in agris
Moscula frons omnis, ne forte ullo patrono.

This custom is still in force in divers places of Eng- land, but especially in Kent, University in Herefordshire, and elsewhere, although with some difference; but by the statute of 35 H. 8, c. 26. all Gavel-kind land in Wales are made defendable to the heirs, according to the course of the Common Law. Camden, in his Britanniam, pag. 239, faith in express words, Cantania e lege Gulielmo Normanno fide dedere, ut patrisa divisiones illas effe sit. — Taylor, History of Gavelkind, that the land of the father is equally divided at his death among all his sons, and the land of the brother equally divided at his death among all his brethren, if he have no issue of his own. Kitchin, fol. 107.

This custom is still in force in divers places of Eng- land, but especially in Kent, University in Herefordshire, and elsewhere, although with some difference; but by the statute of 35 H. 8, c. 26. all Gavel-kind land in Wales are made defendable to the heirs, according to the course of the Common Law. Camden, in his Britanniam, pag. 239, faith in express words, Cantania e lege Gulielmo Normanno fide dedere, ut patrisa divisiones illas effe sit. — Taylor, History of Gavelkind, that the land of the father is equally divided at his death among all his sons, and the land of the brother equally divided at his death among all his brethren, if he have no issue of his own. Kitchin, fol. 107.

Cawvel in London. See London.

Cawveling-men. Tenants who paid a referred rent, befoie some customary duties to be done by them. Cawsw. edit. 1727, the 13th. Law mossbury rent, in gable fce lexibus, in dono xxv. — Cawveling-men. See London.

Cawvelmen. Tenants who paid a referred rent, befoie some customary duties to be done by them. Cawsw. edit. 1727, the 13th. Law mossbury rent, in gable fce lexibus, in dono xxv. — Cawveling-men. See London.
defence of the laws of their country; and being imagination himself to be encompassed in a wood, granted that they and their posterity should enjoy their rights, liberties and laws; some of which, as particularly this of Gavel-kind, continues to this very day. Gavel, ed. 1717.

Of the many opinions concerning the original of this custom the most probable seems to be, that it was first introduced by the Roman clergy, and therefore propagated more extensively in Kent, because there the Christian religion was first propagated. This tenet is reckoned by the best antiquaries to be the same with the Saxon bœclan laws, to which it is especially superior in the feudal services.


How this property came to escape, and to remain intact down to the people of Kent from their Saxon ancestors, is not agreed among the several antiquaries; some of them tell us, that the Kentishmen came with boughs, and demanded their custom to be confirmed by the Conqueror, or else resolved to oppose his march; others reject that story as a monkish fable, and think the Kentishmen submitted, and that the Conqueror came with Odo, bishop of Bayeux, from Normandy; which hath less probability, considering the many exceptions of the Kentish lands from feudal privileges; probably, not withstanding this story as to the opposition of the Conqueror with arms, it might thus far be true, that they came with their boughs to submit themselves to him on his first entry, and might petition for the establishment of their rights and customs; and the Conqueror, who was a very politic prince, might, to gain reputation with his new people, have thought it proper to anoint the custom, which seems the more probable, because the monks, the historians of those times, drop the story, and we all know they have not been at all favourable to his character; and the Romanist part of the story might be invented by Spot, to aggravate his own monarchy.


1. Several properties of this custom.

2. Particular cases which have been adjudged relating to this custom.

3. Several properties of this custom.

The first quality of the land was, that it was alienable, without any licence, according to the true nature of the Roman patrimonial property, and very different from the feudal enfealing. A tenant in this property was entitled to the patrimonial, in nature of the contras, in the Roman law, and without any feudal words or securvam of tenure. 2 Bat. Abr. 638. Summer 88.

The next property, is, that these lands are not forfeitable for felony, but for treason they are; for the feudal forfeitures only held in lands where there were tenures, and not in the alodial property; and the alodial property was only forfeitable, according to the Roman Civil law, for the crimen lese majestatis; and therefore the clerics, that were judges with the earl, never allowed the lands to be forfeited but for the crime of high treason; but subsequent statutes comprehend Gavel-kind, because such laws extend to the whole lands of the kingdom, unless Gavel-kind were excepted; but if a man be outlawed, or abjure the realm for felony, he shall forfeit his land in Gavel-kind, and his wife her dower in them; and those the striketh in which the custom is to be taken, because derogatory from the Common law, is usually given for a reason, viz. that when men, by their own free will, have renounced that outlawry and abjure the realm are penalties introduced since the conquest, and consequently since the establishment of Gavel-kind in Kent, and therefore like other new laws shall extend to that custom. Lamb. 610, 611. Br. tit. Custom 54.

With any tenant died, his heir within age, the lord might and did commit the guardianship to the next relation within the court of judicature in whose jurisdiction the land was; but the lord was bound on all occasions to call him to an account, and if he did not see that the accounts were fair, the lord himself was bound to answer it; this province the Chancellor hath taken from inferior courts since the conquest, only in Kent, where these customs are continued; but the custom is not used even in Kent to this day, because the successive guardians do it at their own peril in the account, and therefore every interpreter of it is ingenious to intermeddle. Lamb. 611, 612, 624, 625.

The infant at fifteen was reckoned at full age to fall for money; this they undoubtedly took from the Civil law, which reckons fourteen the atas pueribatis; for they reckoned, that though the infant had ended his years of infancy, yet he could not have completed his account with his guardian till the age of fifteen, and that was esteemed to be the age when he was completely out of guardianship. Lamb. 624.

The guardian appointed by the lord is to have the same allowance, and no other, with the guardian in foage at Common law, and is subject to the account of the heir for his receipts, and to the directions of the lord for the same cause. Lamb. 625.

The liberty of selling was allowed at the age of fifteen for the convenience and necessity of commerce, for which these small divided shares were absolutely necessary; yet it is certain, that from a very remote times, that the infant could not be wronged or imposed upon; therefore an infant that sells must have a valuable consideration, because otherwise 'tis a plain sign that the infant was defrauded; if a woman sold at the age of fifteen canad maritimil praebuit, this was a good conveyance; for marriage was reckoned to be a good and sufficient consideration.

It must pass by feoffment, and the livery upon the feoffment must be made by the infant in person, because an infant can't appoint an attorney by the Common law; and since the express words of the custom do not derogate from the Common law in that point, an equitable consideration must be admitted to make it derogate, for all customs are to be confined strictly. Lamb. 628.

This custom, like all others that are derogatory from the Common law, is to be confined strictly; because as far as the particular custom hath not derogated from the law, the general custom of the whole kingdom ought to prevail; and we are not to presume that the particular custom goes farther than by notorious facts may appear: therefore in this case, if an infant in gavelkind be defecated, and released to his disposer, or releaseth to a discontinuance, it is not within the custom, and therefore void; so if he make a feoffment with warranty, the warranty is not comprehended within the custom, and to void for the custom to be confined strictly is a conveyance by a naked feoffment. 1 Rol. Abr. 568.

It must be lands in possession, and not in reversion or remainder, because the true value of a reversion or remainder can't be known or computed, and therefore the greater need of more than ordinary discretion in such cases, which is not found in infants; besides, a reversion or remainder could not be immemorial; and therefore the custom could not be thereunto appurtenant, because the immemorial customs only were confirmed by the Conqueror; so that since the Norman conquest such a fale can't be adjudged legal. Benl. 33. pl. 52. Lamb. 627.

It must be land coming by descent, and not by purchase, because the infant's purchase could not be a subjecl matter for the custom; for the Conqueror muft, as is said, be presumed to confirm nothing but a privilege that is immemorial; therefore it must be governed by the general laws of the kingdom. Benl. 33. pl. 52. Lamb. 627.

Therefore it must be that he have the privileges of the infant at Common law, because tho' he hath the privilege of alienation at fifteen, yet that doth not take him any privilege he had before at the Common law. 1 Rol. Abr. 144.

As to the geld, or alodial rent, that was referred upon the lands, the lord might disintrin, by the petty ditches, the villege for his rent as when the tenant held it in medium beneficio; for tho' the lord parted with the lands, yet the rent still remained to be the lord's as it was before, and therefore he had it for the same remedy as all other persons had.
A. feited of lands in gavelkind had issue three sons, and devised part to one, and part to another, and another part to a third; and appointed by his will, that if any of them die without issue, that the other should be his heir; and it was adjudged, that each of them had an effate-tail by implication, by that part of the will, that if any of them died without issue, the others, and likewise the wife that the word heir makes a fee-simile in that part that descends to the survivor, upon the death of the reft without issue. 

Mar 864, Spark v. Farnall.

A man feited of land in gavelkind makes a feoffment for the use of himself and his wife in tail, the remainder to his right heirs; the word heirs in the remainder and their issue, and not of purchase; and therefore the remainder shall descend according to the custom of gavelkind.

Bra. tit. Custum. (1)

Lands in Kent were disfegalled (by 31 H. 8, cap. 3, and a private act made 2 & 3 Ed. 6.) to all intents, constructions and purpofes whatsoever, and that they should defend as lands at Common law, any curfoms to the contrary notwithstanding; and the quefion was, whether these lands loft by these ftutes all other qualities or curfoms belonging to gavelkind, as well as their partibility; and resolved that they lone only their partibility.

628. 6 Ed. 2, c. 28. 175. 155. 124. 125.

Lev. 79. 2 Koh. 288. Hard. 335.

For five, thefe acts were made at the petition of tho' gentlemen whose lands were disfealled, to prevent the extinction of their families by the frequent divisions of thefe lands; therefore 'twas to be presumed, that the legiflature intended to define partibility, as that part of the curfom which tended to the conftraint of families, and not tho' other beneficient curfoms annexed to such lands in Kent, fuch as deiving, forfeiture for treason only, &c.

2. To expound this private act of the 2 & 3 Ed. 6, literally in the clause. (that they should be as lands at Common law, to all intents and purpofes,) I would take away all manner of power of deiving tho' lands, for lands at Common law were not deivable; and this act being fubfegent to 32 H. 8, and 34 H. 8, of wills, muft repeal them, and consequently prevent all future deives; but this reftaint can't be intended to be within the view of the petifioners, nor of the legisfature that framed the act upon the petition.

3. Tho' in the beginning of the clause the words to all intents and purpofes, &c., are large, yet they are refrefifed by the laft words of the clause, viz. that they should defend as lands at Common law, and consequently the curfom of partibility is to be vifted in thefe lands; and if thefe lands were free of this particular curfom, it seems to be very much questioned, whether the power of deiving, as well as the other qualities annexed to the partible land in Kent, be effential to gavelkind; for the curfom of gavelkind prevails in other countries besides Kent; and yet it may be very much questioned, whether the gavelkind of Kent, and that in other countries, agree in any thing but the manner of defendent; and if this doubt may be admitted, then tho' extraordinary curfoms in Kent can't be extingufified in a ftatute, without particular words for that purpofe, 1 Sid. 137.

To illuftrate this point farther, it will be neceffary to take notice, that it is fufpending for any one, who will intitle himfelf by the curfom of gavelkind, that the land is in Kent, and of the nature of gavelkind, without pleading the curfom efically; but if any one will plead the curfom of deiving, or of having a moiety as tenant by the curfory, or in dower, he muft plead the curfom fpefically, and not in that general manner he may plead gavelkind, or in that particular manner he has a moiety in the land. For it seems to be this, that gavelkind in Kent is the general law of the place, and no particular curfom; and therefore when it is generally alledged, the court shall take notice of it as of a law that prevails in a confiderable part of the kingdom; but as for the other curfoms, they are not an extraflary part of the curfom of gavelkind.

2 & 3 Ed. 6, Art. 15.
dom, that the judges may be apprized of them, and where they obtain, and to give their decisions with regard to them. 1 Sid. 138. Cro. Carr. 562. 2 Sid. 153. Brown v. Brooks. Lamb. 595.

Heirs in gavelkind shall make partition as parceners, and a writ of partition lies between them as it does between lessees. Where the declaration among the articles to the custom must be mentioned; as to say, that the land is of the custom of gavelkind, but they need not prescribe; for to the custom, as different from the general law of the kingdom, must be taken notice of to the judges, yet there is no necessity for precluding, because it is loco judicato. 1 Cit. 97. 4. Litt. fol. 965. See 14 Ed. 4. Tit. Gavelkind.

Gavelmen. Is a tenant who is liable to tribute. Villani de Teringe qui vocatur gavelmelm. Somner, Gavelkind. p. 23.

Gavelmen, The duty or work of mealing of grafs, or curra, in the soil land, required in the lord from his customary tenant,—Confectutus fulcendi quod vocatur gavelmea.—Sommer of Gavelkind. Append.—Et pro una septimana dim satisfactor filipula quod vocatur gavelmed, lb.

Gavelors. Javelin, darts, the fellable or being the same with fo, and so derived from jadis. Prumnoigitur, si jadis Willhelmum tam jactatrum, quod vulgariter gavelmores appellat, quam maxime motus baliat et usu—biiillonfer infuquantur. Mart. Par. fac ab anno 1526.

Gavelrey. Bedrear, or duty of reaping at the bidding or command of the lord.—De confutandis metatris 40 acres at dimidium a datur in autumn 40 sol 6 den. Sommer of Gavelkind. p. 19, 21.

Gavelry. See Gavelsey.

Gavelsetre. (Sax.) Sexturia velgilti; (seruaria fidelicet septem trias manueri vel praedi dominus ab usfurparum seruariae esquenta, serui vel valgilti namina, perpendunt.) Is a certain measure of land. Among other articles to be charged upon the stewards and bailiffs of the church of Canterbury's manors, this of old was one.—De gavelsetre cujuslibet bracium braciatui infra libertatem manuerium, viz. Unam lagenam et dimidium curvam. We may find it elsewhere under the name of Telygar. thus, De Telygar curvam, hoc of, de quibusbracium per annum annanum lagenam de curvam, and is without dispute the same. In lieu of which the abbot of Abingdon, of custom, received that penny mentioned by Selden in his Disquisition annexed to Fleet, cap. 8. num. 3. and there (I believe) misprinted Cotebottley-penny for Telygar-penny. Nor differs it (I think) from what is given in Gifford, at the end of H. I. laws, is called ask-guild. Sax. Diri. and see Gavelsetre. Cowell, edit. 1727.

Gavel-were. (Sax.) Was either manuopera by the hands and perfon of the tenant, or corropora by his carts or carriages. Phil. of Parochyce.

Gaugerum. A gauge or gauging, done by the gauger. Litera of 15 H. 4. of deliberum menfora & gaugato mercatorum burdegal, & de gaugatoris sene, & demonium pro dolis, fci, obum ab empirae, & obtum a vendores. Mandetur per breve de Can. quod omnis linea de doliin sinnur fiant de deterro de recto gaugato Anglicum. Roya of 15 H. 4. at the true English gauger.

Gauger. (Gangetor, from the French gantier, i. e. guynm tanguer.) Signifies an officer of the King's, appointed to examine all tuns, pipes, hogheads, barrels and tertia of wine, beer, ale, oil, honey, butter, and give them a mark of allowance, before they be sold in any place. And because this mark is a circle, made with an iron instrument for that purpose; it forms that from thence he taketh his name. Cowell, edit. 1727.

All wines brought to be sold shall be gauged by the King's gauger, 27 Ed. 3. f. 1. c. 8. 31 Ed. 3. f. 1. c. 5. 2 Rich. 3. f. 1. c. 5. 4 Rich. 3. f. 1. c. 5. Vessels of wine, vinegar, oil, honey, &c. shall be gauged, 4 Rich. 2. c. 1. 18 Hen. 6. c. 17. Rhenish wine exempt, 14 Rich. 2. c. 8.

The contents of pipes, hogheads, &c. of wine and spirit, 5 Hen. 6. c. 11. The gauger shall at all times be ready to do his duty, 23 Hen. 6. c. 15. The contents of barrels of salmon, herring and eels, 22 Ed. 4. c. 2.

The contents of vessels of wine and oil, 1 Ric. 3. c. 13. Vessels to be marked, 28 H. 8. c. 14.

Vessels brought from beyond sea, and used for utterance of ale and beer, shall be gauged, 31 Rich. 4. c. 8.

Vessels to be gauged, 31 Rich. 4. c. 8. See that they be not to gauge vessels upon request, 23 Hen. 8. c. 4. 31 Eliz. c. 8. f. 3. Gaugers may take samples not exceeding half a pint, 32 Gen. 2. c. 29. Gauge-penp, Is the gauge's fer. Stat. 23 Hen. 6. cap. 19.

Gaufridum, A hound which never caught a hare. Cowell, edit. 1727.


Gavette. See London Gavette.

Gavellis, In a charter of the privileges of New-

Gaufridum, on fyffle, renewed Anne 30 Ed. we read, viz. Sturinges, balamas, estetas, perfites, (i. e.oporipotes), delphins, ridge, guespeas, i. e. grannops.

Gavurche, Gavurccis, Neighbourhood, or adjoining district. Liges Edw. Conf. c. i. de Penurie, p. 2. Gavurche, Gavurche, The neighbour of the manor, or the same gavurcés, or village. Sax. gubra, a carl, plough-

Gavus, (Gudum,) Among the Saxons signified, pecunia vel tributum, allo the compensation for a crime: Hence, in our ancient laws wergild was used for the value of a man. In our modern laws, to be a beard or a battle. Et ist quod gratum & danegeldis & horgeldes & sorgeldis, & de buhtuvis, & fustives, & fletuvis, & feuthuvis, & beintwas, & mensenfode, & wardy-wendy, & course-wendy, & telling-wendy. Charta Rich. 2. priorat. de Herland in Devon. Pat. 5 Ed. 4. part. 3. m. 13. See Gidse.

Gawle. See Oldewale.

Gemete, Is a Saxen word signifying conventus, an assembly: Tis used in the laws of Edward the Gensfer, cap. 35. for a court, viz. Omnis homin popam bacaret adum ad metendum & reiemen de metem, nisi probatus furri. See Sott.

Gennessee. (Sax.) Villanous, as regis genneth, is the King's
ingale, Cowell, edit. 1727.

Gentum, Gentifs, broum. Cowell, edit. 1727.

General issue. See Mitre.

Generall. The single commons, or ordinary provi

Gvascularia, In a charter of the privileges of Givensorum, we have this account. — In private dis-

Gvascularum. When a mother-abbey or old religious house had spread itself into several colonies or depending cells, that illeve or off-spring as it were of the mother-

Gvascularia, was called Generallia, quod proles & fratres materis domini. Quondam privatus inter abbatam de Waverle & abbatam furnelari terminato loc modo, dillicet quod a daes in Givosinii bacaret privatum in vaca generat-

Gvascularum, was called Generallia, quod proles & frateris materis domini. Quondam privatus inter abbatam de Waverle & abbatam furnelari terminato loc modo, dillicet quod a daes in Givosinii bacaret privatum in vaca generat-

Calaral. Glafton. MS. f. 10.

Gvec. When a mother-abbey or old religious house had spread itself into several colonies or depending cells, that illeve or off-spring as it were of the mother-
Gentleman, Genesys is an irregular compound of two languages, the one from the French gentil, that is, Hainuit, vel hainuita esse notus; the other from the Saxon son, as if you say, a man well born. The Italian follows the very word.——

The Spaniard keeps the meaning, calling him hidalgo or hijo d'alte, that is, the son of some man, or of a man of reckoning: The French also call him gentilhomme. So that gentlemen are a few whom their blood and race doth make noble and known: In Latin nobilis, Smith de Reg. Ang. lib. 1. cap. 10. Under this name are comprised all above yeomen, so that noblemen are truly called gentlemen; but by the course and custom of England, nobility is either major or minor; the greater contains all the degrees from knights upwards; the lesser, all from barons downwards.——

Thrust into the first book of his Saye. Sect. 1, see Cheltham Talihill. Hist. of the Kings of Rome, gentilhomme. These words, gentilis bens, for a gentleman, was adjudged a good addition. Hill, 27 Ed. 3. The addition of knight is known, but of quiche or gentleman rare before the fifth of H. 5. c. 5. See 2 Par. hist. fol. 595 & 657. where the reader John Kingdon made a gentleman by King Richard 2. Pet. 12 R. 2. part. r. m. 13. intit.

Gentleman. —

George Noble, A piece of gold current at six shillings and eight-pence in 1 H. 8. when by indenture of the Most one pound weight of gold was to be coined in the name of the noble. Viz. Lowndes's Elyst upon Coins. pag. 41.

Cressy in Amercia, In colony establisshed. 6 Geo. 2. c. 25. febr. 7.

Cromart. See Caufons.


Cromatina, (Sax. Gerfuma, i.e. sumptus, præmium.) In ancient charters it is used for an income; as Scacciae me A. pro. sit libris, quod B. mihi dedit in gerfuma, delicias, concelfes, &c. Sometimes for a fine or a fault; as, Gerfuma copare de matua vostra impregnata fini cantus vineria, quod dictor Childwet. In Mach. Parif. it is written Gerfuma. Datis abtitiis traciis macres asti in gerfuma, i.e. pro fine. And in Scotland, gerfuma. Sometimes 'tis taken for any exaction or demand; as, Abfque restitutae exsuffiit conjunctoriu fini ferio, i.e. free alterius gerfuma, oct familiae exsuffiti. Angl. 116. 2. tom. 623.

Cromatinate, Finable, or liable to be mulcted, fined or amerced at discretion of the Lord.——


Cromsand, Abledemb. Cowell, edit. 1727.

Crist, (French, gift.) A lodging or stage of rest in a journey or progress.——

Strype's Mem. of Archibishop Cranmer, p. 283.

Cristi, Cristum. Gif, yealt, barm for working of beer or ale.——Ita quod fipures penturin fic vendeure, & in qualitatem occurrat tres demaries, exceptis bernesi & dubios panis ad furnarum—& in folo absum. 3 & in sella ubique, & in camera cub. & in candela quadrantium. Mat. Pat. fab anno 1202.

Crist & Sanna, is a writ now out of use. Lamb. Eiren. lib. 4. c. 14. p. 532.


Cristneda, Is a Saxen word, and it signifies the pub- lic convention of the people to decide a cause. Et pace, quam Aldermanes Regis in quique burgarm gewinde la- due, remandatar 12 libri. Leg. Ethelred. c. 1. apud Brompton.

Cristnctusa, Giving evidence. Leg. Ethelred, c. 2. apud Brompton.

Gift, Is a transferring the property in a thing from one to another without a valuable consideration; for to transfer any thing upon a valuable consideration is a con- tract or sale: He who gives any thing is called the do- nor; and he to whom it is given is called the donee. 1 Wood's Convey. 116.

By the common law all chattels real or personal may be granted or given without deed, except in some special cases. It is good in law without a consideration, if not to defraud creditors. Perk. 57. Hob. 230. See Fract.

But by the flat. 29 Car. 2. cap. 3. No leave, effates or interest either of freehold, or terms of years, or any uncertain interest, not being cophold or customary in- terest, of, in, to or out of any mulligates, manors, lands, tenements or hereditaments, shall at any time be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereinunto lawfully authorized by writing, or by act and operation of Law.

If a man makes a general gift of all his goods, without exception of apparel or other things of necessity, as bedding, &c. though it be by deed, this may reasonably be falsified to be fraudulent to deceive creditors, &c. and though there may be a true debt owing, &c. a gift is made to all one's creditors, &c. and the debt is void against other creditors, &c. though good against the giver, his executors or administrators, or any to whom afterwards he shall fail or convey them; for though it may be a gift upon a valuable consideration, yet it may not be done bona fide, as the statute of the 13 Eliz. cap. 5. requires. Boc. L. Trefl. 146. Strow. Boc. 260. 261. 3 Ca. 80, &c.

If a man puts a robe, or other garment, on his servant to use, this is a gift in law. Br. Don. &c. pl. 9. cites 11 H. 4. 31.

If an adulterer cloaths the woman, the baron may take his wife and the apparel, and justify both. Br. Don. pl. 9. cites 11 H. 4. 31.

A. borrowed 100l. of B. and at the day brought it in a bag, and cast it on the table before B. and said to A. being his nephew, I will not have it, take it you, and carry it home again with you. Per cur. This is a good gift by parol, being cast upon the table; for then it was in the possession of B. and A. might well lawe his wage. But it had been otherwise, if A. had only offered it to B. for then it was a chose in action only, and could not be without a writing. No 67. Flower's cafe.

A gift of any thing without a consideration is good; but it is revokable before the delivery to the donee of the thing given. Donatio perfectio poffessionis acquirit. J3erk. 169. pl. 9.

If I have a barke in London, and I, being at a great distance from London, give my barke to J. S. he may have trefpafs without other possession. 1649. c. 18. for the Thib. Cat. 13. in the case of Willy v. Bower, cites F. N. B.
F.I.G.

P.B. 140. Perk. 30. 21 Ed. 4. 25. 21 H. 7. 39.
31 H. 6. 43.

A made a present of a jewel to a lady whom he courted, but the marriage not taking effect, he brought an action of detinue against her, and the, taking it to be a gift, offered to wager her law; but the court was of opinion, that the property was not thereby vested in her, only being by a Spec. of tenderness, and therefore would not admit her to do it; cited per the Ch. J. Med. 141. Michib. 28 Car. 2. G.B. in the case of Beaumont v.

If the King, being apprised of the value, lets a thing for years, &c. worth 500l. per ann. rent, it stands per ann. this is not a gift to farm, but a gift. Shot. 151. in the Escheuer. Arg. 35 Car. 2. B. R.

Form of a deed of gift of tenements and lands.

T IS Indenture, made the day and year, &c. between A. B. of, &c. of the one part, and T. B. of, &c. son of the said A. B. if of the other part, witnessesthat the said A. B. as well for and in consideration of the natural love and affection which he hath and bearstunto the said T. B. his son, as also for the better maintenance and preferment of the said T. B. hath given, granted, alienated, confirmed, and confirmed, and by these presents doth give, grant, alien, enfeoff, and confirm, unto the said T. B. all that messuage or tenement, situate, &c. and all and every and singular its appurtenances, and all bawys, outbuildings, lands, &c. and the reversion and reversions, remainder and remains, rents and services of the said preferment all and every thing and thing in the said tenement, messuage, &c. premises, claims and demand whatsoever of the said A. B. of, in, and to the said messuage or tenement, lands and premises, and of, in, and to every part and parcel thereof, with the appurtenances; and all and every and singular all and every and singular and every and all deeds, evidences and writings concerning the said preferment, presently now in the hands or custody of the said A. B. or which he may get or come by without fail in law, to have and to have and to hold the said messuage or tenement, lands and premises hereby given and granted, or mentioned or intended to be given and granted unto the said T. B. his heirs and assignes, to the only proper use and behoof of him the said T. B. his heirs and assignes for ever. And the said A. B. for himself, his heirs, executors and administrators, doth covenant and grant to and with the said T. B. his heirs and assignes by these presents, that he the said T. B. his heirs and assignes, shall and may have, hold, occupy, possess, and enjoy the said messuage, tenements, lands, hereditaments and personal chattels, by reason of the said preferment given and granted, or mentioned or intended to be given and granted unto the said T. B. as aforesaid, with all and every and singular and every and all appurtenances, easements, rights of common, and other appurtenances whatsoever, to, with their appurtenances, free, clear and discharged of and from all and every and all gifts, grants, bargains and fals, feoffments, jurisdictions, decessors, assignees, actions, rents, rents-chargable, arrears of rents, plaintiffs, judgments, recognizances, statutes merchant and of the map, extent, and of and from all other titles, troubles, charges and incumbrances whatsoever, bad, made, committed, done or suffered, or to be, had, made, committed, done or suffered, by the said A. B. his heirs, executors or administrators, or any other person or persons lawfully claiming or to claim by, from or under him, them, or any or either of them. In witness, &c.

A gift of goods and chattels.

O all people, &c. I A. B. of, &c. fent greeting.

Know ye, That I the said A. B. for and in consideration of the natural love and affection which I have for my beloved brother L. A. of, &c. and for divers other good causes and considerations me hereunto moving, have given and granted, and by these presents do give and grant unto the said L. A. all and singular my goods, chattels, broad, jewels, leysters, and personal falle subfalle whatsoever, in whatsoever hands, custody or possession either they be, within the town of Great Premises, and the same have and enjoy all and every and singular the said goods, chattels, and personal falle aforesaid, unto the said L. A. his executors, administrators and assignes, to the only proper use and behoof of him the said L. A. his executors, administrators and assignes for ever. And I the said A. B. all and singular the aforesaid goods,

chattels and premises, to the said L. B. his executors, administrators and assignes, against all persons whatsoever, shall and will warrant, and for ever defend by these presents. In witness, &c.


Cigmillis. A kind of fulling-mills, for fulling and burling of woolen cloth, prohibited by Stat. 5 & 6 Ed. 6. cap. 22.

Giffa, A fraternity or company. See Cuttil.

Giffa is also a corporation or guild for a fault, Quingis in amore in alterius futurum bokent in duo geldos comparere faciat. From hence turgold is the price of a man, surgold the price of cattle, angold the single value of a thing, surgold the double value. There are likewise many words which end with geld, and which flew the several kinds of payments, as dundgeal, dundegul, furgold, burgold, penigeld, and many more. Cuttil. edit. 1727.

Gilbale, (from the Sax. gil, i.e. solatia, and ale, ale.) A composition where every one paid his fare. Cuttil. edit. 1727. See Sotacil.

Gildaleidding. (Geldabillis.) Tributary, that is liable to pay tax or tribute. Camden, dividing Suf- folk into three parts, calls the first gildable, because liable to pay tax, from which the other two parts were exempt, because ecclesiastic donates. It is mentioned An. 27 H. 8. c. 26. but we find gildable expounded in an old English statute, which is the only one that is known, which is called the statute civeuncet. See 2 Par. Inl. fol. 701. hoppisitia capta apud Aberijen, &c. 5 H. 5. per sacram. Will. Peirs &c. al qui dicit quod Johannes Choffryfer, qui tenebat unum tenementum & duo curas cum pertinent, in le gildable de Johannes Lille per quod servilium ignarum, exist. crecit 8. Johannes Hierifie, super damnum ad edendam praeli- legiam & libertatem. Templar. de Balfams, quod tenetur prad. tenementum sub fru in prejudicium Dom. Regis & contra faramma fistate inti editis. &c. MS. genes. Dulable, &c. Ar. jur. dicit quod prid. de Simplingham ten- net tres carciuas terre in 5 & non gildales. Ex Rowant, in Terr. Land. de 3 Ed. 1. 1. Linet.


Giltale. See Gild.

Gilmarchant (Gilde mercatoris) Was a certain privilege or liberty granted to merchants, whereby they were enabled (among other things) to hold certain pleas of land within their own precincts; as King John granted gildable mercatorism to the burgesses of Nottingam. Cuttil. edit. 1727. See Gyptate.

Ginger. See Spicery.

Girtler. May make their girdles with white metal, 15 Ric. 2. c. 11.

Gitarms, or Guitarims, (mentioned in the statute 13 Ed. 1. flatl. 2. c. 6.) An halberd. From the Lat. The arm that armed, meaning in both fides. A kind of hand-ax, according to Stene. Thale machines it sif- armes, lib. 1. c. 14. Es armorum genus longo manubrio & parcello cupido. Spec.


Gladiolus. (Ipsa gladiis) Is mentioned in our Latin authors, and is in the Norman laws, and it signifies a su- preme jurisdiction. Camden, in Britannia, writes Comi- tatus Fint. pertinet ad gladium Curtiar. And in Selden, Tit. of Honour, pag. 640. Curtian armum liberam de omnibus placitis, &c. except placita ad gladium eis pertinuissantis. In the Norman laws, that was a sort of justice, if a man slay another in an earl, he is gladius fucius, to signify that he had a juris- diction over the county. See Pleas of the Sword.

Glatre. (Fr.) A sword; also a lance or hornerman's staff. Glarets, long fivord, fivord fivord, and daggers, are the weapons allowed the parties in a trial by combat. Cuttil. edit. 1727.
another, the leafe shall pay riches to the parson that is in possession of the glebe, &c. Harris v. Cotton.

Leafe of the glebe shall pay riches to the parson, if it be at a very low rent, otherwise if it is at a rack rent; for quere of the diversity. Nay 35. Perkins v. Wilde.

If the parson of a church not improper leaves his glebe, the leafe shall pay tithes. But otherwise 'tis, if it had been an联动 appropriate church, because of the statute of 32 H. 8. of dissolution. Nay 152, cites it, as the case of Brower v. Vifeys, cites D. 43. a.

By flat. 28 Hen. 8. c. 11. fett. 6. Incumbent may devile corn fown by him, and growing on his glebe. A prohibition was granted to stay waife, under a fuggling fentence, that the parson might not plough up the ancient glebe land. Comp. 59. Trin. 3 B. & R. 3. f. 34. &c.

An agreement was about glebe lands included, and the parson, &c. to have an equal quantity, and as good in another place. The agreement was decreed. 5 Can. 1. Chap. Rep. 41. Morgan v. Clerk.

Parson exchange his glebe land and dues; the succour enters into the exchanged land, and takes the profits; yet the succour is bound for his time; & adjournatur.
'Tis clear the exchange shall not have been good, if it had been made after the 13 of E. But the exchange in this case was before. Nay 5. Thorburn's case.

Prohibitory was moved for to a parson for digging new coal-mines in his glebe, and also for farming them, for 'tis waife and prohibitable by the statute De nos professionis. &c. The court held, it lay not for the mines; for then no mines in glebe could ever be opened. Lev. 107. Trin. 15 Can. 2. B. & R. Earl of Rutland's case.

By flat. 28 Hen. 8. c. 11. Every succour, on a month's warning, after induction, shall have the moneys-houfe, and the glebe belonging thereto, not fown at the time of the predecessor's death, 28 H. 8. cap. 11.

He that is instituted may enter into the glebe land before induction, and has right to have against any annual rent; per Caze Ch. J. Roll. R. 192. See Sitar.

Glomerrells, concerning restitution and disabilities land on the Welsh of the party of Owen Glewnan, 4 Hen. 4. c. 26. &c.


Glomerrells, Commissaries appointed to hear the differences between the scholars and the townsmen. In the edit of Hugh Baflam, bishop of Ely, an. 1736, there is mentioned the Matter of the Glomerrells.

Gloucester and Gloucesterhire. The statute of Gluecester and its exposition, 6 Ed. 1. & 2. 2. The coutum of the land of scions shall be referred to the house of his majesty, 17 Ed. 2. & 3. &c. For rebuilding the town, 27 Hen. 8. c. 1. The poor in Gloucesterfie provided for, 13 Geo. 1. c. 19. For supplying the city with water, 14 Geo. 2. c. 11. For enlarging the streets and market-places, 23 Geo. 2. c. 15. Gluebes, Frames for knitting gloves not to be exported, 7 & 8 Will. 3. c. 10. &c.

Glove-silver. Money given to some fervants by coutum to buy them gloves, as a reward and encouragement of their labours. Inter antiquas confuetudines abbatine Sancho Edmundo — capiunt etiam guidam ex pradictis servitutibus glove-silver in festis 8. Petri ad vincula quorum habet just 10 scilicet, clausa celletarulii, den. anniger celletarulii ii. den. grangatarulii ii. den. &c. vacua i. den. vacua i. den. &c. Ex Cartul. S. Edmundi, Ms. fol. 323.

Glym, Signifies a valley in Donnington. Couwell, edit. 1727.


Gleaning of vagabonds, That is, sending them to the wall, 35 Ed. c. 7.

Coats, Any cloth may common with gowns within the forest without especial warrant. Note, That Caputieles non est levis venatorii sertice. Manwood's Forre Lawes, cap. 25. num. 3.
Gold, silver, and goldsmiths. Goldsmiths shall make their work of due standard, and shall be ordered as the goldsmiths of London, Artic. proper Chart. 28 Ed. 1. c. 20.

Gold and silver shall not be carried out of the realm, 9 Ed. 3. f. 2. c. 1. 36 Ed. 3. f. 1. c. 2. 5 R. 2. f. 1. c. 2. 2 H. 6. c. 6. 17 Ed. 4. c. 1. 7 H. 7. c. 3. 13 H. 9. c. 13. 30 Ed. 8. c. 1.

Goldsmiths work shall be essayed and marked, 37 Ed. 3. c. 7. 2 H. 6. c. 14. 17 Ed. 4. c. 1.

None that make plate shall gild, 37 Ed. 3. c. 7. Exchanges of money out of the realm, not to be made without the King's licence, 5 R. 2. f. 1. c. 2. Multiplication of gold and silver, folony, 5 H. 4. c. 1. relieved 1 W. & M. c. 30.

Golding, or silvering copper or laton prohibited, 5 H. c. 13.

Silver shall be good alloy, and shall be sold at 46 l. 8 l. the pound Troy, 2 H. 5. f. 2. c. 4.

No metal shall be gilt but silver, &c. nor any thing filtered but knights' spurs, &c. 8 H. 5. c. 3. 17 Ed. 4. c. 1.

The price of silver limited, for the increase of money, 2 H. 6. c. 13.

Silver plate shall be as fine as the sterling, 2 H. 6. c. 14.

The goldsmiths of London to have the rule and search of all goldsmiths within two miles of their city, 17 Ed. 4. c. 1.

Foreign goldsmiths shall dwell in open streets in the city, 17 Ed. 4. c. 1.

Refiners shall fall to none but officers of the mint and goldsmiths, 4 H. 7. c. 2.

Shall sell silver into masts molten and assayed, 4 H. 7. c. 2.

Silver shall bear 12 penny weight alloy in a pound, 4 H. 7. c. 2.

Decret in gold lace of Venice, Florence or Genoa prohibited, 4 H. 7. c. 22.

Gold or silver not to be paid to foreigners, 4 H. 7. c. 23.

Goldsmiths shall mark their work, and keep the standard, 18 Eliz. c. 15.

Foreign coin and bullion may be exported free, 15 Car. 2. f. 7. c. 12.

Gold and silver extrac'd from metals to be sent to the mint, 1 W. & M. f. 1. c. 30. fett. 3.

Penalty of calling ingots like the Spanish, 6 & 7 W. 3. c. 27. f. 3.

Officers of customs may feize bullion if shipped unflamped, 6 & 7 W. 3. c. 17. fett. 6.

Penalty on broker selling bullion, not being a trading goldsmith, 6 & 7 W. 3. c. 17. fett. 7.

Warden of the goldsmiths may search for bullion, 6 & 7 W. 3. c. 17. fett. 8.

If offender cannot prove bullion to be lawful silver, by the oath of one witness, he shall be found guilty, 6 & 7 W. 3. c. 17. f. 8.

Bullion must be flamped at Goldsmiths Hall before exportation, 6 & 7 W. 3. c. 17. fett. 5. 7 & 8 W. 3. c. 19. fett. 6.

Publish hocks prohibited to use plate, 7 & 8 W. 3. c. 19. f. 3.
the King and his legal people, whereby men upon their evil course of life, or loathsome demeanour, are sometimes bound: For as Lambard, in his Exercitata, lib. 2, c. 2. says, it is not finally bound than to the peace; for the peace is not broken without an affray, but this fury De bene gubna may be forfeited by the number of a man's company, or by his or their weapons or harness. See also Gram. fyl. 7 of Peace, fol. 110.—137. Counsel.

1. In what cases, in what manner, and how long, a per- son may be compelled to find surety for his good behaviour. 

Per Hils Ch. J. Trin. 6 Ann. B. R. Farr. 59. in the case of the Queen v. Rogers. 1. In what cafes, in what manner, and how long, a person may be compelled to find surety for his good behaviour. 

If one lives extravagant and high, who has no visible way of getting it, it may be reasonable to enquire how he lives, and may be liable to find sureties of the good behaviour; but if a man lives in a reasonable manner, and is held in it, he is not piracy for the Crown. 12. W. 3. B. R. 12 Mad. 413. Annu. 

Per Hils Ch. J. Trin. 6 Ann. B. R. Farr. 59. in the case of the Queen v. Rogers. 1. In what cases, in what manner, and how long, a person may be compelled to find surety for his good behaviour. 

A justice of peace cannot bind one to the good behaviour upon a general information, or commit him to prison for refusing to find sureties for his good behaviour upon such information. St. 12. Ps. 25. Car. 1. Sir Wil- liam Brereton's cafe. 

If a witness is infamous we may commit him for the immediate contempt, or bind him to his good behaviour, but we cannot indite him for it, and that is according to the Common law of England; per Hils Ch. J. Trin. 6 Ann. B. R. Farr. 59. in the case of the Queen v. Rogers. 

Surety for the good behaviour may be required of ftan- dalous, turbulent, frolicsome persons, as of forcible ent- ries, or obfene writers or ruffians, but not in refpect of bare words; unlefs they tend to a breach of the peace, or scandal of the government. Hawk. Pl. C. cap. 61. 9. See Pl. 1. 2. 3. 4. 

A. was committed to Newgate by the mayor of Lon- don for calling B. an alderman of London, fool and knave upon the Royal Exchange, in the presence of divers; upon a bawdy corpus, it was certified, that the cartoon of London was, upon such a mildmanner, to commit any citizen to prifon, &c. but by affent of the whole court, he was discharged as not having a design to break the peace, of peace require sureties of the peace, not having good cause to do, and the people releive, and is committed to prifon, false impeachment lies. For the statute of 34 & 35 Ed. 3. which gave them that authority, is principally for vagrant persons, &c. and is not intended for a breach above. And Anderjcn said, He could not see how the cartoon could be maintained, and that a man may be imprisoned for a contempt done in, but not for one done out of court. Cro. L. 689. Trin. 41. Eliz. C. B. Devon's cafe. One was indicted for that he slanderous & contemptuous pre- sertions & publick wrath, feminate, &c. That none of the justices of peace understand the statutes for the ex- cife, unless Mr. A. B. and he understands but little of them; do, nor many parliament men do not understand
G O O

Or deftroying timber, 1 Geo. 1. c. 48. sect. 3.
Or forcing through turnpikes, 8 Geo. 2. c. 20. sect. 11.
Or pretending to witchcraft, 9 Geo. 2. c. 5. sect. 4.
Or affiling in running good, 9 Geo. 2. c. 35. sect. 19.

Where one is arrested to the peace, the justice is not bound to demand surety, but the party ought to offer surety, otherwise the justice may award him to gaol. Br. Peace, pl. 7. cites 24 H. 7. 8.

Note: Where sufficient of peace is directed to the justice of peace, the justice, to whom the writ is first delivered, shall alone make provision to take the party to find surety, and it shall be returnable before him only, and he only shall take sureties, and shall make the return alone without the others. Br. Peace, pl. 9. cites 21 H. 7. 20. per Finanx Chief Justice.

The court was moved to grant the good behaviour against the Lord Ffalis, because he was indicted for a foul battery at the felions in London, and the bill was found against him; but per Rull Ch. J. it cannot be granted on a motion, but you must prefer articles against him here on oath, and then you may move for it; and if there appears cause in the articles, it shall be granted. Sti. 293. Mich. 1651. B. R. Dey v. Lord Ffalis.

He that does, or has something sworn in court, declare that the party, against whom the articles are sworn, may be bound thereupon to the good behaviour, must express some full specifie thing in those articles, for which he ought to be bound to the good behaviour; for if the articles be only general, the good behaviour is not to be granted upon them; for a general accestation is no accestation on account of the uncertainty of it, and the party cannot tell what answer to make to such a general accestation. L. P. R. 650.

Bond of 1000l. may be required for keeping the peace, as the cafe may stand, viz. if the party bound be a dangerous person; per Rull Ch. J. Pafch. 1652. B. R. Sii. 327. 60.

The return of the recognizance ought to be certified by the persons who took it, and if by any other, as the sheriff, Gt. it is not good. Trin. 21 Jac. 1. B. R. Cro. J. 669. Leonard Fard v. King.

By the course of the court, a perfon bound to keep the peace, ought to continue on his recognizance for a year; per Holt Ch. J. 12 Med. 251. Mich. 10 W. 3. B. R.

2. When such surety is disbursed, or superfluous, if breach thereof, and of readings, and proceedings therein.

In error, when the peace is granted in B. R. and after superintedas of the Chancery comes to them, 59/s their power in bank is expired, and the party, against whom it was awarded, is disbursed against them of the bank; per all the Justices. Br. Peace, pl. 17. cites 21 Ed. 4. 40r.

And when a man has found surety to keep the peace against J. S. and all the King's people, the party cannot releas it after, because others have interest in it; but Brack fays, it is used otherwise now. Ibid.

And if he pays the money, he shall be awarded to pri- son, and his recognizance is invalid, for the full recognizance is now determined, and he appears to be a trespasser of the law; and if the sureties die, there, upon a formal of the King's attorney, the court shall award process, to compel the parties to find new sureties; per all the Justices, and by others e contra, for the executors are old from hid.

And by some, if a man finds surety of the peace, and no day is limited, there none can release it, but he is bound during his life, and therefore it is good to find surety till such a day. Ibid.

A new King cannot take the forfeiture of mainprize taken in the time of the King his predecessor. Tempore E. 3. tit. Re-attachment in Firta. 18. And such main- prize was anna 1 H. 7. 20. And the opinion of the court was, that by the death of the King it is disbursed, and that every surety of the peace, and mainprizer, for keeping of day in the time of another King, are disbursed

by the demise of the King in every court; good fait cause of surety to the peace, for it is tervere pacem no- trum, viz. of that King; and his peace is determined by his death. Br. Peace, pl. 15. cites 1 H. 7. 2. and 1 Ed. 5. 1. and Firta. Rott. 18. accordingly.

But if the court, and examining the matter, it appeared to the court, that the binding to the good behaviour was upon malice and for vexation, B. R. dis- charged them. Hill. 1652. B. R. Sii. 354. Sir Thomas Revell's cafe.

Note: The King cannot discharge recognizance taken for pay of the peace, but after it is broken he may, Hill. 1 72 W. & M. C. B. 2 Vent. 131. cites 1 H. 7. 12. and in Marg. 1. I. 238. Vang. 334.

A husband was bound to the peace for a year, upon articles exhibited against him by his wife; and on motion to discharge the recognizance, upon suggestion that the wife was deceiving; it was denied per J. Joll, who faid how can we discharge it before the condition is perform'd. Pafch. 6 Ann. B. R. 11 Med. 109. The Queen against Lord George Howard.

It hath been holden, that a certiorari to remove a recog- nizance for the good behaviour, will supersede its ob- ligation, but, if the party is highly indebted, the contrary opinion seems to be supported with the better authority. 2 Hawk. Pl. C. 294. cap. 27. sect. 65. cites as follows; 2 R. A. 922. (v) Pl. 12. Doli. cap. 75. Cra. Jaff. 282.

To be drunk is breach of good behaviour, but cholerick weakness in one provoked by another, is not; per Houghton J. and Chancerlain accordingly; but per Mountague J. Words that are actual and violent and not vocal, are a breach. Mich. 18 Jac. 2. B. R. 210. Stapler v. Hide.

If one that is bound to the peace break his recogni- zance, he may be indicted for it, for a new offence; per Rull Ch. J. 1653. B. R. Sii. 369. Ann. v.

Such a recognizance shall not only be forfeited for such actual breaches of the peace, for which the recognizance for the peace may be forfeited; but also for some others, for which such a recognizance cannot be forfeited, as for going armed with great numbers to the terror of the people, or speaking words tending to sedition. And also for all such actual misbehaviour, which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never ac- tually happen. Hawk. Pl. C. cap. 62. pl. 6.

If a man be bound to good behaviour with sureties, and the sworn content is given in B. R. at any certain, and he dies before the day, and for non-appearance the recognizance be elstread, and process made against the sureties, the sureties must fow by plea all this matter before they can be discharged; and if the Attorney General will confes it, 'ts enough; otherwise, if he will take issue thereupon, he must try it, per 23 Eliz. B. R. Sii. 53. pl. 114. Half-Side's cafe.

Sic. fo. on a recognizance for the good behaviour taken in the Crown Office. The breach signified was, that he affidavt and bound such a one a such a day, and fays not vi. & armis. And for this cause, verdict, the exception taken, and judgment. Cro. J. 12 Med. 14 Jac. 2. B. R. The King v. Hatchin.

The recognizance of peace being taken by a justice of peace, it may be certified by certiorari, tho' the justice of peace does not bring it to the felions, nor to the cafes re- tulsarum; and if superintedas be returned to the felions, and no recognizance, then certiorari may be awarded to the same justice to certify the recognizance; but the in- tute of 3 H. 7. cap. 3. that the justice forfeits to t, if he does not certify the recognizance at the next felions. Br. Peace. pl. 11. cites 2 H. 7. 11.

'Tis a common course, in cases of perons bound to their good behaviour, to indit them, which will be evi- dence in 3 H. 7. sect. 5. on the recognizance. Hill. 30 Eliz. B. R. Cro. E. 86. King's cafe.

Copias against A. to find sureties D. e fer bene gerunde. Sheriff may break the house to arrest the party, as upon a cap. ulug. Trin. 43 Eliz. B. R. Ma. 656. pl. 887. To.
To have fecurity of peace of one, you must make af
fidavie of the caufe of fear, and exhibit it in articles,
and then make affidavies that you demand this, not of any
all will or malice, but out of fear of some body hurt.


See Streep.

Good country, Bonapatria, is an affile or jury of
countrymen or good neighbours. Stene de Verber. Signif.

Chief, and chieftain, (Bona & catella) Personal, &c.

Oual, (from the Fr. guille, or the Latin guila) In fla,
16 & 17 Cor. 2. cap. 11, is a bank in, or fea-wall, or a
pallage wown by the flux and reflux of the sea.

Oare, Court, and Oow, (from the Fr. garte, i. e.
a wear.) Locius in frons cencidat, piceanum cipenderum
grain. A wear. It is recorded, that all such gorses,
mills, wells, flanks, flake, and kiddles, which he leased
and set up in the time of King Edward, the king's
grandfather, and after, whereby the king's fols and boats be
discharged, that they cannot pass in such water as they
want, shall be out, and utterly pulled down, without being
renewed. Stat. 25 Edw. 3. 4. c. 4. Sir Edward Cote (in
Little, fol. 5. b. 8.) seems to derive it from gurges, a
depit, a deep pit of water, and calls it gers or guirs. But guere, if
not a mistake. For he says in Domesday, it is called
gare, the very French word for a gare, and
and we find in the Black Book of Hereford, fol. 20. Quod
gres gurgites in aqua de Monnew attaccharum per bánnies de
Graffo monate: Where gurgites is used (tho' improperly) as
a Latin word for gares or wears. Conwill, edit. 1727.

Oug, A small narrow flot of ground.—Due rode
geres juxta sumum filletet de geres fluit fluitfrong. Poroch,
Antiqu. p. 393. Una aera & dimic Qualia juxta fitdem, &
venantur quinque gures. Lib. 532. Una aera cum una gure.
Lib. 534. See Kenmer's Glossary.

Oul, (from Lat. guttæ, or Saxon gestan) A ditch,
flect or gutter. Conwill, edit. 1717.

Oub, in the parish of Chatham, are certain
officers appointed to take care of, and relieve the poor
and malemed feamen belonging to the King's navy. 22
& 23 Cor. 2. Alt to prevent Disburments of Seamen,

Oare. Acts of parliament for a general and free par
don, are called Acts of Grace. 7 Geo. 1. c. 29, &c.

Gradual See Ouale.

Graduates, (Graduari) Are such scholars as have
taken degrees in an university. 1 H. 6. c. 3.

Oabies, A year; the epihal of William the Con
queror in Ordinaris vitibus, lib. 8.

Præ septem gradibus fæ univeritas atque dux
Visconti in Gregio Plaulio, & his dictis.

Oijfer (Fr. Grifiter, Serlia) Signifies a notary or
fervicer, and is used in the lat. 5 Hen. 8. c. 1.

Oijfia, Ophtalv, Oijt, An Earl, as Land
graves, a Magnific, a Judge, an Advocate — Net
principis, non graffio hand tantum præfatus manus
p. 100.

Oijfl.zit, A writing-book, a regis, a lieger-book
or cartulary of deeds and evidences. David Epifcopi
Mendocini, De Episcopate Anglic. Archi, exaulit
defiis, a cymbalis capitale phiilm abhulit, & librum
quad graffium appelletur. Annual. Eccl. Menzeneus

Oijlale, Graduale, or Oualze. A graduall or book
containing some of the offices of the Roman church.
Graduale, fays Lorrain, fic dictum a graduall in tall
onomies, Provincial. Ang. lib. 3. The word is men
tioned in Plauuden, fol. 542. and 37 H. 6. 32. It is
sometimes taken for a moft-back, or part of it infribed
by Pope Celestine, Annae 432. according to Cotgrave.

Cowell, c. 170.

Oijt, The 24th part of a penny-weight. In 51
Hen. 3. Demania Angliae qui nominatur sterlings, ratu
rus sint fine ponderabili triginta & duo grana frumenti
in medio fpiere. These thirty-two granes in the middle of
Vol. II. No. 84.

the car of corn are the natural grains, which for the bet
ner accommodation of accounts, are now reduced to
twenty-four artificial grains. Cowell, edit. 1727.

Oijtana, Shrods or butter. De grana minus unit. Mon.
2 con. p. 1. See Grains.

Grand affile. See Affile and Magna affile.

Grand rape. See Cake and Attachment.

Grand days, Are those in every term fully kept in
the inns of court and Chancery, viz. in Eaffier-term,
Assizes-day, in Trinity-term, St. John Baptist's day, in
Michaelmas-term, All Saints-day, (and of late a copy
Domesday) and in Hilary-term, the Feast of the Purification
of our Lady, commonly called Candlemas-day. And there are
Dias non juridicis, no days in court. Cowell, edit. 1727.

Grand difficultas, Magna difficultas, Is so called for
the quality and extent thereof, for thereby the feifie is com
manded, and the thing is of great tenor, that you
qui per tyfam ad ea manum apponat, donec habeatur aliqui
prœceptum, & quod ex ditilis omnium nobis reepandat, &
quod habet corpus, ejus, &c. This writ lies in two cases,
either when the tenant or defendant is attached, and so
returned, and appears not, but makes default; then a grand
difficultis is to be awarded: Or else when the tenant
or defendant hath once appeared, and after makes de
fault, then this writ lies by the Common law in lieu of
a petit cap, 2 Par. Inf. fol. 254. 51 E. 3. cap. 9.

Grand practid, See Jur.

Grand feignorump, See Chivalry and Serjeanty.

Grange, (Graniglia) Is a house or farm, not only
where corn is laid up, as barns be, and granaries, &c.,
but also flabbes for herds, fials for oxen, fikes for horses,
and other things necessary for husbandry: And by the
grant of a grange such places will pass. Provinc. Angi.
th. 2. tit. De juriis, cap. item omnis.

Grangertus, The granger or grange-keeper, an officer
belonging to religious houses, who was to look after their
grange or farm in their own hands.—Grangerius, qui
feruorum de sebus eorum officiis custodiaret ad
abatem, demus effic in cartis grangertis. In aliis in
comibus commode celarerint intende. — Ex Cardar. S. Ed
mundi, MS. fol. 323. He was otherwise called gran
garius, and in this he differed from the grangulator; that
this later was keeper of the grany or corn-chamber in a
religious house, the other accounted for the profits of a
country grange. And therefore it was expressly provided
that the same person should not execute both offices.

Nec suflinatur quad praepositis fit granariarum &
granariae fimul. Fleta. l. 2. c. 12. sect. 1.

Granitiarius, Is he who has the care of places for
all manns of board and livery. See Orange and Grangertus.

Grant, (Geneus) Signifies a gift in writing of such
a thing as cannot be paifed on by will, nor by
only, as rent, reversion, services, advowions in gros,
common in gros, tithe, &c. or made by such persons as can
give not by deed; as the King, and all bodies po
ticke, which differences are often in speech neglected,
and it is taken generally for every gift whatsoever,
made of any thing by any perfon; and he that gran
tis named the granter, and he to whom it is made, the
grante. Wiff. Symbol, part. i. lib. 2. fdt. 334. A
thing is said to lie in grant, which cannot be assigned
without deed. Gats, lib. 3. fol. 63. Lincoln college, cafe.

Cowell.

The word grant is regularly applied to things incorp
reale, such as advowions, rents, common, reversions,
&c. which are therefore said to lie in grant, and not in
livery, because they can't pass from one to another, with

On this did the right of a corporeal and incorp
real, it hath been held, there can be no discontinuances of things which lie in grant; and therefore if tenant in
tail of a rent, advowion, common or remainder, or re
version expected on a freehold, make a grant by deed or
fine, or dissolve the tenancy of the land, out of which the
rent is inflicted, of himself, be a party to, and make a
feoffment with warranty, that these acts shall work no
continuance of the intail; for nothing passes but during
GRA

If a person obtain a grant to build houses on church or college land, and this is confirmed (where confirmation is necessary); this grant makes no alienation, but is only as a licence or covenant; for the full remains in the grantor, and so by consequence the houses are also in him. [Heil 57]

As the legislative powers derive of advowsons in right of their churches are restrained from alienating the same, or granting the next or other avoidance thereof, to the prejudice of their successors; for these are parcels of the possessions and hereditaments of the church, and not things whereby an annual rent or profit can be referred. [Co. 2 B. Bedfor's case]

But tho' these grants are void against their successors and the King, yet the grant of a bishop, in such case, is good against himself; so that he cannot avoid it during the time that he continues bishop, the statute being made only for the benefit of the successors and the King, that the preceding possessor they must not be deprived in their respective rights; but not to refrain those in possession from doing any thing to bind themselves during their own time. [Cra. Eliz. 267, 440, 690. 1 And. 241.]

The like law in case of grants made by deans and chapter, for they are void when the dean (being principal member of the corporation) dies, and binds both dean and chapter during his life only. [3 Co. 66. Cra. 2. 173.]

As the grant of the next avoidance of an advowson is only void against the successor himself, but shall bind the bishop, and the next avoidance of any grant by a bishop out of the possession of the bishoprick, this is not void against the bishop that makes the grant thereof. [10 Co. 60. 1 Ec. 182. Hard. 366.]

So if an archdeacon, dean, prebend, &c. make leaves, or other grants of any of their sole possessions, not warranted by statute, the same shall be bound by their own grants for the time. [Graif. 138. Heil 34.]

Where the matter and fellows of a college by deed inrolled made a lease not warranted by the statute, and levied a fine, and five years passed without claim; in this case, tho' it was held, that the lease was void against the succeeding matter, yet that it was good during the life of the matter that was party to the lease, and made no claim, because he is the head and principal part of the corporation. [11 Co. 67. 1 Roll. Rep. 151. 1 Len. 366.]

Infants in regard to their want of understanding are so far protected by the law, that regularly all their grants are void in the same manner as their contracts. [2 Bar. 203.]

But herein the law differes in such between grants as are void, or only voidable; The first of which are all such gifts, grants or deeds, made by an infant, which do not take effect by delivery of his hand; as if an infant give a horse and no delivery of the horse with his hand, and the donee take the horse by force of the gift, the infant shall have an action of trespass, for the grant was merely void. [Perk. 17. 19.]

But if an infant enters into an obligation, makes a feoffment, leaves a fine, or suffer a recovery, these are not merely void, but only voidable by him. [Perk. 19. 12.]

If an infant being feized of a care of land, grant a rent-charge to be issuing out of the same care by deed, and the grantee distrain, he shall punish him as a trespasser, notwithstanding that the infant delivered the deed with his own hand. [Perk. 19. 13.]

If an infant grant a rent by fine, this grant is voidable by himself during his nonage, by a writ of error; but if he do not avoid it during his nonage, it is good for ever; also if he die during his nonage, his heir shall not avoid it. [Perk. 19. 19.]

GRA

the life of a tenant in tail, which is lawful. [Lit. 27. 617. Co. Lit. 387. a. 3 Co. 85. 1 Len. 111. and 2 And. 110.]

Alfo of things which may be transferred without the notoriety of livery or feisin, fuch as rents, advowsons, &c. which lie in grant, a man can't by any disposition or act in pain forfeit them; and therefore, if a tenant, or any other tenant, without common life for life, grants them by deed to another in fetter in fact, this is no forfeiture; for this can be no way prejudicial to him in reversion, because though the grantee claim an effe in fee, he can make no title without the original grant made to his grantor, by which it must appear what interest he had, and consequently what effe he could convey; and if the grantee, notwithstanding the grant in fee, can claim no larger effe than his grantor had power to make, and so he in reversion can receive no prejudice. [Co. Lit. 233. b. 8 Co. 45. a.]

So there can be no occupant of things which lie in grant, and which can't pass without deed, as rents, &c. because these things having no natural existence, but confiding purely in the agreement, and depending on the institution of the society for their being, no man can enter to pollefs them; besides, as these things are framed, and have their exiftence by the municipal laws of the nation; fo tho' laws have established the solemnity of a deed to transfer any thing from one to another, it follows that since no man can make himself a title to those things without deed, whoever claims them, must have he is a party to the deed before he can derive himself a title to the things contained in the deed. [Co. Lit. 41. b. 2 Roll. 150. Cra. Eliz. 721. 901. Vaughan 199.]

1. What persons may make good grants; and of grants by corporations, ecclefialflal persons, infants, fome covert, idiots and perfons of infant memory, and perfon under darts.

2. What perfon may take by grant.

3. What things or interest may be granted.

4. What fhall be a fufficient name or defcription of the grantor or grantees, to make a grant good and certain.

1. What perfon may make good grants; and of grants by corporations, ecclefialflal persons, infants, fome covert, idiots and perfons of infant memory, and perfon under darts.

Corporations aggregate, altho' they be invincible, and exift only in fupputation and intention of law, yet are they capable of making grants and parting with their property, as in all other cases. See Corporations.

But a dean without the chapter, a mayor without his commonalty, the matter of a college or hospital without his fellows, cannot grant or make any contract that will bind the corporation. [21 Ed. 4. 12. Mof. 51. Perk. felt. 31. 32.]

The grants of all dead persons in law, as monks, friars, canons profefled, and fuch like religious perfon were always held void. [Perk. felt. 3.]

But it seems that by the Common law, deans and chapters, masters and fellows of colleges, masters and brethren of hospitals, and fuch like corporations aggregate, might of themselves alone, without the consent or confirmation of any, have made long leases for lives or years, or gifts in tail, or effates in fce to others of their possessions, at their wills and pleasures. [Comp. Incumb. 145.]

So bishops, deans, &c. feized in the right of their bishoprick, deaneries, &c. So archdeacons, prebends, parfons, vicars, &c. with the consent and confirmation of others, might grant their possessions in the fame manner as other aggregate corporations. [Comp. Incumb. 415.]

But now by the statute of 1 Eliz. cap. 19, and the 13 Eliz. cap. 10. All gifts, grants, feoffments, or other conveyances by bishops, masters, and fellows of colleges, deans and chapters, &c. are void, except leaves, for the term of twenty-one years, or lives, being made conformable to the rules preferred by these statutes. See these statutes and the explanation of them, under title Leafe.
A grant by a feme covert is void, for no act of her's can transfer that interest which the intermarriage has vested in the husband; and therefore if a man be feized of land in right of his wife, and his wife grant a rent eftinguishing of the fame lands, without the knowledge of the husband; this grant is void; and so it is the fubfequent grant of rent eftinguishing of the lands, that if it be made and delivered without his affent, or with his affent, if it be made in the name of the wife, and not in the name of the husband; and notwithstanding the husband were abroad out of the country, at the time of such grant made and delivered, it is known whether he alive or dead; or if such grant is void if the husband be living; inasmuch as if the grantee, by force of such grant, entered into the land and disfraine, the husband, at his return, shall have for his entry and dilfrefs an action of trespafs. 2 Bac. Ab. 643. Perk. feft. 6. See Eaton v. fibre.

There may be a difference betwixt the husband and wife, by reason whereof certain lands of the husband are affigned unto the wife by the friends of the husband, and by his affent, and the wife ratifies a grant of rent to be eftinguishing of the same lands unto a stranger, the grant is void. Perk. feft. 8.

If a fingle woman being feized of a carfe of land, by deed grant a rent-charge thereunto, and the delivers the deed to a stranger as an efcrow, upon condition, that if the grantee go to Rome, and return back again before the feall of Egfer then next following, that then he shall deliver the rent-charge to her, and the woman marries, and before the feall of Egfer, and during the coverte, the grantee goes to Rome, and returns again, and the stranger delivers the efcrow unto him as the deed of the woman; this grant is good, notwithstanding that the husband was feized of the land in the right of his wife, before that the grant was taken effect; for it fhall have relation to the firft delivery, at which time she was a feme folo. Perk. feft. 9.

But in this cafe the grantee fhall not have any rent by force of the faid grant before the laft delivery, when the fame took effect as a complete deed. Perk. feft. 10.

Also in fuch cafe, if the woman had been married at the time of the delivery of the deed as an efcrow, and her husband died, and the grantee, after his death, had performed the condition, the grant had been void; for the delivery of the deed as an efcrow, being at a time when the was a feme covert, no ftubfequent act can make it good. Perk. feft. 11.

If a wife by a fine grant a rent out of her lands, this grant fhall not bind the husband during the coverte; but if the husband die before his wife fhall revere the fine by writ of error, the wife fhall be bound for ever. Perk. feft. 20.

Land being by the ftrift notions of the Common law, the grants of idiots and persons of non-fane memory are good, and that they themselves cannot avoid them by pretence of diſtraffe; because if the excuse were real, yet it would be repugnant in itself, because he did not know or remember the thing done. Perk. feft. 21. 1 Co. 173. See tit. Actions and Liables.

But if a man of infane memory, being feized of a carfe of land, grant a rent eftinguishing out of the fame land in fee, and die, and his heir enter, and the grantee disfrains for the rent behind, the heir fhall have an action of trespafs; but if the grantee had disfrained in the life of the grantor for the rent behind, the grantor fhould not have an action of trespafs for he cannot avoid his deed by difiebling of himself. Perk. feft. 21.

And here we muft further observe, that the law distinguiftles between the grants or acts done by idiots, &c. in pari, and those acknowledged on record; that as to the former they are void for the difeablity of the party taking them from the infcurity that may arise in contracts from counterfeit madness and folly; but their heirs or executors may avoid fuch acts by pleading the difiebling. 4 Co. 124. a. Beverley's cafe. Co. Lit. 247. 3 Eliz. 308. 623.

But need not itself, nor his representative, can vacate any act of his in a court of record, and therefore if a perfon non compate grant a rent by fince, it fhall bind him and his heirs; for tho' the judges ought not to admit of a fine from a man under that difiebling, yet when it is once received, it fhall never be revoked, because the record and judgment of the court being the highest evidence in the law, the confufor must be prefumed at that time capable of contrading; and therefore the diefability of the party taking the fine is lost by the recogntion recorded by any averment against the trutl of it. 4 Co. 124. 2 Ifl. 483. Co. Lit. 247. Perk. feft. 24.

A perfon born deaf, dumb and blind, cannot grant, for they cannot understand the figns of contrading, and therefore the grantor the granter is prefumed to receive fome advantage; but if a perfon be only dumb or deaf, he may contrady by figns, and confefquently may bind himself by his contracts. Perk. feft. 25.

The grants of perfon under dures are void, that if, they were made under an apprehension of some bodily hurt, or if the grantor were imprifoned without caufe, and the granter refused to release or difcharge him, he would fome fhould be made fuch grant. 2 Ifl. 483. See tit. Dutres.

But menacing to burn houfes, or spoil or carry away the party's goods, are not fufficient to avoid the grant; for if he fhould fuffer what he is threatened, he may fucce and recover damages in proportion to the injury done him. 4 Ifl. 485. Perk. feft. 18.

2. What perfon may take by grant.

There are but few or no perfon's excluded from being grantees, and therefore a man attainted of felony, murder, or treafon, or a defcendant of the granter, or of the King's villain, an alien, one outlawed in a personal action, or a bufard, may be grantees. Perk. feft. 48.

A feme covert may be a granter, and therefore if a rent-charge be granted to a feme covert, and the deed is delivered to her without the privity or knowledge of her husband, and the husband dies before any diſagreement made by him, and before any day of payment, the grant is good, and fhall not be avoided, by faying, that the husband did not agree, &c. but the diſagreement of the husband ought to be fiewed. Perk. feft. 43.

If an English man goes into France and there becomes a monk, yet he is capable of taking by a grant made to him in England, because fuch profefion is not triable; and all fuch profeffions are taken away and declared unlawful, as being contrary to our eftablihed religion. 2 Rail. Abtr. 43. said to be refolved by all the judges at Serjeants Inn, Ecb. Ecb. 300.

Alfo Aggregate corporations are invalid, and eftif only in Supposition of law, yet are capable of being taken by grant, for the benefit of the members of the corpora

As where the mayor and commonalty of N. brought an action of profecution against the mayor, bailiffs and commonalty of Derby, and declared, that the defendants' predeceffors had by their deed granted to the plaintiffs predeceffors, that all the commonalty of N. fhould be diſcharged of morgage, pontage, culturn and toll, for all their merchandize, &c. within the vill of Derby, and that the officers of Derby had taken toll and culturn of the burgesses of N. againft their covenant; and it was held, that the action lay, and that the grant to the corporation for the benefit of the particular members was good. 48 Ed. 3. 17. 1 Saund. 344. cited.

If a feoffment or grant be made by deed to a mayor and commonalty, and the corporation aggregate of many perfon's capable to purchase, they have a fee-fimple without the word successors, because in judgment of law they never die. Co. Lit. 90.

So if a leafe be made to them during their lives; this is equal to a grant made to them while they continue a body politic, and not to the individuals, and is therefore not granted upon to be for ever. 21 Ed. 4. 76. 1 Rail. Abtr. 543.

If A. grants to the mayor and burgoftfs of D. the moiety of a yardland in the waft of D., without describing in what part it should be, or how it is bounded, the corporation cannot make their election by attorney, but must go directly on having the land, and then they may make a fequal grant of attorney, retenti-
ting the grant to them, and in which part of the waste the grant should take effect, and according to such direction the attorney is to enter. 1 Lev. 30.

3. What things or interest may be granted.

It is laid down as a general rule, that a man cannot grant or charge that which he hath not; and therefore if a man grant a rent-charge out of the manor of Dale, and in truth he hath not any thing in the manor of Dale, yet he may make his grant valid, Park. part. 65.

A corrobod uncertain cannot be granted over, because of the prejudice that may accrue thereby to the original grantor; but a corrobod certain may. 2 Ed. 4. 43. 2 Rel. Atr. 45.

So a common free number in fee may be granted over, but the grantee can have no assurance of life for life or years; free number cannot be granted over, because of the prejudice it may be to the tenant of the land. 21 Ed. 4. 84. 2 Rel. Atr. 46.

If the King grant a warren to f. S. and his heirs in his manor, the grantee may grant the manor with the warren over to another in fee, because this liberty is inherent feft of folam sequitur. 2 Rel. Atr. 46.

So if the King grant to another and his heirs a fair or market in certain manors or towns, the grantee may grant over the manors or towns, with the fair or market. 2 Rel. Atr. 46.

If a rent be granted in tail, the grantee cannot grant it in tail; if it continue in a rent, because, as such, it may be in tail within the statute De donis; but if the grantee brings his writ of annuity, it is no longer within the statute, because then it is become a charge merely personal, without any relation to the land out of which it was at first granted, and therefore is become a fee-simple conditional, as such a gift of lands had been before the statute, and therefore the annuity not being within the statute may be aliened or granted over. Poph. 87; Ca. Lit. 19. 6. 7 Ca. 61. Nevill's cafe.

The grantee of a rent-charge in fee may grant over any part of it, though it hath been objected to these kind of grants or divisions of rent-charges, that thereby the tenant is exposed to several suits and difficulties for a thing, which in its original creation was inteire and recoverable upon one avowy; but the answer to this is, that it is the tenant's own choice, whether he will submit himself to that inconvenience or not, before the grants, before the 4 & 5 Ann. could not take any benefit of the grant by detinue, without the consent of the owner of the tenant, nor by affize, without he obtains feisin of it from the tenant; besides, since the law allowed of such fort of grants, and therefore established such fort of property, it would have been unreasonable and severe to hinder the proprietor to make a proper distribution of it for the promotion of his children, or to provide for the contingencies of his family, which were in his view. 9 H. 6. 13. 2 Rel. Atr. 45; Ce. Lit. 148. 8. but Csa. Elit. 747. seems contrary.

The Common law hath so utter an abhorrence to any act that may promote maintenance, that regularly it will not suffer a possibility, right of thing, or interest, in anything to be created for a term of time, or for a condition broken to be granted or assigned over. 21 Ed. 4. 244. Ce. Lit. 214. 1 Rel. Atr. 376. 2 Rel. Atr. 45. and Skinner 66, 26. that arragaces of rent are not assignable.

So though a bond be a choses in a&ion, cannot be assigned over, so as to enable the assignee to sue in his own name, yet he has by assignment such a title to the paper, which he may keep or cancel it. Ce. Lit. 233. 2 Rel. Atr. 46.

So if an obligor makes two executors, and one of them delivers the obligation to a stranger in satisfaction of a debt which he himself owes, and dies; although the debt does not pass to him, yet the parchment or paper remains, and the grantee in an assign of demince brought by the obligor's executor, may still sue thereon. 2 Rel. Atr. 46. Csa. Elit. 478. 8. 496. pl. 15. 4

So a husband poissible of an obligation in right of his wife may assign it to a stranger, and the assignee may justify the detaining thereof against the wife after the death of the husband. 2 Rel. Atr. 46.

Alfo in equity a bond is assignable for a valuable consideration paid, and the assignee alone becomes intitled to the money; so that if the obligor, after notice of the assignee, delivers the money to the assignee, he will be compelled to pay it over again. 2 Ven. 59. 1 Chron. Rep. 90.

The interest gained upon an execution of a statute or recognizance cannot, without an actual entry of the co- nuence to perfect his security, be granted or assigned over to any other person; and the assignment is a co- nuence in a statue after his death sued forth an extent, and upon that a liberate, which was returned, and before any actual entry or recovery of the poffeifion in ejectment, or without executing of the deed upon the land, did by indenure allign over all his interstit to lefjor of the plantation, and to the grantor and the assignee; and it was adjudged, that the assignment was void; for by the return of the liberate he had accepted of the poffeifion, and was eftopped to fay the contrary then, when the owner still continues in poffeifion; this turns the poffeifion which the adminiftrator had accepted by the liberate to a right, which right cannot be assigned; nos this like an interstit termius, which 'tis true, the assignee may assign over before actual entry, because in that cafe the lefior is the principal agent, and hath done all on his part to transfer over an interest to the lefior, which he may execute at pleasure; and as the person who fues the liberate is in this cafe entitled to fay, that he hath the poffeifion; fo is the lefior in the other cafe eftopped to fay, that he hath the poffeifion against his own leaee. 3 Lev. 312. Stephen and Hanum. 4 Med. 48. 1 Snow. 290. 2 Sad. 536. 5 C.

If there be a devile of a term to A. for life, remainder to B. R. cannot, in the life-time of A. assign or grant over his interest, because he has but a bare possibility, for A. may oulive the number of years. Dyf 116. 4 Ca. 66. 10 Ca. 47. b. Raym. 145. 1 Sid. 188. & vide 1 Chron. Cases 8, 11.

If a leafe be made to baron and feme for their lives, the assignee of the executors of the survivors of them; the husband cannot grant over the term, being but a possibility; for it is uncertain which of them shall be the survivor. Ce. Lit. 46. 2 Rel. Atr. 48.

If a church is void, the void turn is not grantable by any common perfon, for it is a mere spiritual thing, and annexed to the perfon of him who is patron; and during the life-time of the patron in the actual possession of it, unless there be annulment of his authority, a thing in a&ion, and in effect the fruit and execution of the advowson, and not the advowson itself; but whilst a church is void, the next avoidance or avoidances that shall happen, or the inheritance of the advowson may be granted away. Dyf 125. b. 282. 1 Leg. 366. 176. 21 Can. 45. 1 Rel. Atr. 48. 2

If a man acknowledges a statute in 2004. to A. and afterwards leaves the land for 21 years to commence immediately, and the land is extended upon the statute, at 53. per annum, the lessee for ninety years may, during the extent, grant over the term, allo' the extent be till the cotr is levied, which may not happen till after the expiration of the ninety years; for the extent is but in nature of a leafe, and by a reasonable con- fusion will end before the term of ninety years. 2 Rel. Atr. 48. Cadbe and Oliver.

If a man grant a rent-charge with a clause of diffrents, and that if the diffrents be reprieved, that the grantee may enter and hold till satisfaction, the grantee may grant over the rent with this penalty, allo' the penalty is but a possibility; for being annexed to the rent, it may well pafs together with the rent. 2 Rel. Atr. 48. 9.

If a man make a lease to B. for forty years, and the lessee, upon his view of the premises, and finding him in sufficient repair at the expiration of the forty years, that the lessee shall hold them for forty years longer; and the leflee, during the forty years, grants to f. S. Tamum interives, terminus & terminis, gau tune habita in tenementis illis: this being a mere possibility cannot be granted or assigned over. Mor 27. pl. 88. Snerre's cafe.
GRA

If a man grant 200 fagots of wood to be taken out of all his lands, or 20 s. in lieu thereof, out of his lands, with all the profits thereof, and with all the profits arising therefrom, at the election of the grantee to have the one or the other; in this case the grantee may, without any election, grant over the fagots, because he had a present interest in them; but the 20 s. being given in lieu thereof cannot be granted over before election. 2 Rol. Abr. 47. Sandler and Hudson, 1st ed. 1

It is a mistake of divers woods bargains and sells 300 cords of wood to B. and his assigns, to be taken by the appointment of the bargainor; by this bargain and sale a present interest is invested in B. which he may grant over before any appointment by the bargainor. 2 Rolls 111. pl. 955. Maynard and Balfour adjourned. 2 Rel. Abr. and 3 Lev. 24. 4. S. C. cited.

A man may grant that which he hath potentially, though not actually, as if a leitorcovenants that it shall be lawful for the lessee at the expiration of the lease to carry away the corn growing on the premises, although by possibility there may be no corn growing at the expiration of the lease; yet the grant is good, for the grantor hath such a power in him, that the property shall pass as soon as the corn is extant. Hob. 132. Grantham and Halsey adjourned, 2 Rol. Abr. 48. 8. S. C. cited.

So if A. lease land to B. for years, and grants that he to be held of, and to have, and to hold the same, as grantor, and as grantee thereof, may at any time after the lease is to end, change the name of the grantor, and the name of the grantee, and may give the freehold to another, and so convey the same as an inheritance; but to an heir repre- sented his ancestor as to an inheritance; so an executor represents his testator as to a chattel. Cit. Lit. 54. 2 Rol. Abr. 47.

4. What shall be a sufficient name or description of the grantor or grantees, to make a grant good and certain.

The names of persons at this day are only found for distinction-take, though it's probable they originally imported something more, as some natural qualities, features or relations; but now there is no other use of them, but to mark out the families or individuals we speak of, and to difference them from all others; and therefore in grants which are to receive the molt benign interpretation, one of the parties against the other, it is not sufficient then to ascertain the grantor and grantees, and to distinguish them from all others, the grant will be good. Perk. Jett. 36. Gaud. 122. Hob. 32.

And this we may observe in those cases where there are such sufficient marks of distinction, that the grant would be good without any name at all, confemonedly a mistake in the name of baptism or surname, is to be looked upon but as a mistake, and will not vitiate; as a grant by or to George Bishop of Norfolk, where his name is John, or to Henry Earl of Pembroke, where his name is Robert, may be more perfections of those names. Cit. Lit. 3. 2 Rol. Abr. 48.

So a grant of an annuity by an Abbots, by the name of the foundation, without his name of baptism, is good, if there be not any more Abbots in England of the same name of foundation. Perk. Jett. 36. 2 Rol. Abr. 44.

If a grantor takes a name, that is not in the register, for his wife, without naming her by the name of baptism, yet the grant take. 45. Ed. 3. 22. b. 2 Rol. Abr. 45. cited.

So if a grant be made to T. and Elen his wife, where in truth her name is Enys; yet the grant is good, for being called the wife of T., reduces it to a sufficient certainty. 2 H. 4. 25. 2 Rol. Abr. 44. Cit. Lit. 3.

If A. be created a herald, and in the patent he is called Cheyher, a grant or obligation made to him by the name of Cheiffer is good, for this sufficiently distinguishes him from all other men. 2 Rol. Abr. 44.

If there be father and son of the same name, and the father grants an annuity to his son, without any addition, it shall be intended the grant of the father; and if the son being of the same name with his father grant any annuity without any addition; yet the grant is good, for he cannot deny his own deed. Perk. Jett. 37.

A baifard, who is known to be of such a one, may grant or grant to his baifard the right of such reputed name; for all surnames were originally acquired by reputation. Cit. Lit. 3. 2 Rol. Abr. 43. 4.

As where George Shelley conveyed lands to the use of himself, the remainder to George Shelley his son, whereas in truth George was born of one B. in matrimony of one C., yet was reputed the son of George, and educated by him; though the boy was but six years old, it was ruled he should take the remainder, for having gotten by reputation the name of George Shelley, these words are a certain description of the person to take the remainder. Cit. Lit. 3.

If a remainder be limited to the eldest issue of f. s. whether legitimate or illegitimate; and f. s. has issue a baifard, he shall not take this remainder, for it is not vested in f. s. as it was in the other case, but is in contingency, and the certain time is not defined when this contingency shall happen; for the baifard at his birth does not acquire the reputation of being the eldest of f. s., and since the baifard, when first in being, can not take by virtue of this limitation, he can never take it; for he cannot be understood to be the person designed and marked out by these words, if after his birth it depends on the uncertainty of popular reputation, whether he should take the remainder, or not. And if the mention of the person as contains no certainty in itself, or no relation to any other certain matter that may reduce it to certainty, it is a void limitation. 2 Rol. Abr. 42. 43. Blackwell and Edwards.

T t

But
GRA

But where a remainder is limited to the eldest son of *fane S.* whether legitimate or illegimate, and the *fath* issuer a barbath, he shall take this remainder, be- cause he acquires the deminution of her *fide*, by be- ing born of her body, and so it never was uncertain who was designated by this remainder. *No. 35.* If a grant is made by a father and his sons, he la- bouring on, the grant is good for the apparent cer- tainty of it; but if the father has several sons, or if a grant be made to a man's 
do
c of friend, there are void for uncertainty. *Cra. Fact. 374.* 

GRA

It has been already observed, that the naming the right names of the grantor and grantee is for no other purpose but to ascertain the parties, and disingenuous from others; and that if there be a sufficient verification to this purpose, the grant will receive the most favourable interpretation; and it seems the fame indulgence will be allowed of in the midst of additions, which are by law made part of the name. By additions we mean names of dignity, which are marks of differentiation, imposed by public authority, and always make up the very name of the person to whom they are given; and these are of two forts: 1st. Such as exclude the surname, so that the per- sons may not seem to be of any common family; and 2dly. Such marks of differentiation as are also imposed by the King, and parcel of the name itself, but do not exclude the surname, such as Knight and Baronet. 2 Inf. 666. Dyer 88. * & Shew. 392.

As to those names of dignity, which exclude the surname, we have already observed, that in grants a mistake in the Christian name will not vitiate the grant, because there cannot regularly be more than one person of that name. *Ca. Lit. 3.*

So a grant to a Duke's eldest son, by the name of a Marquess, or to the eldest son of a Duke, by the name of an Earl, &c. is good, because of the common country of England, and their places in heraldry. *Curb. 440.*

So where a conveyance was made of a reversion to Ralph Everi, knight, Lord Everi, and he, brought an action of covenant, to which the defendant pleaded, that at the time of the grant he was not cognizant of quiesitatis per nomen milid; and it was held to be no good plea, for the person is sufficiently expressed by Lord Everi, and the addition of Knight, tho' false, doth not take away the description of the true person. 1 Balf. 21. Lord Everi v. BritMIand. *Cra. Cor. 250. 8. C.*

In *C. B.* and affirmed by three judges in *B. R.* where the party set forth his title to an advowson by virtue of letters patent granted to *A.* *tunc* armiger & potesta militia; and upon oyer of the letters patent it appeared, that the grant was made to *A.* knight, that it could not be intended the fame person, becaufe Knight is a name of dignity, but Armorger or Esquire, a name of worth; and if he is afterwards made a knight, the name of Esquire is thereby extinguished, and consequently that a grant made by the King to *A.* knight, when there was no such man a knight, was a void grant. *Curb. 450.*

The King v. Bishop of Chester. 5 Mad. 397. 2 *Bred.* 960. 8. C. and see *Lit. Rep.* 200. 8. P.

As to grants by and to corporations, here shall only observe, that tho' the names of corporations have a certain and significant meaning, and are not as arbitrary as those of common persons; yet if there be enough said to shew that there is such an artificial being, and to distin- guish it from all others, the body politic is well named; tho' the words and syllables are varied from. 10 *Ca. 125.*

Gaulif. 122. 

Comp. Incumb. 474.

As if a corporation be founded by the name of the Dean and chapter of the cathedral church in Oxford, and they make a leaf by the name of the Dean and chapter of the cathedral church in Oxford, it is well enough, for the place of the situation is well and sufficiently shewn. *Pep. 57.* 2 *Roll. Abr.* 42. 8. C.

So if the prior of *St. Michael* in Coventry make a leaf by the name of the Dean of Coventry, this is good; so if

they had granted an annuity or corroy, and the name of the fain had been omitted. 10 *Ca. 125.*

So if a corporation be infulituated of *St. George the Martyr*, and in a leaf they omit the word Martyr, it is well enough; for the name of dedication is but an empty sound, and no otherwise requisite than to 'dilige the corporate from all others. *Pep. 57.*

If there be an immaterial addition, this doth not hurt; as if the President and scholars of Corpus Christi college in Oxford make a leaf by the name of President and scholars of Corpus Christi college in cam. Oxon, this is good; for with per insinuo non vititur. *Cra. Eliz. 816.*

If the corporation be expressed by words synonymous, it is sufficient; as if a college be infulituated by the name of Gardianus & scholarum donus fuses collegii philobarium de Morton, and they make a leaf by the name of Corpus & scholarum, it is good. *Ca. 125.*

It seems by the better opinion of the books, that a change of the Christian name will vitiate the grant; as where the grant is without any Christian name at all, or where a wrong name is made of, as *Edmund* for *Edward*, for a person cannot have two Christian names; neither can the party be declared against by his right name, with an averment, that he made the deed by a wrong name, for that would be to set up an averment contrary to the deed, and to aniction allowed by law to every solemn contract; and therefore if he be impedled by the name in the deed, he may plead that he is another person, and that it is not his deed. See 36 *H. B. 26.* Dyer 279. Owen 107. *Ca. Lit. 3.* Cra. Fact. 538. 640. *Perr. jett. 38.

A person's name does not vitiate the grant, because there is no repugnancy that a person should have two different surnames, so that he may be impelied by the name in the deed, and his real name brought in by an alter, and then he cannot deny the name in the deed, because he is ellped to say any thing contrary to his own deed. 3 *H. B. 25.* 2 *Roll. Abr.* 146.

Afo, tho' a person cannot have two Christian names at one and the same time, yet he may, according to the infulituation of the church, receive one name at his bap- tifm, and another at his confirmation, and a grant made to or by him, by the name of confirmation, will be good; for tho' our religion allows no re-baptifm to make double names; yet it doth not force men to abide by the names given by their godfathers, when they give themselves to make profeflion of their religion. 43 *Ed. 3.* 23. 2. *Ca. Lit. 3.* 2 *Roll. Abr.* 43. *1 Brownl. 147.* *Lit. Rep.* 182.

So if a man make a leaf by a Christian name to that by which he is impel'd, yet the leaf is good; for this doth not take effect altogether by the indenture, but partly by the demise; as if *John* by the name of *Jane* leave lands, admitting that these are difieunt names, yet the leaf is good. 2 *Roll. Abr.* 42. *Hide and Chatterer.*

If a rent be granted to *J. S.* or *J. D.* the grant is void, because he is not impel'd for the deed is in the disjunctive; and tho' the deed be declared to *J. S.* yet this cannot make the grant good; for the deed was void at first, and cannot be made good by the delivery. *Perr. jett.* 56.

If a rent or any thing else that lies in grant, be granted to the right heirs of *J. S.* and *J. A.* alive, this grant is void; for there is no person capable of taking, as an- swering this description. *Perr. jett.* 52.

For more learning on this subject, see 2 *Bac. Abr.* and 14 *Vin. Abr.* tit. Grants.

Form of a grant of an annuity out of lands. *T*

**THIS Indenture made, &c. between A. B. of, &c. of the one part, and C. D. of, &c. of the other part, Witnesseth, That the said A. B. for and in consideration of the sum of &c. to him in hand paid by the said C. D. the sum of &c. in &c. he, the said A. B., hath given, granted and confirmed, and by these presents doth grant, and confirm unto the said C. D. and his assigns, one annuity of, &c. to be received, taken, bad, and to be issuing out of all that messuage or tenement situated, &c. therein**
futurum in urbe illo, vide vice, portentis incendium. Cum
erant sequenti die multae ingenti pericula; in plateis, di-}n
curia fortasse, censu provolet ad Iatranum. Continuataque
saeclum, sequentes causas ad incidendum fuit causa quoque
invicta; hujus temporis illius conviveneae de iis euius con-
Downloaded from https://academic.oup.com/academic/issue/6/3/3177584 by guest on 25 October 2023

trol, et se officimus damnum genus, dunn aperientes

verbani, suae adventu manum ignitantes folet. Cowell, ed.
1727.

Grants, for Grandees, or great men, in the Parl. Roll of
6 Ed. 3. n. 5. 6. Et les dit. comm. barons, et autre

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.

Grants, 1727.
GRÆ

W. 3. c. 33. 10 11 W. 3. c. 25. 1 Ann. fl. 1. c. 16. 10 Geo. 1. c. 16. 12 Geo. 1. c. 16. sect. 7. 5 Geo. 2. c. 28. sect. 21.

Exempt from the new subsidy, 10 W. 3. c. 25. sect. 17.

Bounty to ships fitted out for the whole fishery, 6 Geo. 2. c. 33. 28 Geo. 2. c. 20.

Additional bounty during the war, 17 Geo. 2. c. 28. sect. 5.

Greenland fishers not to be impreded, ibid.

A second bounty of 20s. per ton given, 22 Geo. 2. c. 45. 28 Geo. 2. c. 20. sect. 12.

No larger bounty than 400 tons, 28 Geo. 2. c. 20. sect. 12.

Every ship employed in the fishery to have one apprence for every 50 tons burden, 28 Geo. 2. c. 20. sect. 5.

Bounty may be injured, 28 Geo. 2. c. 20. sect. 12.

For other matters, see Fish and Whales.

Often buried, Argentum vorside. By custom in the manor of Writtle in Essex, every tenant having his fore-door opening to Greenhury, pays a half-penny yearly to the lord of the manor, by the name of green-fiber. Cowlis. ed. 1727.

Green Whin, is a word used in 43 Ed. 3. 9. and 7 H. 4. 3. and signifies the cireat's faws, fisces and amercements in the Exebridge, under the seal of that court, on which man in tax was, to be levied in the county. Cowlis. ed. 1727.

The names of persons paying debts exacted by green wax to be inrolled, 27 Ed. 1. fl. 2. c. 2.

The effracts shall be used to the party charged, and what is paid shall becott, 43 Ed. 3. c. 9. 7 Flm. 4. 5 Geo. 3. c. 10. sect. 7. How it proceeds to be awarded on effracts of fines, E. &c. 22 &c 23 Car. 2. c. 22. sect. 10.

Greenwich Hospital. A duty of 6d. a month to be paid by every seaman, 7 & 8 W. 3. cap. 10. 8 & 9 W. 3. c. 23. 10 Ann. c. 17.

The King authorized to grant land to the use of Greenwich Hospital, 16 Geo. 2. c. 28. condit. All seamen disabled in fes service, &c. capable of being admitted, 2 & 3 Ann. c. 6. sect. 19.

The crown enabled to dispose of certain sums to the use of Greenwich Hospital, 4 Ann. c. 12. sect. 14. 1 Geo. 2. fl. 2. c. 9. sect. 9. 6 Geo. 2. c. 25. sect. 10. 27 Geo. 2. c. 10. sect. 7. 28 Geo. 2. c. 22. sect. 14. 29 Geo. 2. c. 20. sect. 8. 3 Geo. 3. c. 26. sect. 9.

 Shares of prize-money not claimed, given to the Hospital, 6 Ann. c. 13. sect. 11. 10 Ann. c. 17. sect. 9. 13 Geo. 2. c. 4. sect. 11. &c. 11 & 16.

Seamen wounded in defence of merchant ships may be admitted, 10 Ann. c. 17. sect. 20.

For enforcing the payment of 6d. per month, 2 Geo. 2. c. 7. and c. 36. fl. 10. 20 Geo. 2. c. 38. sect. 17.

Seamen in yersey, Guernsey, &c. and the plantations to pay, 2 Geo. c. 7.

Rents of the Derwentwater estate applied to the use of the Hospital, 8 Geo. 2. c. 29. 11 Geo. 2. c. 30. 22 Geo. 2. c. 52.

Provisions for securing the payment of the 6d. per month from privates, 18 Geo. 2. c. 31.

Regulations for securing prize-money belonging to the Hospital, 20 Geo. 2. c. 24.

Penalties on persons or servants pawning clothes or imbestling fuses, 20 Geo. 2. c. 24. sect. 15. 17.

The governors enabled to purchase lands for completing the building, 25 Geo. 2. c. 42.

The governors empowered to grant out decrepit seamen, 3 Geo. 3. c. 16.


CITOLE. (Præfiteus,) Is a word of power and authority, signifyning as much as comis, or vice-comis. Lamb. in his Exposition of Saxon words, verbo Præfites, makes it all one with ræo. The Saxon word is greifa, of which see greif, swine-greif, pork-greif, pork-gerseth, Pors. See Shirerow and Portever. Grovedon. Port. pifer. Annot. fl. 346. faith, Grove dictator, id est quod jurat

GRÖ

debate gibis, i. pacem ex illis facere qui patriae inerunt cur, i. majestatum eum molam. From whence, but with less dignity and universality, derived the word gibe, gibe, or under-officer of the lord of the manor. Cowlis. ed. 1727.

Grives, Iron boots. Id.

Grilling, See Gritlschurtz: Habiter residis factis habitano grant in griseo forsituri. Deh Nolc, per Gal. 760.

A kind of small fish, mentioned in flat. 23 Ed. 4. c. 4.


Gritlschurtz, (Sedes pacis) A sanctuary. See Trotz mortell.

Curtars, By 37 Ed. 3. 5. were merchants that engrossed all mercantile vendible; but now it is a particular and well-known trade, incorporated into a company, which is one of the twelve, and have a very handsome hall, from which they flimed Grocers-Hall. Cowlis. ed. 1727.

Grievy wares, Raifins, fags, princes, and currams, in every ships to be imported, and in what cases to be deemed aliens goods, 12 Car. 2. c. 18. sect. 8. 9.

No grocery to be imported from the Netherlands or Germany, 13 & 14 Car. 2. c. 11. sect. 23.

What grocery imported shall pay ten pounds for every hundred pounds value, 2 W. & M. fift. 2. c. 4.

Raifins imported to pay but five pounds, and currams fifty shillings for every hundred pounds value, 4 & 5 W. & M. c. 5. 100.

Curtars imported in English or Venetian shipping, how exempt from paying the subsidy granted by 3 & 4 W. m. sect. 1. 4 Ann. c. 6. sect. 3. 8 Ann. c. 13. sect. 21.

Every hundred weight of raifins imported pays fifty shillings, 8 Ann. c. 7. sect. 6.

Importers of raifins what time to have for payment of duties, and what allowance for prompt payment, 8 Ann. c. 7. sect. 12.

Landing raifins without entry, or unshipping with a design to land them before payment of duties, to forfeit, 8 Ann. c. 7. f. 14. 17.

Duties in what cases to be paid on exportation, 8 Ann. c. 7. sect. 15.

A part to be levied, 8 Ann. c. 7. sect. 16.

Grönna. A deep hollow pit; a bog, a miry place. —In bax Harvaldi corsa effer, &c in gronam procurrens jussi. Roger Hoveden, pág. 438. So Grönna, in the life of Saint Sólab, bishop of Fern in Ireland, ann. 10, Evat amrum magus gronna inter est 41. Silvamur, per corvis cirius via conrata est.

Grönna. (Valetius, mentioned in 33 H. 8. cap. 10.) Is the name of a servant in some inferior place. Verghan in his Registia of decayed Intelligence, faith, That he findeth it to have been in times past a name for youths, who albeit they served, yet were they inferior to men-servants, and were sometimes fent on foot on errands, and was of such rank as none know what. Cowlis. ed. 1727.

Grüm-poter, An officer or superintendant over the Royal gaming-tables; in Latin, written Aluie Regi juniter primarius.

Gröfla, A great. Consella est Regi una grossa, qui continet quartus denarius de quilibet oculi -miaeure. Henry Knyghton, sub ann. 1738.

Gröfla, In grise, absolute, independent; as formerly a villain in grise, was such a servile person, as was not appendant or annexed to the land or manor, and to go along with the tenure as an appurtenance of it; but was like the other personal goods and chattels of his lord, at his lord's free pleasure and disposition. So adowton in grise distinguish'd from adowton appendant.
Merchant's grant to the Clayton's of the woods generally used in the education of the children, whether born at the time of the decease of the father, or at that time in utero, or whether such father be within the age of twenty-one years, or not, may be lawfully held by his executor; and such disposal shall be good against all per sons claiming such child, as gardian in suo, or otherwise. But if the father order no guardian to his child, the ordinary may appoint one to manage his goods and chattels, till the age of fourteen years, at which time he may chuse another guardian, accordingly as the Civil law he may have his curator; for we all hold curatos as the Civilians in this case, and that is levius curator nos datur. And for his lands the next a kin on that side, by which the land cometh not, shall be guardian, and was here tofore called guardian in foage. See more of the old law in the Ed. 1. Add. 1. and 15. Repro. De Laudibus Legum Ang. cap. 44. Sannfs Pfraec. cap. 3. Old Nat. Brew. fol. 94. and Skene de verb. figur. verbo Varda; from whence you may learn great affinity, and yet some difference between the law of Scotland and ours in this point. Convell, ed. 1727.

A guardian is one appointed by the wisdom and policy of the law to take care of a per son and his affairs, who by reason of his imbecility and want of understanding is incapable of acting for his own interest; and it seems that by our law his office originally was to instruct the ward in the arts of war, as also to teach him husbandry and tillage, so that when he came of age he might be the better able to perform those services to his lord, whereby he held his own land. 2 Bac. Abr. 672. See 2 Jiff. 12, 13, 564, 565.

And therefore Bracton, lib. 2. cap. 38. fol. 86, treating hereof, says, De iis, qui minutum & infima attonit, & quibus operet eft sub tutela & cura aliis, &ique regere non morunt, et quorum quidam debent eft sub curialia Dominii cum terris & tenementis, que sunt de feiulo eorum, & quidam sub curialia parentum & proximorum confanguini nemorum, ut privatis. & quibus dominus curialia aliquando de jure de jure, vel de jure hominis aut impetratores aut homines. — So Fleta, cap. 9. fol. 4. Quidam sub curialia parrentum & proximorum confanguinem, & illis dominus curialia de jure gentium.

1. Of the several kinds of guardians, namely, by the Common law, by curialia, and by statute.
2. Who may and are intitled to be guardians; by what authority they are appointed, and of refreshing and punishing abuses by them.
3. Of the time and manner of appointing a guardian; and of the guardian's interest in the body and lands of the ward, and his remedy for the same.
4. What things a guardian may lawfully do, and which shall bind the infant.
5. Of the infant's remedy against his guardian for abuses by him; and of protecting a guardian to account, and what allowances shall be held bona.

1. Of the several kinds of guardians, namely, by the Common law, by curialia, and by statute.

Guardians by the Common law. There are four kinds of guardians by the Common law, viz. guardian in chivalry, focage, nature and nurture. Cz. Litt. 88. k.
As to guardian in chivalry it is to be observed, that by the Common law, if tenant by knight-service had died, his heir male being under the age of twenty one years, the lord should have the land holden of him till such heir had arrived to that age, because that the king had not interest in the tenant's service; and such lord had likewise the custody of the body of the infant to bind him up, and inure him to martial discipline, and was therefore called guardian in chivalry. Lit. feu. 103.

Ca. Lit. 74. 75. 2 Co. 12. 13.

An heir who had been in ward by reason of a tenure in capite, when he came of age must have held livery, i. e. to have the lands delivered to him by the King, the expense of which was half a year's profit of his lands holden; but if the heir had been of age at his ancestor's death, he should have paid for land in possession a year's profit, his father was then to be a most confidential friend, and for exceptions expectant on freeholds half a year's profit, and the King should have had all the mean profits till tender of livery were made; so if tender were made, and not duly purified.

Ca. Lit. 78. a.

By the statute of Aketon, cap. 6. if the lord dispa-age his male ward under fourteen, he should have loft the ward, and the whole profit thereof should have been converted to the ward's benefit; the lord was to dis- parage the heir by marrying him to the daughter of a villain, burgess, one attainted of felony, to a baidard or alien, one wanting land or foot, deformed, paralytic, or commonly blind.

Ca. Lit. 80. b.

On the death of guardian by knight-service, the executors should have had the wardship of the heir, for they had it to their own use, and might have granted or af- liged it over; and therefore were not at all accountable to the infant when he came of age. Ca. Lit. 90.

This sort of guardian ship being a sort of dominion of nature, and wanted to prevent the use which were made of the Gothic nations to brend them to arms; it was dec- ended a great burden, and therefore is now fallen by the 12 Car. 2. cap. 24. by which all tenures by knight-service, and foceage in capite, are turned into common foceage, and disfranchised of hommage, livery, premier formag, ward- ship, and all acts of wardship were at law incident to such tenures, and aids per fili marrier & per faire fin chivellerie.

2. Bac. Ald. 674.

1. By the Common law, if tenant in foceage die, his heir being under fourteen, whether he be his issue or cousin, male or female, the next of blood to the heir to whom the inheritance should at first be, shall be guardian of his body and land till his age of fourteen; and although the nature of foceage be in some measure changed from what it originally was, it yet is still called foceage tenure, and the guardian in foceage is still only where lands of that kind (as mould of the lands in England now are,) defend to the heir within age; and though the heir after fourteen may chuse his own guardian, who shall continue till he is twenty-one, yet as well the guar- dian before fourteen, as he, whom the infant shall think fit to chuse after fourteen, are both of the same nature, and so the same office and employment appertain to them by the law, without any intervention or direction of the infant himself; for they were therefore appointed, because the infant, in regard of his minority, was sup- posed incapable of managing himself and his estate, and consequently derive their authority not from the infant, but from the law; and that is the reason they transact all affairs in their own name, and not in the name of the infant, as they would be obliged to do, if their au- thority were derived from him. Ca. Lit. 87.

Hence the law has invested them not with a bare au- thority only, but also with an interest till the guardian- ship, and is consequently the authority and interest, the law has made them accountable to the infant, either when he comes to the age of fourteen years, or at any time after, as he thinks fit; and there- fore are not to have any thing to their own use, as the guardian in chivalry had. Ca. Lit. 90. a.

Guardian by nature, who is the father or mother; and here we must observe, that by the Common law every father hath right of guardianship of the body of his son and heir until he attain to the age of twenty-one years. Ca. Lit. 84. 9 Ed. 4. 52. 27 Att. pl. 73.

33 H. 6. 55. K. B. 163.

In free tenures in knight-service were in being, the guardian in chivalry could not have the custody of the body of the heir as long as his father was living; but all, which such guardian could have, was the cus- tody of the lands which were defended to the infant from his mother or other collateral ancestor; and there- fore the father had an action of trespas, for taking away his son and heir, quare femineum & heredem replevit, though he was not in propriety of speech counted the guardian.


But neither the mother, nor any collateral ancestor could have the custody of the heir apparent before the lord, for though they may have an action of trespas quare consequeniam & heredem replevit, yet they can have it only against a stranger guardian in chivalry. Lit. feu. 114. Ca. Lit. 84.

4. Guardian by nurture, who hath only the care of the perfon and education of the infant, and hath nothing to do with his lands merely in virtue of his office; for such guardian may be, though the infant hath no lands at all, which a guardian in foceage cannot. Ca. Lit. 88.

Guardians by custem. By the custom of the city of Langden, the custody and guardianship of orphans under age unmarried belongs to the city in Boc. Att. 675.

By the custom of Kent, where any tenant died, his heir within age, the lord of the manor might and did commit the guardianship to the next relation within the court of justify, in whose jurisdiction the land was; but the lord was bound on all occasions to call him to an account; and if he did not find that the accounts were fair, the infant should be brought and examined. This pro- vince the Chancellor hath taken from inferior courts on- ly in Kent, where these customs are continued, but the custom is not used even in Kent at this day, because the lords in giving tutors do it at their own peril in the ac- count; and therefore every man thinks it dangerous to introduce it. Lamb. 611.

This guardian appointed by the lord is to have the same allowance and no other, with the guardian in foceage at Common law, and is subject, as has been said, to the account of the heir for his receipts, and to the difficulties of the lord for the same cause. Lamb. 624.

If any hold lands descendent to an infant within the age of fourteen years, the next of kin, to whom the lands cannot defend, shall be guardian both of the infant's land and estate, if the custom of a manor it does not belong to another. 2 Rol. Ass. 40. 2 Lutw. 1185.

S. P. said to be refused, but the copyhold defend to a lunatick, or an infant within the age of fourteen, the lord, with- out a special custum for that purpose, hath no power of appointing a guardian. Hob. 215. Hutt. 16. 17. 2 Lutw. 1185.

Guardians by custom. By the Common law no perfon can be appointed a guardian, because the law had appointed one, whether the father was tenant by knight-service or in foceage. 3 Co. 37. 3 Inst. 62.

The first statute, (1 Ed. 362.) that gave the father a power of appointing, was the 4 & 5 H. 5. & M. 8. which provides under severe penalties, such as fine and imprisonment for years, "That nobody shall take away any
any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession, custody, or management of, and against the right of, such maid or woman child, or of such person or persons to whom the father of such maid or woman child by his last will and testament, or by any other act in his lifetime, hath or shall appoint, assign, bequeath, give or grant the order, keeping, education and governance of such maid or woman child, or of any other child or children, within the age of twenty-one years, or of full age, by his deed executed in his lifetime, or by his last will and testament, or in the presence of two di- dible witnesses, to dispose of the custody and tuition of such child or children, and, for and during such time as he or they shall respectively remain under the age of twenty-one years, or any lesser time, to any person or persons in possession or remainder, other than Polych recusants; and this power of the custody of such child or children made since the 24th day of February 1645, or hereafter to be made, shall be good and effectual against all and every person or persons claiming the custody or tuition of such child or children as guardian in focage, or otherwise; and such person or persons to whom the custody of such child or children, or shall be disposed of as aforesaid, shall and may maintain an action of ravishment of ward and trespass against any person or persons which shall wrongfully take away or detain such child or children, for the recovery of such child or children, and shall and may recover damages for the same in the said action, for the use and benefit of such child or children.

And such person or persons to whom the custody of such child or children hath been, or shall be disposed of or devised, shall and may take into his or their custody, to the use of such child or children, the profits of all lands, tenements, and hereditaments of such child or children, and also the custody, tuition and management of the goods and chattels and personal effait of such child or children till their respective age of one and twenty years, or any lesser time, according to such disposition aforesaid, and may bring such action or actions in relation thereto, as by law a guardian in common focage might do.

In the construction of this statute the following opinions have been held.

1. That a testamentary guardian, or one formed according to this statute, comes in lieu parentis, and is the same in every respect with a natural parent, and differs only as to the modus habendi, or in a few particular circumstances; as first, That it may be held for a longer time, viz. till the heir attains the age of twenty-one, where before it was but to fourteen: secondly, It may be by other persons held; and before, it was the next of kindest not inheritable could have it; now who the father names shall have it.

2. That though neither before nor since this statute a person under age may devise his lands, yet a person under age may, within this act, dispose of the custody of his child, and such disposition draws after it the lands, &c. and incident rights of the custody.

3. That an infant hath the same remedy against a testamentary guardian, as he had against a guardian in focage, to the statute speaks only of remedies for the guardian.

4. If the father being of age devise his lands to J. S., during the minority of his son and heir, in trust for his heir, and for his maintenance and education until he be of age, this is devising the custody within this statute, for he might have done this before the statute. 

5. If a man devise the custody of his heir apparent to J. S. and mentions no time, either during his minority, or for any other time, this is a good devise of the custody within the act, if the heir be under fourteen at the death of the father, because by the devise the modus habendi custodiam is changed only as to the person, and left the same as it was to the time, but if above fourteen at the father's death, then the devise of the custody is merely void for the time, and for the act J. S. did not intend every heir should be in custody until one and twenty years, and tandem, sed ne disturbis; therefore he shall be in this custody but so long as the father appoints, and if he appoint no time there is no custody. 

6. That this testamentary guardian hath the custody not only of the land defended or by the father, but of all lands and goods any way acquired or purchased by the infant, which the guardian in focage had not. 

7. That this guardian can't assign or transfer the guardian ship over to another, neither shall it upon his death go to his executors, administrators, or assigns; for tho' it be an interest, yet it is an interest joined with a trust, and the tefator might think those persons incapable of executing, too he placed that trust and confidence in the guardian himself; but it seems, that if two or more are made guardians, and one of them die, the survivor or survivors shall continue guardians, for from the nature of the thing, the authority must both cease and follow; if also, were it otherwise, the more guardians were appointed for the security of the infant, the less secure he would be, because upon the death of any one of them the guardianship would be at an end. 

8. That if a person, appointed guardian pursuant to this statute, die or refuse to take upon himself the guardianship, the Lord Chancellor may appoint a proper guardian. 

9. Also if a person appointed guardian pursuant to this statute, becomes a lunatick, or is otherwise incapacitated to execute the trust required in him, or he abuses the trust, by doing any thing prejudicial either to the person of the infant, or his estate, it seems, that the court of Chancery, may either totally remove him, and appoint another guardian, or else impose some terms on him, by obliging him to give security, &c. as will effectually hinder him from doing any thing prejudicial to the infant; but in what particular instances of this kind a court of equity will interpose, does not seem to be clearly agreed.

And note, that both by the 45 & 55 Ph. 3. M. and by this statute, there are express saviings with respect to the city of London and other towns, as to the custody of orphans. 1 Sid. 363.

2. Who may and are entitled to be guardians; by what authority they are appointed, and of restraining and punishing abuses by them.

Here in the first place we must take notice, that there can be no guardian in focage but where lands of that nature descant to the heir. Co. Lit. 88. 2 M. 170. 

Therefore if a man die feu feft et alia, or a tenant common, or fuch-like inheritances, which lie not in tenure, (and dispose not of the custody of his child,) the heir may chuse his guardian; if he be so young that he can make no
no choice, it is most fit that his next cousin, to whom the inheritance can’t defect, should have the custody of him, and whoever takes the rent, &c, is chargeable in account; but if he have any other land, the fecage guardian shall take the rent-charge, &c, in his custody. 

Co. Lit. 87.

So the wife’s heir shall not be in ward during the life of the tenant by the curtesy, because by his continuance of his wife’s estate, the defect to the heir is interrupted. 

F. N. B. 143.

For by law, the next of blood, to whom the inheritance can’t defect, is intituled to the guardianship; as if the land descended from the father, the mother, or other next cousin of the mother’s side, shall be guardian in fecage, &c in curtesy, where lands descend from the mother; but the next in law appointed to be the guardian, that is the heir next, which our law fays is committitur even ipsa. Co. Lit. 87.

If the younger brother die seised in tail, leaving issue under fourteen, the elder, or the middle brother, shall be his guardian in fecage, for in equal degree the law prefers him. Co. Lit. 88.

But if tenant in tail have no brother or sister, and die, leaving issue under fourteen, the next cousin of the father’s or mother’s side that first seizes the heir shall have the custody of him; for the relation on both sides is equal, and no cause appears wherefore either should be preferred; and he that first takes care of the heir shows himself to be most concerned for his interest. Co. Lit. 88.

But if donees in frank-marriage die, their issue being under fourteen, the next cousin of the part of the donee that was the cause of the gift (being not inheritable to the donor’s reversion) shall have the custody. Co. Lit. 88.

A. seised of some lands as heir to his father, and of others as heir to his mother, dies, leaving issue under fourteen, the next cousin of either side, that first seizes the heir shall have the custody of him; and the next cousin of the father’s part shall enter into the lands of the mother’s part, &c in curtesy. Co. Lit. 88.4.

If a woman hath issue a son by a former husband, and she marries a second husband, seised of fecage lands, by whom she has issue another son, and the husband and wife die, leaving the said son under fourteen, his brother of the half blood shall be guardian in fecage, as next of kin; and from the inheritance can’t defect. Cro. Eliz. 825. 2 Ad. 171. Mor 635. 2 Jen. 17.

If A. be guardian in fecage of B. under fourteen, he shall be guardian in fecage of another infant whom B. ought to be guardian of, as being his next cousin par cufto de gard, and an account lies against him. Co. Lit. 88.4.

An infant, idiot, lunatick, non comper, one blind and dumb, deaf and dumb, or leper removed, can’t be guardian in fecage. Co. Lit. 88.4.

It is clearly agreed, That the King as pater patriae is universal guardian of all infants, idiots and lunatics, who can’t take care of themselves; and as this cafe can’t be exercised otherwise than by appointing them proper curators or committees; it seems also agreed, that the King may, as he has done, delegate the authority to his Chancellor; and that therefore at this day, the court of Chantery is the only proper court, which hath jurisdiction in appointing and removing guardians, and in preventing them and others from abusing their persons or estates.

2 Inr. 14. 4 Co. 126. Bovary’s cafe, and in Stann. Pr. 37.

And as the court of Chantery is now invested with this authority, hence in every day’s practice we find that cause referred to the right of guardianship, who is the next of kin, and who the most proper guardian; as also orders are made by that court on petition or motion, for the provision of infants during any dispute herein; as likewise guardians removed or compelled to give security; their estates punished for abuse of him to be appointed on in effectual care taken to prevent and abate intended them in their persons or estates; all such wrongs and injuries being reckoned a contempt of that court, that hath by an established jurisdiction the protection of all persons under natural disabilities. 2 Abr. 177.

But it is clear, that the ecclesiastical court hath not and can not refer a cause to a guardian with regard, or ofolitative guardians; and therefore where Sir Henry Wood having devised the guardianship of his daughter, by his will in writing, according to the 12 Car. 2, to the Lady Chiffer his sister; the Dutchess of Cleveland, to whom for this daughter, being about eight years old, was contrived, pretending that Sir Henry Wood by word revoked this disposition of the guardianship, sued in the Prerogative court to have this nuncupative codicil proved; and the court granted a prohibition; for they are not to prove a will concerning the guardianship of a child, which is a thing of a temporal nature, and of which the courts and courts of law have no jurisdiction. 

3. Of the time and manner of appointing a guardian; and of the guardian’s interest in the body and lands of the ward, and his remedy for the fame.

The authority of a guardian in chivalry did not determine till the heir, if a male, came to the age of twenty-one years, because it was prefixed, that till that age he was not capable of doing kight-service, and attending his lord in the wars; the guardianship of an heir female deterred the woman to be married at Common law; by W. &c 1. the lord had the wardship till the attained the age of sixteen, to render her conveyable marriage; the authority of a guardian in fecage ceases at the age of fourteen, at which age the infant may call his guardian to an account, and may chuse a new guardian. Lit. fol. 103. Co. Lit. 75. 2 Inr. 125.

If a guardian in fecage die, the guardianship shall go to the next of kin of the infant, to whom the inheritance can’t defect, and shall not go to the executors of the guardian, because they can take nothing but what the testator had to his own use; besides, the law gives the guardianship to fictitious persons as are presumed to have most affection for the infant; and therefore will not intrust executors with it, who may happen to be strangers. Plow. 293. 2 Inr. 260. Co. Lit. 89. S. P.

If a feme infant who is in ward marries, at Common law the guardianship is determined, because the husband is immediately on the marriage become her guardian; and it would be inconsistent that the fhould at the same time be under the power of another guardian. 2 Inr. 260.

If a feme infant in ward marries, the husband becomes guardian in right of his wife; but if she dies the infant goes to her husband, and shall go to the next of kin to the infant. Plow. 294. a. Co. Lit. 89. a. S. P.

A guardian in fecage shall not forfeit his interest by outlawry or attaint of felony or treason, because he hath nothing to his own use, but to the use of the heir. Co. Lit. 88. b. God. 316.

It is said, that in Chantery a guardian can’t be otherwise appointed than by bringing the infant into court, or his praying a commissio to have a guardian affigned. 

Aer. Eq. 260. Lloyd and Carew.

Regularly an infant is to sue both at Common law and in Chantery, by his prochein amn or guardians, but he must always be defended by a guardian, who is to be admitted by the court. 

Fide. Head of Infants.

The respective courts in which the suitor is commenced, must affign a proper guardian to the infant; and therefore if an infant is sued, the plaintiff must move to have a proper guardian affigned him. Stil. 269. Bridg. 74. 1 Inr. 258. 365.

And as an infant can bring his bill but by prochein amn, so he must take care of it; for if the bill is dismissed, the prochein amn must pay the costs thereof. 

Aer. Eq. 75. Andrews and Cradock.

Where 2 bills is brought against an infant (if in town) he obtaining ceases as to him, unless the plaintiff on having a guardian affigned him, by whom he may defend the suit; if in the country, he files out a commissio to affign a guardian, and put in his answer; whether he pleads, antwors or demurs.
demurs, fill it must be done by his guardian; for if it is the plea, answer or demurrer of the defendant, without doing it, the guardian will be irregular.

But where the infant neglects to appear, or to have a guardian assigned, it is a notion of course (he being in contempt to an attachment) to pray for a messenger to bring him into court, and when he is there the court always orders his guardian to appear, in which case this can be done against a peer of the realm who is an infant, and whose person is sacret. 2 Dall. Ali. 661. See Privilege.

As the law hath inviolated guardians not with a bare authority only, but also with an interest till the guardianship ceases; for it provides several remedies for guardians against those who violate that interest: and therefore at Common law there were remedies both extra-territorial and possessory, to recover the guardianship. 2 Inst. 90. 9 Co. 72.

As at Common law there was the writ Dr custodia terræ et heredit.] called the writ of right ward, wherein the guardian recovered the custody of body and lands; but if the ward were married, then the guardian was driven to his action of trespas, quaer intreit mariaginis non fatisfattit; but this was remedied by the statute of Marston, cap. 6, which provides, that in the writ of right ward, there shall be a writ of raviishment of ward, in which the plaintiff recovered the body of the heir, and not damages only. 2 Inst. 90, 430. 9 Co. 72. Hussey's cafe. Hob. 94.

If upon a bonæ ægis an infant be brought into court, and it appears, that the question is touching the right of guardianship, the court cannot deliver the infant to the guardian, for he may have a writ of raviishment of ward. 3 Kel. 446.

What things a guardian may lawfully do, and which shall bind the infant.

From the authority and interest, which the policy of the law has invested guardians with, it appears, that a guardian may do several acts which will bind the infant, such as making leaves for years, which he may do in his own name, and such leaves may maintain ejectment thereupon. 1 Co. Lit. 89, 89. Est. Suits. 123, 124. 1 Inst. 110. 2 Inst. 82, 83. 3 Inst. 129. 3 Stat. 1.

Therefore if a guardian in foage makes leaves for years to continue beyond the time of his guardianship, such leaves seem not to be absolutely void by the infant's coming of age, but only voidable by him, if he thinks fit; for they were not derived but out of the interest of the guardian, or to be measured thereby, but take effect also by virtue of his authority, which for the time was general and absolute; and therefore all lawful acts done during the continuance of that authority are good, and may subsist after the authority itself, by which they were done, is determined; and consequently the infant when he comes of age, may by act of infan., be void, or other act, if he thinks fit, make such leaves good and unavoidable; but a guardian par naturæ cannot make any leaves for years, either in his own name, or in the name of the infant; for he hath only the care of the person and education of the infant, and hath nothing to do with his lands. Bray, Tit. Gard. 70. Tit. Gardin, 19. 2 Rel. Abr. 41. Briflen and Hussey. Gra. Fac. 55, 98. Shipland and Rider.

A. lets lands to B. for four years, and died, and the land being held in foage, and the heir under fourteen, the guardian may recover the sale of the leaf by injunction. 1 Inst. 110. before the first leaf was expired, let the same lands in his own name to B. for eight years; and if by this acceptance of a new leaf from the guardian in foage the first leaf was farrendered, was the question; and 'tis said to be held by the court, as it was farrendered; or if it could not be properly called to be halden, for want of a reverision in Vol. II. No. 82.

the guardian in foage, yet they held, that at first the first leaf was thereby determined by admittance of the lefsee's own, and that the guardian, it is said, which if the first should fland in the way he could not do it in the act. 158, 322. 4 Lem. 7. Owen 45, 56. Willis and Whitehead.

If a woman who is guardian in foage to her for marries again, and then gives up the infant's lands, by a contract upon the infant's lands, and charge upon the infant's lands, and becomes void; for the interest she had in the lands was in right of the infant, and therefore shall not bind her, as those acts shall in which she joins her husband in parting with her own personal property. Plow. 293. O'Herne's case.

A guardian in foage may grant copyhold estates in his own name, and such grants shall bind the heir, for he is dominus pro tempore, and shall take the profits to his own use, though he shall account for them; and he shall keep courts in his own name. Gra. Fac. 55, 99. Poph. 127, 2 Rel. Abr. 49.

Alfo it hath been held, that a guardian in foage may grant copyhold in reversion according to the custom of the manor, and that such grant shall be good; though they come into possession during the non-age of the infant. Mich. 8 W. 3. in C. B. Lade and Barker.

A guardian in his own name any may make partitions in behalf of an infant, if equal; for the principal reason is, that by the law to take care of the inheritance of the infant; and this partition and division of his part from what belongs to another is so far from being a prejudice to the infant, that it is really for his benefit and advantage. 2 Rel. Abr. 52.

As the authority and interest of a guardian extends only to such things as may be for the benefit and advantage of the infant, and whereof he may give an account; on this foundation it is held, that a guardian cannot prefrat to any benefit in right of the heir, because he can make no advantage thereof (for that would be fancy); and consequently has nothing therein whereof he shall account, and therefore the infant himself shall prefrat thereon.

Ca. Lit. 17. b. 89 a. 29 Ed. 3. 5.

But yet a prefratment made by the guardian in the name of the heir, is a good title to the heir in quære impedit. 42 Ed. 3. 130.

In qœcitum the cafe was, that one A. devis'd land to B. his fon in tail, with divers remainder over, and makes one C. overfer of his will, and willed that he should have the education of his fon till he came to twenty-one, and to receive, fez and let for the faid B. the faid land, for giving him, and thereupon to account to the faid B. being allowed his charges, &c. C. makes a leave for seven years in his own name, with refevention of rent to himself, and this leave by computation was to continue half a year after B.'s attaining his full age, and if this leave was good for any part of the term was the qœcitum, C. being dead, and B. not yet of age; and it was argued to be good for the whole term, or at leat during the minority of the fon, and only void for so much as exceeded the full age of the fon, and that C. had an interest in the land, and not a bare authority only; for then al leaves must have been made in the name of the infant, and make such prefrat as he would them whenever he thought fit, which the qœcitator never intended to improper him to do; but Poplam, Clinch and Fenner held, that as this devise is, C. was but a guardian for nurature, and could not make leaves at his own will and pleasure, for then he might make them for a hundred years; but here he can only make leaves at will, for there is no other time certain appointed, and he is but in the nature of a bailiff, and accountable; and therefore it was adjudged that the leave was void; from which cafe it appears, that if the authority had been given without the infant being in full age, or incapable to have made leaves for years, such leaves might be made during the continuance of that authority would not have determined therewith, but should have subsisted during the whole term for which they were made; and the infant in such cafe could not when he came of age have avoided them, as he may leaves made by his guardian in foage, if he thinks fit, be - X x
caufe the leffe would have been by the will and devise, not by the guardian for naturalle. Cre. Eliz. 6/8, 7/4. Pigott and Garrish.

If a guardian borrows money of A. to pay off an incumbrance on the infant's estate, and promises to give A. security for his money, but dies before it is done, the court will decree him fafhion out of the infant's estate; but if the sum disbursed exceeds the profits of the estate, for so much A. shall have an account as for money due to the guardian, and it shall be raised out of the infant's estate. 6 Co. 480. Harper and Eyler.

A guardian to an infant, having a considerable sum of money in his hands that was raised out of the infant's estate, lays out, with the consent of the grandmother, 300l. in a purchase of lands which lay contiguous to the infant's estate, and takes the purchase in the name of J. S. for his benefit, if he when he came of age he should agree thereto, and allow that money on account; the infant dying in his minority, it was held by my Lord Chancellor, C. B. Atkins and J. Latysche, against the opinion of the Mafter of the Rolls, that th'o' neither the heir nor administrator of the infant were intitled to the lands, yet the guardian muft account for the 300l. for the benefit of the infant; and that it was not in the power of the guardian, without the direction of this court, to turn the personal into real estate, by which it would defend to the heir: and that the objection, that an infant may make a will at seventeen of his personal estate, but not of his real, was not founded. 1 Term. 492. Lord of Herchelfield v. Nerliff.

A mother, as guardian to her infant son, had out of his personal estate paid off a mortgage; the infant afterwards died, and the estate defended to a remote heir, and then the mother would have had back the money; but the court denied her any relief. 2 Term. 93. Zaub and Ld. Co. 492. Lord.

If a guardian puts in an answer to a bill in Chancery for an infant, on oath, such answer shall not conclude the infant, nor be read in evidence against him; for the effect of an infant's answer to a bill in Chancery is to no other purpose than to make proper parties, fo as to have an opportunity to take depositions, and to examine witnesses to prove the matter in question. 2 Term. 325. 1 Show. 89. S. C. Eyden and Petty.

An estate having defended to an infant subject to incumbrances; and the question being, whether a guardian might, without the direction of a court of equity, apply the funds of the infant to discharge the incumbrances, or the interest of them, or whether they should not be accounted personal estate, and fo the administrator of the infant be intitled to them, if the infant died in his minority; it was held by the court, that a guardian, without any direction, may pay the interest of any real incumbrance, and the principal of a mortgage, because that is a direct and immediate charge on the land, but not any other real incumbrance. Ab. Eq. 357. Palmer and Dealey.

And therefore where a widow, who was guardian to her son, received the rents and profits of his estate, and paid off debts by specialty, but took affigments of the bond for the son dying in his minority, he brought his bill against the defendant the heir, for a discovery of affig by defect to satisfy the money due by bond, the claiming the profits as administratrix to his son; and it was held by the court, that the guardian was not compellable to apply the profits of the estate of the infant to pay off the bond debts. 2 Term. 606. Water and Ebrill.

5. Of the infant's remedy against his guardian for abuses: and of obliging a guardian to account, and what allowances be shall have.

At Common law, both a prohibition of waffe, and an action of waffe, lay against a guardian in chivalry and a guardian in foage, for a voluntary, but not for pernicious waffe, or waffe done by a stranger. 1 Ab. 355.

If a guardian suffers another stranger to cut down timber trees, or to protract any of the houses, and doth not, according to his duty and office as guardian, endeavour to keep and preserve the inheritance of the ward in his custody and keeping, and doth not prohibit and withfand the wrong-doer; this shall be taken in law for his consent, according to the rule, Qui non prohibet quod prohibere debet, non habet legitimum suum. And if such waffe and destruction be done without the knowledge of the guardian, or with such force that he could not withfand, then ought the guardian to caufe an affize to be brought against such wrong-doers, by the heir, wherein he shall recover the freehold and damages for such wrong and damage.

And if the heir brings his action of waffe within age, the judgment, according to the statute of Gloucester, cap. 55, shall not only be to recover bawn vofation, but the guardian shall lose the whole wardship, and yield to the heir the fingle damages, if the wardship be not fufficient to fatisfy the damages.

If the guardian doth waffe, and after affigneth over his interest, an action of waffe lieith against the grantor in the tent. 4 Ab. 305.

Also if the wafe be committed to near the time of the infant's coming of age, that he could not conveniently bring an action of waffe during his minority; yet after the determination of the guardian's interest, he may bring an action of waffe, and in such case, as he cannot recover the wardship which is ended, he shall by the statute of Gloucester recover treble damages. 2 Ab. 306.

By 3 Willm. 2. cap. 5. If lyke for years, or guardian also, the remedie of recovering the freehold shall be by affize of novel diffafio, and both the fec-flor and fec-flor shall be esteemed diffesiers, and the survivor of them shall be liable to this remedy. So, if either happens to die, he that survives may be conftrued a diffesier, and as such liable to this action. 2 Ab. 415.

Not only guardians in chivalry, but in foage and life, nor come within this law of Willm. 2. So also their alienations not only in fee, but in tail, or for life, are within the act.

If a guardian accepts of a feoffment from his ward, the ward may bring an affize against him as a diffesier; for the guardian acts contrary to his duty, when he allows any alienation made by his infant; for it is his duty to protect the inheritance of his ward, and to deliver it up to him at full age, and not to bring it into his own family. Bre. Diffafio 95.

If a guardian, after the full age of the heir, continues his estate in the hands of a guardian, and an affize is brought against him, the heir lies against him by the heir; but he cannot be deemed a diffesier, because he does not actually outhe the heir of his freehold, which is required in a diffesier, but holds him out by an intermediate entry between him and his ancestor, which makes the diffesier between an abatement and a feoffment. 3 Willm. 2. 57, 58, 2. Ab. 142.

If an infant appears by guardian, and suffers a recovery, this shall bind him; and one of the reafons hereof is, that if the recovery be to the prejudice of the infant, he has his action against his guardian, and may reimburse himself out of his pocket, to which the law had commiited the care of him. 1 Roll. Abr. 737. But for this see tit. Fine and Recovery.

By the Common law, guardians in foage are accountable to the infant, either when he comes to the age of fourteen years, or at any time after, as he thinks fit. Co. Lit. 87.

But the guardian, on his account, shall have allowance of all reasonable expenses; and if he is robbed of the rents and profits of the land without his default or negligence, he shall be discharged thereof upon his account; for he is in the nature of a bailiff or servant to the infant, and undertakes no otherwife than for his diligence and service. Co. Lit. 87, a.

If a man enters as guardian into the lands of an infant, who has no title to be guardian, 'tis at the election of the infant to make him a diffesier on account of his wrongful entry upon, and actual outher of such infant, or else diffemblle the wrong, and call him to an account as guardian. 1 Roll. Abr. 661. Crew. Cor. 212.
GUE

If a guardian takes a bond for the arrears of rent, he thereby makes it his own debt, and shall be charged with it. 2 Chon. Rep. 97. Wall and Buckly.

If a guardian to an infant, whose lands are incumbered to the value of 600L, buys it off with 100L of the infant's money, he shall not charge the infant with the 600L. 2 Chon. 743.

If a person's infancy receives the profits of an infant's estate, and continues to do so for several years after the infant comes of age, before any entry is made on him; yet he shall account for the profits throughout, and not during the infancy only. Apr. Eq. 1741 and Halworthy.

A receiver to the guardian of an infant, who has had his account allowed him by the guardian, shall not be obliged to account over again to the infant when he comes of age. Precod. Chon. 535.

For more learning on this subject, see 14 Vin. Abr. tit. Guardians, and Ward.

Guardian, or Caretane be fœlestary, Warden of the flanerious. Sis. 16 Car. 1. c. 15.

Guardian, or Gardane del eglefie, Cheurbeawardan, who are officers clothed in every parish, to have the care and custody of the church goods; and they may have an alias for the goods of the church, and other dents they do for the benefit of the church. And by 43 Eia. cap. 2. They are to join with the overseers for making of rates, and other provisions for the poor of the parish.

Guardian of the quinte potts. (Guardianus quinque portus.) Is a principal magistrate that hath the jurisdiction of the Inns in the Exchequer. These which are commonly called The quinte potts, that is, the Free ports or havens; who there hath all that jurisdiction that the Lord High Admiral of England hath in places not exempt. And the reason why one magistrate was affected to so few havens, was, because they, in respect of their situation, anciently required a more vigilant care than other havens, being nearer, and more obvious to enemies, by the narrowness of the sea in those parts, Camden in his Brit. pag. 238. faith, that the Romans, after they had settled themselves and their empire here in England, they first placed the sea ports. And the quinte potts was first erected among us, in imitation of that Roman policy. Cowell, ed. 1727. See Cinque potts.

Guardian of the peace, Cyphos paecis. See Confrs.

Guardian of the peace, or constable, is he to whom the spiritual jurisdiction of any diocese is committed, during the vacancy of the see. 25 Hen. 8. 21. And the guardian of the spirituals may either be guardian in law, or mere magistrate, as the archbishop is of any diocese within his province; or guardian by delegation, as he whom the archbishop or vicar-general doth for the time depute. 15 Eliz. cap. 12. And the guardian of the spirituals hath all manner of ecclesiastical jurisdiction of the courts, power of granting licences and dispensations, probate of wills, &c., during the vacancy, and of admitting and infurting clerks preferred; but such guardians cannot as such consecrate or ordain, or prefect to any benefice. Woot's Inf. 25, 27. See Bishop.

Gutenly, Jerle, Aberney, and Sack. Provis. relating to the exportation of wool from Southampton to thole isles. 12 Car. 2. c. 32. Selt. 12, 13 14.

W. & M. Sel. c. 3. 32. Selr. 14.

So much bought from thence charged with the excise, 2 W. & M. Selt. 2. cap. 9. Selt. 12. 4 Ann. cap. 6. Selr. 34.

Goods of their own growth may be imported duty free, 3 Geo. 1. c. 4. f. 5. Salt imported from thence to pay as foreign, 5 Geo. 1. c. 18. Selr. 11. 

GUI

Their veffels how made liable to the payment of excio pence a month to Greenwich hospital, 2 Oct. 2. c. 7.

Guthfl, (Sax. gift, Fr. gief, a flag of reef in a journey,) A lodger or stranger in an inn, &c. A guesl who hath a piece of plate set before him in an inn, may be charged with and are known country. El. 200. P. C. 90. And a guesl having taken off the plate of plate and eat it, and then with intent to get rid of it, placed it under a bed, and then told them it into another room, and was apprehended before he could get away, this was supposed harryng. Ibid 92. Adion lies against an innkeeper, refusing a guesl lodging, &c. See Visit.

Gyldagy, (Gyldagy.) Is an old legal word, signifying that which was not allowed through a strange land, or unknown country. El. 12. 3. Porphyr. gyld agdor alieni, ut tota conducatur per terram alteram. Consecut. Burgund. p. 119. 2 Inf. 526.

Guilders, Are those who lead flux to the net. 1 Jas. 1. c. 23.

Guilf, A fraternity or company, and comes from the Saxon word gifdan, which is to pay; because every one was gildar, to bear the taxes and contributions of the church, for the charge and support of the company. And from thence come Guild-balls, that is, the halls of the society or fraternity, where they meet and make orders and laws among themselves. The original was thus, uic. It was a law among the Saxons, that every freeman of fourteen years old should find sureties to keep the peace, or be committed to a guard, whereupon several neighbours entered into an association, and became bound for each other, to produce him who committed an offence, or to make satisfaction to the injured party; that they might the better do, they raised a sum of money among themselves, which they put into a common stock; and when one of their pledges had committed an offence, and was fled, then they made satisfaction out of this stock, by the payment of mortuory, according to the quality of the offence. And because this association confiUed of ten families, it was called a Decenary. And from hence came our fraternities. But as to the direct time, when these guilds had their origin in England, there is nothing of certainty to be found, since they were in use long before any formal licences were granted to them for such meetings. Edward the Third, in the 14th year of his reign, granted licence to the men of Canterbury to erect a gild in the charge and support of brethren and sisters, with a master and wardens, and that they might make charties, b-flow alms, do other works of piety, and constitute ordinances touching the same, &c. So Henry the Fourth, in the fourth year of his reign, granted licence to found a gild of the Holy Cross at Greenwich. See Matte c. 21. 37. 2. S. Anon. See Antiquities of Warrick-fairs, fol. 119 & 522. Guild, guild or gold (according to Camden) signifies also a tribute or tax, and the statutes of 27 Ed. 3. flat. 2. cap. 13. and 11 Hen. 7. c. 9. ufed gildable in the same sense with taxable. Guild (according to Gough in his Jurisdiction, fol. 191) signifies an amercement, as fast-gild; and fol. 197. he interprets it to be a prelation within the forein in these words, To be quit of all manner of guilds is to be discharged of all manner of pretensions, to be made for gathering fees of corn, lambs, and wool, to the use of lurgers. The word is also mentioned in the statute 15 Hen. 6. cap. 6. and 15 Car. 2. cap. 6.

By flat. 1 Ed. 6. c. 14. Selt. 9. 10. 11. Guilds and fraternities are given to the King.

Guilbalda Trentouiorum. See Sir.

Guilball, The chief hall of the city of London, Gildarium numine continenter nos salum minuras fraterrinatici & facultat, sed de eis etiam civitatem communicatit, tayas the learned Spener. See Guild.

Guil rents, Are rents payable to the crown by any guild or fraternity, or such rents as formerly belonged to religious guilds, and came to the crown at the general disfolution, ordered for sale by the flat. 22 Car. 2. c. 6.

Guinness, Traders therein not liable to bankruptcy, 13 & 14 Car. 2. c. 24. Selt. 3.
GUN

Guineapepper, otherwise called Indian pepper, is mentioned among drugs and spices to be garbled, by 1 Jat. c. 19.

Guineas and half guineas, may be imported, 8 W. 3. c. 11.

Gule of August, (Gula Augusti. WItt. 2. cap. 30. 27 Ed. 3. cap. 10. R. F. B. fol. 62. alias goats de August.) And Ptolemae, (fol. 916. cafe of mines.) Is the day of St. Peter ad Vincula, which was wont to be, and is still celebrated upon the first of August, and probably called the gule of Augustus, from guls, a thief. The reason we have in Dauradis Rationale Dictionar. bk. 7. cap. De factis Sanet Petri ad Vincula, where he faith, that one Quirinus, a Tribune, having a daughter that had a disease in her throat, went to Alexander, then pope of Rome, the sixth from St. Peter, and defined of him to borrow or fee the chains that was chained together with Ners; which request obtained, his fad daughter quickly was cured of her disease, and Quirinus with his family baptized. Tune dicitus Alexander papa, faith Dauradus, bel fipsum in calendis Augusti celebrandum infringit, & in honorem beati Petri ecclesiam in urbe fabricavit, ubi infra vincula repulsit, & Ad vincula nominavit, & calendis Augusti ditelavit. In quo ficturante popularia, igne fuis fuccentibus cheles cineraverunt. So that this day which before was only called the calendis of August, was upon this occasion termed indifferently either from the instrument that wrought the miracle, St. Peter's day ad vincula; or from that part of the maid whereon the miracle was wrought, the Gule of August. See Ptolemae de Oris. Anno regni domini fi et in Hock-day & Gulam Augusti: Remedia Manri Regis de Wyte, Cowell. edit. 1727.


Gultwitz, An amends for trespass, according to Saxon, in his Descriptio England, cap. 11. But we may supposse it maystaken for guiltwite, because no such word is found either in Spelmann's Glossary, the Saxon Dictionary, or ancient records. Cowell. edit. 1727.

Gun, Is a clammy or tough liquor issuing out of trees, and hardened by the sun. There are divers sorts of it brought from beyond sea, that are drugs to be garbled, as appeareth by the statute 1 Jat. c. 19.

Gunnfus, Simplicity. The hook upon which the hinge turns. Cowell. edit. 1727.

Gun, Gift. Stat. 33 Hen. 8. cap. 6. fol. 1. enacts. That none shall fale upon the safe to keep in his house a hand-gun, cross-bow, hagbut or demihagbut, unless his lands are of the value of 100 l. a year, in pain to forfeit 10 l. for every such offence.

Sect. 2. &c. Howbeit, the followers of lords spiritual or temporal, knights, esquires, gentlemen, and the inhabitants of cities, boroughs or market towns may keep in their houses, and use to shoot (but at a dead mark only) with any hand-guns of the length of one yard, or hagbut, or demihagbut of three quarters of a yard; for may the owner of a fhip, for the defence of his ship, and also he that dwells two furlongs distant from a town, or within six Roman miles from the face of the sea. And this liberty may fhot in any wild beast or fowl, save only deer, be- ron, thoveldar, partridge, wild swan or wild eike. Sect. 5. None may license his servant to shoot, except his game-keeper, on pain of 10 l. Sect. 12. 13. Gunsmiths or merchants may keep guns by them, observing the lengths abovefoaid.

Sect. 14. Proclamation to issue before an offender can be punished.

Sect. 15. Owner of the gun to forfeit, and not the matter of the house.

Sect. 16. Shall be lawful for any perfon to convey the perfon offending against this act before the next juf-
tice of peace; who, upon due examination and proof, shall have power to commit him to prifon, there to re-
main till he hath paid the penalty, which in this cafe shall be divided between the King and the party that fo takes the offender.

Sect. 19. Justices of peace in their fellungen, and stew-
ards of leets, have power to hear and determine these offences.

Sect. 20. Penalty of 20 l. apiece on juries concealing offenders.

Sect. 22. Forfeitures arising by this act shall be fixed for within one year by the King, and within five months by common perfon, otherwise they shall be loif.

Sect. 44. Saving for servants carrying guns by their masters orders.

S. was convicted of shooting in a gun contrary to this statute, and committed to gaol; and upon hab. corp. exceptions were taken to the return. If. That the caption is taken before J. S. and T. N. ad pacem confen-
sumandum, without saying, (jurisdictions) and so by what appears it is an improper exception. 3dly, That it should be a conviction by oath, where the statute says (proof and examination) which must be intended by jury. 3dly, That it does not appear, that it was before the next juf-
tices, as it ought to be. 4thly, Nor that the statute had been proclaimed in the same county, whereas there is an express provision in the statute, that none shall be pu-
ished before it is proclaimed, which Tawlton J. said, ought to appear in the return, (though the statute per-
haps was proclaimed one hundred years since). 1 Sid. 419. No judgment. Trin. 21 Car. 2. B. R. The King v. Swanderi. 1 Swander. 253. S. C. says, that it was upon the 27th day of August, that the conviction was to be eram T. B. & G. ab. doubs jufitic. divini re-
g ad pacem in com. praditis confundatur. But that the word (affirma) was omitted. For it ought to have been confundatur, affertationes. And so it does not appear, whether the faid liberties were attaigned to keep the peace or no. The reporter adds a note, that the conviction was before two juflices of peace, but the statute gives au-
tority to one juflice alone, being the next juflice of the county where the offence is committed, to commit the offender for the forfeiture, but that here it does not ap-
pear whether either of the faid two juflices was the next juflice, which was another exception intended to be moved; but the conviction being qualified for the ex-
tection aforefaid, this exception was not moved, and that he was of counsel with the defendant. Vent. 33. Annot. But S. & C. reports, that as to the words (upon due examination and proof before a juflice of peace), it was refolved, that that was not intended by a jury, but by another; and that no write of error lies upon such a conviction: And that an exception was taken, because it was coram f. juflice of the peace, without adding nee ad diversas feloniae, transgressiones, &c. vifinda, affertationes, and that the court agreed it ought fo to be return'd upon exception, to remove indiftments taken at felonies, is otherwise of convictions of this nature; for it is known to the court, that the statute gives them au-
tority in this cafe. Vent. 33. Trin. 21 Car. 2. Annot.

A perfon being brought before the next juflice of peace in the county where, &c. for shooting with fball-
shot in a hand-gun, who, upon examination finding it true, made a record thereof, and committed the party to prifon, 'till he should be brought on 10 l. vis. c. upon the informer, and 5 l. to the King. This record being certified upon a babac corpor, it was held by the whole court, that if the juflice of peace does not observe the form preferred by the statute, it is void, & coram non juficis, and needs no write of error, but if he acts according to the statute, then neither B. R. nor juflices of peace, can redeem it, or fet the party at large. T. 179. Hill. 3 Car. B. R. Cal's cafe.

The judgment on an indultment upon this statute was, that the defendant felvis dictis domini regis, &c. demum lib-
brauram, &c. where the words should have been felvis infcitit, &c. was infcitit in the statue; and that the words for those and other reasons the judgment was reversed. Rym. 378. Trin. 32 Car. 2. B. R. The King v. Alvp.

The conviction was for having a gun in his house, and this being excepted to, because the statute is use to keep in his or her bailey, and perhaps it might be lent him, and the words of the statute ought to be pursed; fo the con-

vidation
he shall on conviction within one month, by the oath of one witness before one justice, forfeit twenty shillings to the informer; to be levied by distress by warrant of such justice; and for want of sufficient distress, to be committed to the house of correction, to be kept to hard labour not exceeding one month, nor less than fourteen days.

Stat. 5 Geo. 2. cap. 20. sect. 2. No matter of any veil outward bound, shall receive on board any gunpowder, either as merchandise or flue for the voyage, except such as shall be within the Thanes above Blackwall, upon pain of five pounds for every fifty pounds weight, and fo in proportion.

Stat. 3. And the matter of every veill coming into the Thanes, shall land all the powder on board, either at the place of first arrival at Blackwall, or within twenty-four hours (if the weather will permit) before he comes to anchor there, or at the place of unloading, on pain of five pounds for every hundred weight.

Stat. 4. And if any officer of any ship (except the King's) shall between London Bridge and Blackwall keep any gun loaded with ball, or fire any gun on board above Blackwall, before sun-rising, or after sun-setting, he shall forfeit for such gun loaded five shillings, and for such gun fired ten shillings.

Stat. 5. And the corporation of Trinity house at Deptford Street, may appoint a perfon to inspect veills; and if any such officer obstruct him, he shall forfeit five pounds.

Stat. 6. And the said penalties shall go to the poor of the corporation.

Stat. 7. And two justices of London, or the respective counties where the offence shall be committed, shall have power to summon the offender, or after oath made of the offence, may issue their warrant for apprehending him, and on appearance or contumacy may commit him either by oath of witnesses, or confession, or his own view, and levy the penalty by distress and, if not redeemed in five days, by sale; for want of distress he shall forfeit for such cargo for thirty months, or till paid; and persons aggrieved may appeal to the next sessions.

Stat. 15 Geo. 2. cap. 32. sect. 1. No person not being a dealer in gunpowder shall keep more than fifty pounds weight, or being a dealer, not more than two hundred pounds weight, longer than twenty-four hours at any time, in the tower, or in the suburbs, or in public places, or in houses or places, of any kind, under the same roof, or by dividing the same, or discharging thereof under different roofs, or in any yard or yards within London and Westminster, or the suburbs thereof, or within three miles of the Tower, or of St. James's, or on the Thanes, except in veils passing or detaining the same, or in bad weather, except carts and other carriages loading or unloading, or passing on the highway; on pain of forfeiting the same, and the value thereof, with full costs to him who shall sue in any court of record at Westminster in thirty days.

Stat. 2. Any justice of the peace within the said limits, on demand by any inhabitant possessing a reasonable cause, may issue his warrant for search in the day-time for dangerous quantities of gunpowder, and break open any place, if there be occasion, and thesearchers may be, and may remove the same in twelve hours out of the said limits, and detain the same till it be determined in the court, in the like manner as before not.

Stat. 3. And persons permitting others to keep gunpowder in any places not belonging to the owners of such gunpowder, shall forfeit one shilling a pound.

Stat. 22 Geo. 2. cap. 38. sect. 1. No person shall keep gunpowder for more than twenty-four hours at any one time in any house or other place, in any city or the suburbs thereof, or in any market town, or within one hundred yards thereof, or within two miles of any of the King's palaces, or one mile of any of the King's magazines; nor shall keep for more than twenty-four hours at any time, a greater quantity than three thousand pounds weight, in any house or other place.
GUT

Sel. 2. And any two justices, on demand made, and a reasonable cause assigned by any parli. officer, or two householders inhabiting where it is kept, shall issue thereon, in the day-time any house, shop, or other place, and breaking open the doors thereof; and if upon search, more than four hundred pounds weight or three thousand pounds weight respectively, as above, shall be found, all exceeding the said quantities shall be seized and detained, and forfeited to the said justices, and any person shall for his breakage, or the theft of the same, be liable to the day-time or the day for 50/. by the said justices; which court shall give judgment for recovery of the same, or the value thereof with full costs.

Sel. 3. No perfon shall convey at any one time, in any wagon or other carriage, a greater quantity than two thousand five hundred pounds weight, or five hundred pounds weight, in any one car, in any street or on any river, within one mile of any city or market town: and all such gunpowder shall be carried in covered carts and carriages; and the barrels shall be clofe joined and kept, and fecured that no part thereof be scattered in the pafsage, on pain of being feized and forfeited to the informer, on proof of the offence before two justices.

Sel. 4. Every perfon employed in any flourhouse where gunpowder is kept, or in carrying of gunpowder from one place to another, being convicted before one justice of wilfully committing any act, whereby such gunpowder may be in danger of taking fire, shall forfeit five pounds to the informer, for every hundred pounds weight of gunpowder contained in such flourhouse, or which he shall be employed in conveying, and on non-payment thereof shall be committed to the public gaol, without bail, not exceeding six months.

Sel. 5. But this act shall not extend to any magazine belonging to the Crown, or to hinder the trying of gunpowder by his Majesty's officers; or to the carrying of gunpowder to and from the King's magazines; or with forces in their march; or to any mills already built and used for the making of gunpowder, or to any flourhouses, warehouses, or other offices near or adjoining to such mills.

Sel. 6. The justices in seafons shall, on application to them made, appoint convenient plats of ground, two miles distant from any city or market town, not exceeding two acres, with the use of convenient roads leading thereto, for erecting warehouses for keeping gunpowder in any quantity, first agreeing with the proprietor; and if they cannot agree, the said justices shall issue their warrant to the sheriff to impanel and return a jury, who shall on oath (to be administered by the said justices) inquire into the value of the ground, with the use of convenient roads leading thereto; and all such verdicts and inquisitions shall be kept with the records of the seafons, and be conclusive to all parties; and the said justices may send for persons interested, and examine the parties and witnesses on oath; and the sum to be assessed as aforesaid, not exceeding thirty years purchase, shall be paid to the proprietor; and on such payment, or in case of refusal to accept it, or leaving it with the said justices for the proprietor, the inheritance of the ground, and use of the roads leading thereto, shall be vested in the purchasers and their assigns for the perpurses aforesaid, and not otherwise; and the warehouses to be built thereon, shall be built in such manner as will most effectually render them safe and secure.

Gunpowder, &c. Shipped after prohibition, forfeited,
29 Geo. 2. c. 16. sect. 2.

Alliance on exportation of gunpowder continued to 29th of September 1771, 4 Geo. 3. c. 11.

For other matters, see Salt pets. Ships, Cottages, &c. during these years. See Cott.

Cott. This act is used by Braddon for a stranger or guf tof, that lodges with us the fecond night. Lib. 3. trait. 2. cap. 10. In St. Edward's laws, published by Lanc. num. 27. It is written yf. Of this fea more in the trait.

Cott. Cott., Cotti. and Cotti, (called sometimes Jurr, by the Romans Cetti, and by the English Cottis; tis derived from the old word jet, which signifies a giant) Were one 3

HAB

of those three nations or people who left Germany, and came to inhabit this island. In Leg. Edw. Confiffor, cap. 35. we read, Gotti vero fimiliares, tom venientis, jufipi in Jufips regn. fent conjurati fratres ficut propri, &c.

Gutta. The gout. Cowell, ed. 1727.

Guttair. A gutter or spout to convey the water from the leads and roofs of churches.—Culps oris purit juncus, magnum placitas faciam feriatum nostraru superioris ecclefiam, et tune fimiliter mandari fecundum declarandum et eccleficam exterius, ut plebia librum famum habet per gutteras nec amplius, &c. Liber Statutorum Ecel. Paulus London. MS. fol. 41 a.

Gutter-tile or Cettarteil, is a tile made three corner-wise, especially to be laid in gutters, and at the corners of tiled houses and dovecotes, 17 Ed. 4. c. 4.

Guy, (Thomas,) His executors how incorporated for the management of his charities, 11 Geo. 1. c. 12.

Wabt-metchet, is a British word, signifying a fine made to some lords of manors upon the marriage of their tenants daughters, or otherwise upon their committing incontinency. Cowell, ed. 1727. See Barchett and Laibort.

Waldou, (Gouteloum, from the Sax. Gewel, i.e. patriulum, and fisus, locis), A place of execution. Lactus patellae juex eccleficam. Omnia gwalouwa, id eft, occi- dendorum loca, notify regis juxta fines in juicarum. LL. H. 1. cap.

Owayp, Waffe, (Faicium) Were properly such goods as felons or thieves, when pursued, cast down and left in the highway, which became a forfeiture to the King or lord of the manor, unless the right owner did legally claim them within one year and a day.—Recognitione millibus & libertis femininis, quod ad nos spectet et gwayref, &c. ita & statim reddatum eft modo le gwayref de Ermitis, siletet duo porci cum quinque parlitii. Perbor. Antig. p. 16. where the word signifies only fray-cattle. See Waffe and Strap.

Oydpit. It was found by inquisition upon an Ad quod damnum, 13 Ed. 3. n. 12. that there did belong to the liberty or hundred of Pathnet, in com. Wap. a certain court called gypit held every three weeks. Cowell, ed. 1727.


Cypfrs. See Egyptians.

A Cypfrs or Cypfr, was a sort of wandering monks, who left their own cloister and visited several others, pretending piety. Mut. Paraf. pag. 490.

Cypfr. (Fr. Tufs.) In Law-French signifies a Jew.

Et que nul gynu de cto juf en avant tel manier de dette. Provisiones de Judiciamine, 53 Hen. 3.

II.

HABC COPHAS, Is a writ which lies for the bringing-in of a jury, or so many of them as refuse to come upon the venue faciis, for the trial of a cause brought to illude. Old Nat. Brev. fol. 157. See great diversity of this writ in the table of the Register Judicial, verbo CONFESSION. And the New Book of Entries, verbo ABBOT. Cowell.

HABEC COPUS, Is a writ which a man, indiﬁed of a trefpas before justices of peace, or in a court of franche; and being apprehended for the same, may have out of the King's Bench to remove himself thither at his own costs, and to answer the cause there. F. N. B. fol. 230. And the order in this case is, first to procure an escoriis out of the Chanery directed to the said justices, for the removing.
removing the indictment into the King's Bench, and upon that to procure this writ to the sheriff, for the causing his body to be brought at a day, Reg. jud. fel. 81. and divers cafes, wherein this writ is to be used. Cowell.

Wherever a person is restrained of his liberty by being confined in a common gaol, or by a private person, whether it be for a criminal or civil cause, he may regularly by habeas corpus have his body and cause removed to some further jurisdiction, which hath authority to examine the legality of such commitment, and on the return thereof either bail, discharge, or remand the prisoner. Vaug. 136. Bufet's cafe.

The habeas corpus ad faciendum is that which issues in criminal cases, and is derived from a prerogative writ, which the King may issue to any place, as he has a right to be informed of the place and condition of the prisoner, and for what reasons he is confined. It is also in regard to the subject desired his writ of right, that is, such a one as he is entitled to in disfrive jusfritice, and is in nature of a writ of error to examine the legality of the commitment; and therefore commands the day, the cause, and cause of detention to be returned. 2 Inst. 55. 4 Inst. 182. Cors. Jas. 543. 2 Roll. Abr. 69.

The habeas corpus ad faciendum & recipiendum issues only in civil cafes, and lies where a person is confined, and is the law, in inferior jurisdiction; and he may have the cause determined in some superior court, which hath jurisdiction over the matter; in this case the body is to be removed by habeas corpus, but the proceedings must be removed by certiorari. 3 Bat. Abr. 2. If upon this writ a civil action, and also a matter of crime be returned; as if a person be arrested for debt, and also charged with a warrant of a justice of peace for felony. 1. If it appears to the judge or court, that the arrest for debt, or other civil action, is fraudulent, they may remand him. 2. If it be found real, they may commit him to the King's Bench with his caufes, tho' they are cases of the inferior courts, for that court is an officer of the crime as of the civil action; but then in the term the court may take his appearance or bail to the civil action, and remand him, if they see cause, as to the crime to be proceeded on below; but upon the writ ad faciendum & recipiendum, there ought not sillily a matter of crime to be returned, for that belongs to the habeas corpus ad faciendum. 2 Hal. Hisf. P. C. 145. and see Med. 133.

There is likewise a writ of habeas corpus ad respondendum, where a person is confined in gaol for a cause of action accruing within some inferior court; and a third person hath arrested a cause of action against him; in which case he may have his writ in order to charge him in such superior court; for inferior courts being tied down to causes arising within their own jurisdiction, the party would be without remedy, unless allowed to sue him in another court; but it seems, that regularly a person confined in B. B. cannot be removed to the C. B. by this writ, nor vice versa; for in those cases there can be no defect of justice, as these courts have converse as well of local as transitory actions. Dyer 197. a. 249. pl. 84, 296, 307. 1 Med. 235. Syl. Prat. Regijl. 350.

There are also, besides these, other writs of habeas corpus, as habeas corpus ad satisfaciendum & recipiendum, which lies to remove a person to the proper place or county, where he committed some criminal offence. 3 Bat. Abr. 21.

There is also a writ of habeas corpus ad satisfaciendum after a judgment; and on this writ the attorney for the plaintiff must indorse the number roll of the judgment on the back of the writ. Syl. Regil. 331.—Habeas corpus upon a cepi, where the party is taken in execution in the court below. —So upon an attachment out of Chancery, and a cepi returned by the sheriff, the next step is a habeas corpus; for the sheriff having executed the command, he must return the writ of attachment to the body, he cannot carry him out of the county without the King's writ. —There is also a writ of habeas corpus ad satisfaciend?, which is to remove a person in confine-

ment, in order to give his testimony in some court of justice; for which vide Syf. 119, 126, 250. 3 Keh. 51. Comb. 17. 48. A person committing a crime in Barbadoes, and apprehended here, may be sent thither by habeas corpus, and tried. 3 Keh. 560, 566, 568. Warner's cafe. —Also since the habeas corpus ad, a person committing a criminal offence in Ireland being here, may be sent to Ireland, and tried there. 2 Vent. 314. Colonel Landy's Cafe. Also Justices of Goal-delivery may send prisoners by habeas corpus to the Sheriff of their other County, and a precept to the Sheriff of that other County to receive them, namely, for a felony committed in that county, though that county be out of the circuit of the justice that founds them. 2 Heli. Hisf. P. C. 37. — That if any habeas corpus come to receive a prisoner from another gaol, the gaoler is to take notice of the writ, by which he is beth committed at the other gaol, and to inform the court, that if he shall happen to be acquitted, or have his clergy, he may yet be remanded to the former gaol if there be cause. Kelkynge 4. And that if any habeas corpus come to the gaolers to receive a prisoner, that with the prisoner they also certify the cause for which he is held there committed. Kelkynge 4.

1. What courts have jurisdiction of granting the habeas corpus ad faciendum; how far they have a discretionary power in granting or denying it; and of the habeas corpus ad.

2. In what cases, and to what places, it may be granted.

3. Of the manner of suing it out; to whom it is directed; manner of compelling a return, and remedy for a false return.

4. What matters must be returned, together with the body of the party; and where the return shall be deemed certain and sufficient to warrant the commitment.

5. Of suggesting any thing contrary to the return; of amending any defect in the return; and of bailing, discharging or remanding the prisoner.

6. Of the habeas corpus ad faciendum & recipiendum.

1. What courts have jurisdiction of granting the habeas corpus ad faciendum; how far they have a discretionary power in granting or denying it; and of the habeas corpus ad.

It is clear, that both by the Common law, as also by the statute, the courts of Chancery and King's Bench have jurisdiction of awarding this writ of habeas corpus, and that without any privilege in the person for whom it is awarded; but it seems, that by the Common law the court of King's Bench could only have awarded it in term-time, but that the Chancery might have done it as well out of as in term, because that court is always open. 2 Inst. 55. 4 Inst. 200. 2 Adit. 297. 2 Jan. 13, 14, 17.

If the habeas corpus issues out of Chancery, and on the return thereof the Lord Chancellor finds that the party was illegally restrained of his liberty, he may discharge him, or if he finds it doubtful he may bail him; but then it must be to appear in the court of King's Bench, for the Chancellor hath no power in criminal causes; or the Chancellor may commit the party to the Fleet, and in term-time may præpis manibus deliver the record into the King's Bench, together with the body; and thereupon the party to the King's Bench may order to bail, discharge, or commit the prisoner. 2 Hal. Hisf. P. C. 147. 2 Heli. P. C. 114-5.

If the habeas corpus, and also a certiorari be granted, returnable in Chancery, and the cause and body be returned there, they may be sent into the King's Bench; if the body only be returned with his caufes, by habeas corpus into the Chancery, and delivered over into the King's Bench, they may proceed to the determination of the return, and either by procedendo remand him, or grant a certiorari to certify the record afo, and thereupon com-

mit
mit or bafl the prisoner, as there shall be cause. 2 Hal. Hyl. P. C. 147-8.

But the finding an habeas corpus ad satisficendum & rectip- ed if the Chanceller for persons arrested in civil eases, especially being in execution, is neither warrant- eel law nor ancient usage, and particularly for- in the case ofjenry the 2 Hen. 5. cap. 2. as to persons in execution. 2 Hal. Hyl. P.C. 148.

There are several story of persons, or such as have no habeas corpus ad satisficendum could be in Common law if he out of the court of Exchequer or Common Pleas, unless it was in the case of privilege, because these courts are confined to civil causes merely; and therefore unless the party were an attorney, or intitked to the privilege of the court as an officer, &c. upon which there had been fair commensation, by their delaying to bring in these courts, they could not grant a habeas corpus ad satisficendum, to have any other writ of habeas corpus.Dyer 175. b. pl. 26. 2 Leaf. 55. 3 Leon. 18. 4 Leaf. 70. 182. 290. 1 Mod. 235. 2 Vaughan. 155. Carter 231. 2 Vent. 22.

But notwithstanding these opinions, it was holden in Bodle's case, that the court of Common Pleas may issue a habeas corpus ad satisficendum, and that if it appeared on the return thereof that the party was imprisoned and de- signed against law, the court might, th'o' there was no privilege in the case, discharge him; for that to render him would be an act of injustice in the court, and con- tradictory to justice. 4 Vent. 14.

Also by the statute of 16 Car. 1. cap. 10. they have an original jurisdiction to bail, discharge, or commit, upon a habeas corpus for one committed by the Council- Table, as well as the King's Bench, and that altho' there be no privilege for the person committed. 2 Hal. Hyl. P.C. 144.

Also by the habeas corpus act, 31 Car. 2. Any of the said courts in term-time, and any judge of either bench, or baron of the Exchequer, being of the degree of the coat, in the vacation, may award a habeas corpus for any prisoner whatsoever, and on their return direct him to be discharged. And upon the: holograph in the court, it is ordered that the commitment was against law, as being made by one who had no jurisdiction of the cause; or for a matter for which no man ought by law to be troubled; or bail him, if it shall be doubtful whether the commitment were legal or not; or remand him, according to the nature and circumstances of the case. 2 Vent. 14. 17.

Notwithstanding the writ of habeas corpus be a writ of right, and what the subject is intituled to, yet the prov- ision of the law herein being in a great measure enfrusted by the judges being only enabled to award it in term- time, as also by an imagined notion in the judges, that they are the superior power of great things, and acting but especially by the act and conscience of officers, to whom it was directed, who used great delays in making any return to it. 4 Leaf. 290. 3 Balf. 27.

By the 31 Car. 2. cap. 2. commonly called the habeas corpus act, reciting, "That great delays had been used by sheriffs, gaolers and other officers, to whose custo- dy the King's subjects had been committed for criminal or supposed criminal matters, in making return of writs of habeas corpus, by standing out an alias & praries, and sometimes more, and by other shifles, to avoid their yielding obedience to such writs, contrary to their duty, and the known laws of the land, whereby many subjects had been detained in prison in such cases where by law they were bailable." Therefore it be enacted, "That whenever any person shall bring any habeas corpus, di- rected to any person whatsoever, for any person in his custody, and the said writ shall be directed on the said of- ficer, sheriff, gaoler, or any other person upon commission of officers, under keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their un- der officers, under keepers or deputies, shall within three days after such service thereof, (unless the commitment were for treason or felony, plainly and specially expres- sed) be required to render an account of the charges of the offices, or render the charges of bringing the said prisoner, to be aterstated by the judge or court that awarded the same, and indorsed on the said writ, not exceeding 12. per- mile, and, on forfeiture given by his own bond to pay the charges of the office, and fees as aforesaid, and that he will not, in any way, make return of such writ, and bring or cause to be brought the body of the party so committed or re- tained, unto or before the Lord Chancellor or the Lord- keeper, or the Judges or Barons of the court from which the commitment is made, by reason of any thing whatever, other than by the legal order and process of their proper and lawful superiors, or such as shall appear, or other court having jurisdiction of the cause, on pain of 500l. And
And it is hereby further enacted, sect. 7. "That if any person, who shall be committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or the first day of the sessions of the court, or general gaol-delivery, to be brought to his trial, shall not be indicted some time in the next term, feions of oyer and terminer, or general gaol-delivery, after such commitment, the justices of the said court shall, upon motion in open court, the last day of the term or feions, for liberty the prisoner upon bail, unless it appear upon oath, that the witnesses for the King could not be produced the same term; and if such prisoner upon his prayer, &c., shall not be indicted and tried the second term or feions, he shall be discharged from his imprison-ment.

Provided, sect. 8. "That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with proceeds in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to law for such other term.

And it is further enacted, sect. 10. That it shall be lawful for any person as aforesaid, to move and obtain his habeas corpus, as well out of the Chancery or Exchequer, as the King's Bench or Common Pleas; and if the said Lord Chancellor or Lord Keeper, or any judge or judges, baron or barons, for the time being, of the de-etermination of any of the said habeas corpus to the vacation-time, upon view of the copy of a warrant of commitment or detainery, or on oath made that such copy was denied, shall deny any writ of habeas corpus by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the party grieved the sum of 50l.

It is provided, sect. 18. "That after the affizes pro-claimed for that county where the prisoner is detained, no perfon shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act, but upon such habeas corpus shall be brought before the judge of affizes in open court, whereon thereupon shall do what to justice shall appertain.

But it is provided, sect. 19. "That after the affizes are ended, any person detained may have his habeas corpus, according to the direction of this act." 

Sect. 3. "Assisted and subjoined to two wittifers! One wittiness, with an affidavit that the other is fufficient.

Sect. 7. The first week of the term] A person need not enter his prayer the first week, if there be an act of para-liament which forbids the habeas corpus act; and takes away the power of bailing for a time. 1 Salk. 103. — The grand feisions of Wales is in nature of a term; so that the party entering his prayer there on the want of profession for a term, B. R. may bail him. Com. 6.

Sect. 10. In the vacation time] And therefore this statute makes the judges liable to an action at the suit of the party grieved in one case only, which is the refusing to award a habeas corpus in vacation-time, but leaves it to their discretion, in all other cases, to pursue its directions in the same manner as they ought to execute all other laws, without making them subject to the action of the party, or to any other express penalty or forfeiture. 2 How. P. C. 92.

In the construction of this statute it was held by two judges, in the absence of one, contrary to the opinion of the other, that persons committed by rule of court are not intitled to the benefit of this act; and that none are intitled to make their prayer but such as are com-mitted by a warrant of a justice of peace, or secretary of State, and not those committed by rule of court, for that is not within the meaning of the act, which speaks of a commitment by warrant. Coas in Law and Equity 429—See Dall.

Vol. II. No. 86.

2. In what cases, and to what places, it may be granted.

A habeas corpus is a writ of right, which the subject may demand, and is the most usual remedy by which a man is restored again to his liberty, if he hath been against law deprived of it. Vaugh. 136.

By the 31 Car. 2, cap. 2. sect. 9, it is enacted, "That if any officer of this realm shall be committed to any prison, or in case of any other commitment before for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers, unless he be by habeas corpus, or some other legal writ; or where the prisoner is delivered to the contrary, or other inferior officer, to carry him to some other common gaol, or where any person is sent by order of any judge of assizes, or justice of the peace, to any common workhouse or house of correction; or where the pris-oner is removed from one prison or place to another within the same county, in order to a trial or discharge by due course of law; or in case of judicious fire or infection, or other necessity; upon pain, that he who makes out, signs or countersigns, or obeys or executes such warrants, shall forfeit to the party grieved one hundred pounds for the first offence, two hundred pounds for the second offence, and imprisonment for life for a third offence."

If a party be imprisoned against law, tho' he is intitled to a habeas corpus, yet may he have an action of false imprison-ment, in which he shall recover damages in propor-tion to the injury done him. Finch. Corpus cum Causa 3. 9 H. 6. 44. a. 2 hyf. 55. 10 H. 7. 17. 5 C. 64. 11 C. 68. 1 Lib. 153. 24.

But it was held in Balford's case, (which together with the other juror appointed to try an indictment for a riot between the King and Peas and Masts, were fined at the Old Bailey, because they found a verdict contra pronom evidendam et dirigendum eam in materia legit; and for nonpayment of the fine, of three dollars) that the constable, who brought their habeas corpus in C. B. and the imprisonment held illegal, (in several conferences with all the judges,) that yet no action lay against the commis-sioners, because they acting as judges and commissioeners of oyer and terminer, can no more be punished for an erroneous commitment, than a jury before a jury under infe-cese judgment; and the highest remedy the party in that case can have is a writ of habeas corpus. 1 Mod. 119. 3 Kee. 322, 358. Vaugh. 153. 2 Jas. 13. 1 Sid. 273.

If a husband confine his wife, she may have a habeas corpus; but the judges on the return of it, cannot re-move the wife from her husband. 2 Lev. 126.

A motion made for a habeas corpus to the Lord Leigh, for having in court the body of his wife; and the caee was, The parties were married in 1669, and because they were both within age, no settlement was made till 1671; Lord Leigh pernises his wife to levy a fine of some lands of 900l. per annum, whereas she had the inhe-rentance, to him and his heirs; and because the prayed to advise with her friends, he confined her until her mother had petitioned the King and council, and there the matter was referred to three lords of the council; and they made an award, which the Lady Leigh was ready to perform; but Lord Leigh began to her an infringement to be sealed, upon which (the made the same remark as before,) that she might advise with her friends, but he refused to permit it, and presently compelled his wife to go with him to his house in the country, where he made her his prisoner; and tho' by the barbarous usage of her husband she fell sick, yet he would not let her have physicians or servants to attend her, or to be visited by her friends; &l pare, a habeas corpus was granted, for this is a writ of right, which the subject may demand, and the King ought to have an account of his subject; and tho' it was objected, that here was no affidavit but of such com-plainant as the Leigh had made a letter to her mother, yet the habeas corpus was to go to the Lady in a con-dition to make oath of this matter herself, and to exhibit articles against her husband; for here is sufficient matter to compel him to find sureties of the peace, and of his grace.
HAB

HAB

good behaviour also; for this treatment the Lady may be
for our a divorce 352. sufficiency; and in a like case be
renewed. 7 Cal. Cas. and his wife, a bakese corpus
was granted; and in this case an attachment may be
granted against my Lord Leigh, if he refuses obedience
to the writ, for being a contempt, a peer has no privi-
1. 462. 463. 464. 465. 466.
It may be taken in the manner within a forcible
killing or chastising deer, &c. and the officer upon tender of
sufficient sureties refuses to bail him, he may have a ba-
ket out of the courts at Westminster, which courts may
bail him to appear at the next eyre held for the forest; and
this is the rather, because sureties-letters are but friend-
holds, and the party without this remedy, might be
obliged to continue a long time in confinement. 4 Tuth. 296.
If a person be in custody, and also indicted for some
offence in the inferior court, there must, refuses the ba-
ket corpus to remove the body, he is a certiorari to remove
the record: for as the certiorari alone removes not the body,
so the bakeset corpus alone removes not the record
itself, but only the prisoner with the cause of his com-
mitment; and therefore, although upon the bakeset corpus,
and the return thereof, the court can judge of the sufficiency
or insufficiency of the cause of his commitment,
ment, it will not find it different, or remand the prisoner,
as the cause appears upon the return, yet they cannot upon
the bare return of the bakeset corpus give any judgment,
without the record itself be removed by certiorari; but
the same facts in the same force it did, though the
return should be adjudged insufficient, and the party did
change theretofirn of his imprisonment, and the court
below may issue new process upon the indictment. 2
Held. Hiff. 240, 211. 1 Salk. 352. Comb. 2.
But it is otherwise in a bakeset corpus in civil caues,
which supports the inferior power of court; for
that as they proceed after, their proceedings are cems non jus-
dicit. 1 Salk. 352.
If a person be excommunicated, and the signification
does not express that the cause of excommunication
is for any of the offences within the statute 5 Eliz. the re-
medy expressly appointed upon that statute is a bakeset corpus,
and upon the return of it the parties shall be dis-
charged. 1 Vern. 24. Domini Rex v. Slider. & cai. 1
Sid. 18. 1. 1 Keb. 483.
If the Chief Justice of the King's Bench commit one
to the marshal by his warrant, he ought not to be
brought to the bar by rule, but by bakeset corpus. 1 Salk. 349.
Per Holt Ch. Jf. 330.
Galex is guilty of horse stealing, and in gaol at
St. Albans, was brought by bakeset corpus and certiorari
to R. B. and the court demanded of him what he could
say why execution should not be done upon the indict-
ment; and because he could not prove good cause to sfay
execution, he was committed to the marshal, who was
commanded to do execution, and the next day he was
hanged. 1 G. 1. 2. 51.
It hath been already observed, that the writ of bakeset
 corpus is a prerogative writ, and that therefore by
the Common law it lies to any part of the King's domi-
ions for the King ought to have an account why any of
his subjects are imprisoned, and therefore no answer
will finally be had, but to return the cause with certiorari
Hence it was held, that this writ lay to Cality at the
time it was subject to the King of England. Palm, 54.
It hath been held, that this writ lies to the marches of
Wales, as it does to all other courts which derive their
authoritie from the same courts, and the court executing
jurisdiction within his dominions do, and that it being a
prerogative writ, it doth not come within the rule Brinio
Dominio Reginae non currant, &c. for that must be undi-
352. but to return the cause with certiorari
and other
habeas corpus; for this is the subject's writ of right,
in which case the county patrime has no privilege; in 32
1. a bakeset corpus ad facultiendum and other
habeas corpus; for this is the subject's writ of right,
in which case the county patrime has no privilege; in 32
Ed. 1. a bakeset corpus ad facultiendum was directed to the
bakeset corpus must be directed to him. 32 Ed. 1. a bakeset corpus
was directed to the bishop of Durham to return
the body of one Rich'ty; and relieved, that the
write did well run thither; in this case the writ is di-
rected to the King, and not to the person removed, to
require the body here; but he commands him to have the
body himself, which is ill; again, the Chancellor do not
return the body to us, for there is no corpus pa-
"part"
1. A habeas corpus was directed to remove one J. S. to which no return was made; then an alias was granted, and it was returned good tradition in balthus ante adven-
tum itus breve; and the truth of the case was, that between the first and second writ the party was bailed; & for cor. after an habeas corpus delivered, the party cannot be bailed & more than once if it happens. The cause of the commitment ought to be returned, though the body can’t be brought into court; and in this case the officer having on the first writ of habeas corpus taken 3 l. to have the body in court, and yet making no return, the court granted an attachment against him. 3 Bac. Ab. 11. Hill. 25 & 26 Cor. 2. in B. R. Salmon ver. Slade.

Where a commitment is in court to a proper officer there present, there is no warrant of commitment; and therefore to a habeas corpus he cannot return a warrant in his own name, but must return the truth of the whole matter, under peril of an oath, & if he be committed to one that is not an officer, there must be a warrant in writing, and where there is one, it must be returned; for otherwise it would be in the power of the gaoler to alter the case of the prisoner, and make it either better or worse, at his pleasure, without the warrant.

When the writ of habeas corpus, the writ of security, and the writ of prohibition are brought in with the body of the officer, & the same committed to one who is not a proper officer, there must be a warrant in writing, & the proper officer to alter the case of the prisoner.

2. A habeas corpus was directed to remove one S. which no return was made; then an alias was granted, and it was returned good tradition in balthus ante adventum itus breve; and the truth of the case was, that between the first and second writ the party was bailed; & for cor. after an habeas corpus delivered, the party cannot be bailed & more than once if it happens. The cause of the commitment ought to be returned, though the body can’t be brought into court; and in this case the officer having on the first writ of habeas corpus taken 3 l. to have the body in court, and yet making no return, the court granted an attachment against him. 3 Bac. Ab. 11. Hill. 25 & 26 Cor. 2. in B. R. Salmon ver. Slade.

Where a commitment is in court to a proper officer there present, there is no warrant of commitment; and therefore to a habeas corpus he cannot return a warrant in his own name, but must return the truth of the whole matter, under peril of an oath, & if he be committed to one that is not an officer, there must be a warrant in writing, and where there is one, it must be returned; for otherwise it would be in the power of the gaoler to alter the case of the prisoner, and make it either better or worse, at his pleasure, without the warrant.

When the writ of habeas corpus, the writ of security, and the writ of prohibition are brought in with the body of the officer, & the same committed to one who is not a proper officer, there must be a warrant in writing, & the proper officer to alter the case of the prisoner.

3. As a gaoler, &c. is obliged to bring up the prisoner as the day prefixed by the writ, it is no excuse for not obeying a writ of habeas corpus ad subjiciendum, that the prisoner did not render the fees due to the gaoler; nor yet is the warrant of such tender an excuse for not obeying a writ of habeas corpus ad res bodem & ad captandum, but if the gaoler brings up the prisoner by virtue of such habeas corpus, the court will not turn him over till the gaoler be paid all his fees. 2 Cal. 178. March 89. 1 Keb. 272. 280. 2 Smur. 172.

For a false return there is regularly no remedy against the officer, but an action on the case at the suit of the party returned, for an information or indictment at the suit of the King. 6 Med. 40. 1 Salt. 349. But no action lies until the return is filed. 1 Salt. 352.

But it has been held, that if a gaoler return one Longinus when the party himself brings his habeas corpus, if in good health, an attachment shall be against him; but if the habeas corpus was brought by another. 2 Bac. Ab. 11.

4. What matters must be returned, together with the body of the party; and where the return shall be deemed sufficient and just, in order to warrant the commitment.

As upon the return of the writ the court is to judge, whether the cause of the commitment and detainer be according to law, or against it; to the officer or party in whole custody the prisoner is, malls, according to the commitment, with certificate in the return thereof of the day, cause of caption and detainer. Pang. 137.
I. ifc' but yet Robert at but and the 2 and well And is plead, upon his privilege, another return, and remanded, that to a breach of the peace. Upon this return, Archer declared his opinion to be, That he should not be remanded, but give his own recognition to appear in court the next term, to answer any thing that should be alleged against him; but Vaughan and Tysell were for his absolute discharge; for seeing by the return it did not appear there was any case for his commitment, they thought they had no reason to require a recognition of him. Thereupon Wall moved, that he could not be discharged, the case being two for it. But Archer replied, that it had been several times ruled, that where there were three opinions, that was taken to be a point of law, or a question of the judges for it; and accordingly Rudyard was discharged. Vaughan and Tysell made another objection to the return, viz. that they should have expressed the sum in which they required him to give security, (which they had not done;) for they said that those perform, that might be willing to be bound for him in 40 l. might not be willing to be bound for him in 100 l. &c. But as to this it was said, that yard had refused absolutely to give any security, and therefore it was no purpose to tell him of the sum; if he had confented to give security, then the judges ought to have told him the sum. Trin. 22 Car. 2. in B. R. Rudyard's cafe. 3 Bost. Abr. 12.

If true, and any defect in the return; and of ballots, discharge, or remanding the prisoner. It seems to be agreed, that no one can in any case controvert the truth of the return to a habeas corpus, or plead or suggest any matter repugnant to it; yet it hath been holden, that a man may confenate and avoid such a return by admitting the truth of the matters contained in it, and suggesting others not repugnant, which take off the effect of the return. 5 Cr. 63. 5 Cor. 71. 6. 2 How. P. C. 113.

Upon a habeas corpus it was returned, that Swellow, a citizen of London, was fined for alderman, and was committed for his fine by the judgment of the court in London. Swellow alleged, that he was an officer of the mint, and by an ancient charter of privilege granted to the minter of moneyers, he ought to be exempted. It was at first doubted whether he might not plead this to the return, it being a matter conformable with it. Upon the statute 17. 2, it is held the parties may come in and plead, and do upon 5 Eliz. But here there is a difference; for he might have pleaded this in the court below, but not that is paff, and here is a judgment and execution. Another day Swellow brought into court a writ of privilege upon that charter, and the recorder prayed that it might not be allowed against the ancient customs of the city; for if such a way might exempt men, they should have little otherwise of that, which privilege they may be supposed to be sufficient for, and it appears he has an office of necessary attendance elsewhere, which makes the privilege reasonable; the King may by his charter exempt from duities, if there be enough besides, much more here; and if there be not sufficient besides, upon the plea of privilege they may be supposed to be sufficient; and Swellow may be discharged by this court now as well as he could at first, or as if he had taken upon him the aldermanship. This court is supreme and mandatory in such cases. And he was accordingly discharged. P. D. 9. 3. Sir R. Swellow's case, 1 Sis. 257. 2 Eliz. 54, 55.

Afo the court will sometimes examine by affidavit the circumstances of a fact, on which a prisoner brought before them by an habeas corpus hath been indicted, in order to inform themselves, on an examination of the whole of the matter to which the prisoner is to be returned not: And accordingly here, where one Jackson, who had been indicted for piracy before the seises of Admiralty on a malicious prosecution, brought his habeas corpus in the said court, in order to be discharged or bailed, the court examined the whole circumstances of the fact by affidavits; upon which it was thought, that the prosecution himself, if any one, was guilty, and carried on the prosecution to feign himself: And thereupon the court, in consideration of the unreasonable and the uncertainty of the time when another seises of Admiralty might be holden, admitted the saidJackson to bail, and committed the prisoner till he should find ball to answer the facts contained in the affidavits.


It seems, that before the return filed, any defect in form, or the want of an averment of a matter of fact may be amended; but this must be at the peril of the officers, in the same manner as if the return were originally about what it is after the amendment. 1 Med. 102, 103.

But after the return is filed it becomes a record of the court, and cannot be amended. 1 Med. 102, 103.

So after a rule to have the return filed; as where a habeas corpus, alias & pluris was directed to Sir Richard, mayor of London, to have the body of Bridget, daughter and heir of Sir Thomas Hyde, deceased; and upon the pluris he returned good temporary receptions, bonus brevis nec usque usque poena sei juxta infra efi/uidum, and the counsel of the lord mayor expounded that return to the judge, that they, after the return had been amended, were not contained in custody present per breve juxta eos. If per ear this is an insufficient return, for he ought to say not only the temporary receptions, bonus brevis, sed alius/uis, upon return of a pluris. Then a question was, if the return could be amended; for though a rule was made that the return should be filed, yet this was not actually done; but per ear, this is filed by the rule of the court, and after cannot be amended; and this return the court held to be equivocal; for it is well enough known that she is not detained in ferris; but though the liberty of the house, if she cannot go out of the house, or of the keeper, she is within his custody; and the court shall adjudge what sort of custody is intended by the writ. Hilt. 26 & 27 Car. 2. in B. R. Emerson v. Sir Robert Viners. 2 Lev. 128. 3 Keb. 434. 447. S. C. 3 Med. 164. S. C. cited.

Upon the return of the habeas corpus the prisoner is regularly to be discharged, bailed or remanded; but if it be doubtful which the court ought to do, it is said that the prisoner may be bailed to appear de die in diem till the matter is determined. 5 Med. 22. Sty. 16.

By the petition of right, or 17 Car. 1. cap. 10. the court mufi within three days after the return of the habeas corpus either discharge, bail or remand the prisoner. But it seems that if a commitment by the court of King's Bench to the Marshalsea is a remanding, being an imprisonment within the statute. 5 Med. 22. 3 Bost. Abr. 14.

Also it hath been ruled, that the court of King's Bench may, after the return of the habeas corpus is filed, remand the prisoner, whether it be reasonable to bail him or not; and order him to be brought up from time to time, till they shall have determined whether it is proper to bail, discharge, or remand him absolutely. 1 Vent. 330.

And tho' in doubtful cases the court is to bail or discharge the party on the return of the habeas corpus; yet if a person be convicted, and the conviction on the return of the habeas corpus appears only defective in point of form,
form, it is at the election of the court either to discharge the party, or oblige him to bring his writ of error.


If on the return of the habeas corpus it appears that the contenf relates to the right of guardianship, tho' the court will not determine that point, yet will it set the infant at liberty, fo as to let him choose where he will go till he can come of age. If, however, the abufe, will order him into such hands as will take effectual care of him. 3 Scb. 526. 2 Lev. 128. Sra. 982.

6. Of the habeas corpus ad faciendum & recipiendum.

The habeas corpus ad faciendum is used only in civil causes, and lies for removing suits out of an inferior to some superior court, at the application of the defendant, who may imagine himself injured by the proceedings of such inferior court. 1 Med. 235. 2 Med. 178.

This writ fugends the power of the court below; so that if they proceed after, the proceedings are void, and coram non judice. 1 Sal. 352.

By this writ, the proceedings in the inferior court are at an end, for the perfon of the defendant being removed to the superior court, they have lost their jurisdiction to the contrary effect. The proceedings in the inferior court are de nouo, and bail de novo must be put in the superior court. Skin. 244.

And ahito' this writ be a writ of right, yet where it is to abate a rightfull suit, the court may refuse it; as where an action of debt was brought against a feme folo, and the court found for her, but at a date. The courts held the writ of habeas corpus to B. R. where she pleaded her coverture in abatement; and the court held, that if this matter had been moved on the return of the habeas corpus, they would have granted a praesumenda; but that now the plea in abatement was made too late, and that there were any danger of de novo, and the court takes not notice of the proceedings below, or of what preceded the habeas corpus. 1 Sal. 8. Hatherington v. Reynold.

After an interlocutory, and before final judgment in an inferior court, a habeas corpus cum causis was brought; before the return of the writ the defendant died, and a procedendo was awarded; because by the 8 & 9 W. 3, cap. 11. the plaintiff may have a fere facias against the executors, and proceed to judgment, which he cannot have in another court; and by this means he would be deprived of the effect of his judgment, which would be undue.

3. Sal. 357.

If an action be brought in London for calling a woman a whore, this cannot be removed by habeas corpus, because the words are not actionable elsewhere; and if allowed to be removed, the suit would be destroyed. 2 Rol. Abr. 69, and see Carth. 75. See 14 Vin. Abr. tit. Habeas Corpus.

Baldenium. Is a word of form in a deed or conveyance.

Every conveyance must have two principal parts, viz. the premifes and the habendum. The office of the premifes is, to exprefs the names of grantor, grantee, and the thing granted. The office of the habendum is, to limit the estate, so that the general implication of the estate, which, by the use of the word, is included in the premises, is by the habendum controlled and qualified. As in a lease to two perfon's, habendum to the one for life, the remainder to the other for life, this alters the general implication of the joint-tenancy in the freehold, which should pass by the premises, if the habendum were not. 1 Sal. 357.

The office of the habendum is to limit the certainty and extent of the estate to the freeholder or grantee, for the habendum need not repeat the thing granted; 'tis sufficient if it be named in the premises, because it is the premises that makes the gift, and the word habendum does of its own nature determine the thing conveyed. 2 Rol. Abr. 65. 2 Ca. 55 a. 9. Co. 47.

Of the habendum there are these things observablc: 1. That the habendum can't pass any thing that is not expressly mentioned or contained by implication in the pre-

mises of the deed; because the premises being part of the deed by which the thing is granted, and consequently that makes the gift, it follows that the habendum, which only limits the certainty and extent of the estate in the thing given, can't increase or multiply the gift, because it were absurd to say, that the grantee should hold a thing which was never given him. 2 Rol. Abr. 65.

2. If a man grant by habendum to another man, the habendum then is to fix on the grantee as if it were a freehold. This by the common law, as also by the statute of 25 Geo. II, the word habendum to another man, only the manor granted in the premisls will pass. 2 Rol. Abr. 65.

But if a private person grants a manor, habendum unam cun advocationes, which belongs to the manor, this is a good conveyance in the adfeor, because it was impliedly given by the gift of the manor itself. 2 Rol. Abr. 65.

The habendum may alter or abridge the gift in the premisls; and here it is regularly true, that the habendum, that is repugnant and contrary to the premisls, and shall be rejected; because the rule in the interpretation of all deeds is, that all grants shall be taken most strongly against the grantor; and therefore he shall not be allowed, by any subjunctive part of the deed, to contradif or retract that gift which he made in the premisls; as if a man gives lands to J. S. and his heirs, and grants the habendum for life, this is a void habendum, because repugnant to the premisls. 2 Gs. 23 Balden's cafe.

But for the better explication of this rule, it will be necessary further to consider it under these exceptions:

1. That if no express eftate be given in the premisls, as if a rent or any other vestry be given in the premisls to J. S. this creates an eftate for life in J. S. by the habendum, that is repugnant and contrary to the premisls; and shall be rejected; because the rule in the interpretation of all deeds is, that all grants shall be taken most strongly against the grantor; and therefore he shall not be allowed, by any subjunctive part of the deed, to contradict or retract that gift which he made in the premisls; as if a man gives lands to J. S. and his heirs, and grants the habendum for life, this is a void habendum, because repugnant to the premisls. 2 Gs. 23 Balden's cafe.

But upon the face of the deed it evidently appears, that the rent was given but for a determinate number of years, or only at the will of the grantor, there the law will never create an estate against the express provision of the parties, or permit J. S. to enjoy the rents beyond the period of time expressly limited in the deed. Hoh. 170. Co. Lit. 183. 2 Co. 24. a. 55. 2 Rol. Abr. 65, 66. Cres. Elia. 254. 8 Co. 154.

So the habendum may frustrate and controul the estate by implication in the premisls, that the estate implied by the habendum be void itself, thus if a deed of feufofent be made, and the lands given generally in the premisls, habendum to the feufofent and his heirs, after the death of the feufofent, the implied estate for life shall not pass by the premisls, because it is evidently the intention of the deed, that no estate shall pass till after the death of the feufofent, and the limitation in the habendum is void; because the livery can't pass the feufofent in future, for that would create an uncertainty of the feufofent, and others would be at a lofs against whom to bring their preciss, as is before observed. Cres. Elia. 254. Hogg and Crish. Hoh. 171. 2 Roll. Abr. 69. 2 Co. 55. Buckler's cafe. Mor. pl. 591. Cres. Elia. 451. 585. See Mor. 881. cent.

2. If to the perfecution a limited estate in the premisls there be a ceremony necessary, which is not required to pass the estate in the habitum; then if the ceremony be not performed, so carry the estate in the premisls, the habendum shall fail, tho' it be repugnant to the premisls; as if a man covenant, grants, demifus, and to farm lets land to A. and B. and the heirs of B. habendum to A. and B. for three hundred years, this is but a term of years in A. and B. tho' there be words of inheritance; for it was plainly the intention of the lefser to create an estate for these years, and to give the land to the heirs of his demifs; besides, it is evident that the lesseis by the premisls could have but an estate at will, as the words of inheritance in the premisls were not sufficient to
Harry the freehold without livery, which was not made in this case, and consequently the habendum does not really contraddle but enhance the premises. Thus my Lord Coke found in this case, that if livery had been made, only a term for years should have paifed; because that the words of demising and covenants in the deed plainly discover the intention of the parties to create a term; but querue of this, because there are words of inheritance in the premises; and therefore the premises are to be taken most strongly against the grantor. 2 Co. 23, 24. Baldinon's case. 1 And. 223.

But though the habendum can't retract the gift in the premises, yet it may confine and explain in what fenfe the words in the premises shall be taken; and it is upon a principle, that if the intent of the parties must be collected; therefore if lands be given to a man and his heirs, habendum to him and the heirs of his body, this is but an effate-tail; because the habendum only expounds the general word heir in the premises; and each explication is confident, and does not define the operation of the words mentioned in the premises, but only explains in what fenfe they are to be taken, and what heirs are comprehended. 8 Co. 154, 5. Co. Lit. 21, 4. Lit. Rep. 345.

A prebend demifed land, of which he was feised in right of his church to J. S. and his heirs, habendum to him and his heirs for three lives, and to be a good lead and his further interest; because the habendum explains in what fenfe, and to what purpose the word heirs was used in the premises, viz. to create a special occupancy in the leffe; for if the demife had only to J. S. habendum for three lives without injuring the word heirs, any finder upon the death of J. S. might have entered and held the land as a general occupant, during the lives of the Cyffhj que vitis; therefore the heirs of the leffe fhall enjoy the land, because they are mentioned in the premises; but the habendum explains in what manner they fhal] enjoy it, and that is as special occupants during the three lives. 2 Jon. 4. Polifworth and Dezz. 2 Ed. 865. S. C.

But it has been held, where a husband was feised in lead of right in his wife for her life, and they both by deed of feoffment conveyed the land to J. S. and his heirs, habendum to him and his heirs, to the ufe of him and his heirs for the life of the wife, that the whole fee simple paifed to J. S. and fo was a forerocle of the effate-tail; because there ought to be a femple conveyed to J. S. by the liberty, and the premises and habendum of the deed, the words of refeifion for the life of the wife refer only, to the limitation of the ufe, and consequently the fee simple remains in the feoffee; whereas in the former case, the conveyance relates only to the ufe of land; and therefore the revocation in the habendum must relate to that or be void, which is never admitted where they are only explanatory, and not repugnant. Cro. Ern. 141.

Piers and Hoc. So of a rent; as if the grant had been to J. S. and his heirs, executors and assignees, habendum to him and his heirs, executors and assignees, for or during the life of J. F. N. this is a good habendum, and the leffe has only an effate for life; for the habendum does not defeat, but explain the operation and ufe of the word heirs in the premises; for as this case flands upon the death of J. S. his heirs fhall enjoy the rent during the life of J. F. N. as special occupants; whereas if the rent had been granted only to J. S. for the life of J. N. it would have determined upon the death of J. S. because there can be no general occupant of a rent; and the heirs of J. S. could not take, because not named in the grant. Mor 856. 2 Rol. Ab. 66, Willkins and Parroti. 1 Ernou. 19, 113. 2 Blufb. 135.

But if the grant had been to him and his heirs, habendum to him for his life, and the lives of three others, this is likewise a good habendum, because it does not render the word heirs in the premises ufefuls, but expounds them only to create a special occupancy, and thereby to prevent the determination of the effate by the death of the grantor. 1 Blufb. 135, 136. Bowes and Parr. Co. Jf, 282.

But if the grant in the premises be of a rent to a man and his heirs, habendum for the life of the granteor, this is a void habendum, because it totally defeats the operation of the word heirs in the premises, and consequently is repugnant, and not explainatory, and therefore void. 2 Co. 23, 24.

If a man makes a feoffment in fee in 20 acres to A. and assigns the same to B. and the other moiety to A., and the other moiety to B. this is good; and the habendum makes them tenants in common for though the premises be joint, and therefore of themselves would operate to give a joint efate and possession, yet the habendum explaining the manner of possifling is not inconftient or repugnant, because it makes no division of that undivided poiflion which was given in the premises. Co, Lit. 190, b. 183, 6. Hob. 172.

But if the habendum had limited 10 acres to A. and the other 10 acres to B. this had been void, because the habendum, in this case, contradiles, and is repugnant to the premises; for if the premises, the entire and undivided poiflion of the whole twenty acres is equally given to both; and therefore the habendum that excludes A. out of his share of ten acres, and B. out of his share of ten acres, is contradictory to the premises, and therefore void. Hob. 172.

And if the lease be for two, habendum to one for life, remainder to the other for life, this is a good habendum, because it explains the design of the gift in the premises, and thefe that they Shall take the whole in fuccifion one after the other. Co. Lit. 183, 190. 2 Co. 55. Rol. Atr. 65.

So a lease for the mother and fon, habendum ris pro term Hungers erius & alterius erius dianus vivunt, jufcifove tur erius jufcifove diebus vivent, this is a void habendum, and neither B. nor C. can take any thing; not as leifes in poiflion, because not parties to the deed; and therefore the mother was adjudged to be agent for his wife, the remainder to the son. Dyer 361. 1 Bult. 145.

But a demise to A. habendum to him, B. and C. pro termo uiue & alterius uiue jufcifove diebus vivent, this is a void habendum, and neither B. nor C. can take any thing; but as leises in poiflion, because not parties to the deed, or named in the premises; nor by way of remainder, because they can't take jointly in remainder, the limitation being to them jufcifove; nor can they take in fuccifion one after the other, because non conflit of the deed who Shall take ftrike, because they are to take one after another, as they are named in the deed; and therefore the mother was adjudged to be agent for his wife, the remainder to the son. Dyer 361. 1 Bult. 145.

And a demise to A. habendum to him, B. and C. for their lives, provisionally it is covenanted and granted, that C. Shall not enjoy the land during the life of B. and that D. shall not enjoy the land during the life of C. this is but a collateral covenant, which shall not alter the nature of the estate given by the premises which create the gift. Gra. Erna. 89, 107. Mor 267. 1 Leon. 217.

A made a lease for three lives, and after grants the yevention to J. S. habendum to him for life, which laid estate for life to begin after the death of the three first heirs; this is a good grant of the yevention to J. S. during his life to commence immediately; for though the habendum, as it is already observed, may totally control any implicit or express words, and this grant given by implication of law, yet in this case there was an express estate given for the life of the grantee, and no subsequent words shall defeat that estate which was complete and express by the former part of the deed; and therefore the subsequent words which would limit the estate to commence in future, are void because the latter grant cannot be granted for instance, that grant was already observed. 2 Rol. Ab. 66. Hob. 171, Mor 881. Underhur and Underhay. Co. Erna. 209, ill reported.

A termor for years, reeding by indenture his term and estate, grants all his term, estate and interest to another, with the use and occupation of affigns, for a term of the grantor; this was held a void habendum, because by the grant in the premises, the whole interest...
H A B

was absolutely conveyed; and therefore the habendum which
retains the grant is void; for it may happen that the
grantor may deliberate the term, and then the habe-
dandum defects, and is repugnant to the grant. 2 Dyer 272.
Littly and Hynas, 2, ed. aty. 65. 1717. Cr. Eliz. 255.

A makes a lease for three lives of lands, and, after
demento to f. 8, for ten years the reversion of the land,
habendum the said lands from Michaelmas next en-
veloping, after the death of the issue for lives; this is a
good demise to f. 8, because the word reverent, includ-
ing not only the intent or estate which A had depend-
ingly transferred to the heirs, but the estate which A is
left, returning after the determination of the particular ef-
tate, the habendum which explains in what sense the word
habendum is to be taken, full hand; and therefore in this
case f. 8, f. 80 was adjudged to have a term for years in the
land, to commence upon the determination of the free-
hold. 1 Peth. 1637, 18, 165. Barcop. Ass. 1717.

Habitudes hominum. In a charter of Cemuel. King of
the Meriones, Anno 831. Nce Res fumum postum re-
quirat, vel habentes hominum, quas nos dicimus fequestrum- men, nec est qui acceptres portant vel faluentes. Mon. Angl. 
tom. 1. pag. 100. De Priftne says, they are no more than
habitationes, place where houses are built.

Habitationes. See Seats.

Habitationes. See Placeiun. See Shelter, 

Habitatio eti frisianum, is a writ judicial, which
lieth where a man hath recovered land in the King's
court, directed to the sheriff, and commanding him to
give seisin of the land recovered. Old Nat. Brevo. fol. 254. See great diversity thereof in the table of the Re-
script Judicialis, verbo Habito faciens seisinum. This writ
is sometimes shining out of the records of a fine execu-
tory, directed to the sheriff, to the commonalty of the place
where the land lieth. And commanding him to give to the cogni-
see, or his heirs, seisin of the land whereto the fine is
levied, which writ lieth within the year after the fine, or
judgment upon a fine facis, and may be made in di-
vers forms, Prell. Symbol. 2. tit. Persona, f. 136. There
is also a writ called Habito, a faciam seisinum, unde Res ha-
biiit annum, dianm et v hạum, which is for the delivery
of lands to the lord of the fee, after the King hath taken
his due of his lands that was convicted of felony. Reg.
Origo. fol. 165.

Habitatio eti frisianum, is a writ that lies in divers
cases. One call Bredon or Bredon, where view is to be
taken of the lands or tenements in question. F. N. B.
in Indici, verbo Vireo, Bracton, lib. 5. traet. 3. cap. 8. &
26, 45, 49, 52.

Habritillus. A fort of fish, perhaps barbarituna, or
e of cod-fish and dried and salted. Cowell, edit. 1759.

Haburgeran. An helmet or head-piece, which covered
the head and shoulders: From the Germ. balz, collum, and
brogan, tegere.

Haburcrs or Hauurcrs, Hauuerkett. A kind of
clot or mixt colour. Una fist latituin penumbrarum tinc-
tur. Hauuerkett to 2. heuerkettariam, f. 2. duum ulce infra
c. 22. Cowell, edit. 1717.

Habitationes of war, Are armour, harness and pro-
vision of war of all forts, without which no war can be
maintained, 3 Par. Hist. fol. 79. 3 Eliz. c. 4.

H A F

Habitus, the plural of the French habite, signifies
a port or haven of the sea; whence it is first brought into
other countries, and where they do arrive when they
return from their voyage; This word is used 27 Hen. 6.
c. 2. Cowell, edit. 1727. See Halitan.

Halamba, Abundance, plenty. — Recipit de caffo &
fatica, & se meo propter habudum naticum maximun. Pericr. Arch. 179. pag. 448.

Darche, A hatch, a gate or door. Cowell, edit. 1727.

Darche. See Darches.

Darjury, A hatchet or cutting instrument of iron.
Cowell, edit. 1727.

Darjia, A lock, a pick or instrument for digging,
Adam de Hol charter. Henricus Secundum, parum
manueri de Acterton, & flatin parvereunt ad aliquam
quartum partem de Selinus in Selinem, & ad ultimo Se-
leum dictis Adam cum hacta zesti quamdam particular
terrae, & tradidit illis dictis Henrico nomine zeininae. Pla-
C. Eliz. 3. MS.

Darcheyn, dooarch and chairs. See Coaches and
Chairs.

Daborc, Was a remonstrance made for the violation
of holy orders, or violence offered to persons in holy or-
ders. See Vexation.

Habendum expleat. See Darches.

Habere dius, a day. Habeo terrae, Sce heuerdidi in maros
domini duos aera terra antices' decem Selinus & duas
hadas. Anglies, ten ridges, and two haches, jacent inter terr.

Haberdugs. Recept of persons, partiality, from Sax.
had, perdon, degree, quality, and arrogancy, honouring,
admiring, or in the laws of the King Ethelred.--Ju-
dicio debet esse fine maxime haberdun, quod non pariter di-
visi uti debet in eis. &.

Haberdunc, alias Hyggenul. Seems to be a tax or
must. Item quandis aliquis deplauce terram Burguicii
in Elymorea conventus, terra illa faciat de carere effa quinta
dum habere & maxime ecleazis. Mon. Ang. 1 par.
f. 502 a. q.

Darcrebe absence. Is a writ that lay for a lord, who
having the warship of his tenant under age, could not
come by his body, for that he was conveyed by another,
Old Nat. Brevo. fol. 93. See Habeinment ce garde, et
Hareide rapes in Reg. Orig. f. 163. but now out of
use.

Darcrebe deliverando alii qui habere susubdom
terrae, is a writ directed to the sheriff, commanding
one, having the body of the heir that is ward to another,
to deliver him to, whole ward he was by reafion of him.
Reg. Orig. fol. 161. This is now out of use by
12 Car. 2. fol. 524.

Darcrepitia. The next heir: Et nullus heredita
fas propoqua vel extranea periculo sae custodia committatur.
Leg. H. c. 70.

Darectate. To give a right of inheritance, or make
the donation hereditary to the grantee and his heirs.
—Tandem abus contus et patrocinii antecuram berrarum Sandum
Gale, cap. 41.

Darcreticu obscurando. It is a writ that lies against
him that is a heretick, s. that having once been con-
trusted of the devi by his bishop, and having abjured it,
afterwards faileth another, or into some other, he is
thereupon committed to the secular power. F. N. B.
fol. 269. This writ lies not at this day, according to the
opinion of Sir Edmund Coke in his twelth Rep. fol.
93. This writ is now utterly abolished by fiat. 39 Car. 2. 
cap. 9. Britton, lib. 1. ch. 17. says, that, by the Com-
mon law duty, as felonously burn the corn or houses of
others, forreces and forrecresses, sodomitical and heretic should be burnt.

Darectes cours: Hafina is a Danab word, and signifies
us with a leon or sea-apt. Letters patent of Richard,
Duke of Gloucester, Admiral of England, 14 Auguy ano
Ed. 4. have these words. Uttericae sicum, quod dicit ubri
& convivat & prae leores jux habes & habere conuenientur
per idem tempor in praedicta uixis (Stan-after & Rugghead)
cum Hafina quasdam quarum parum, vocien haine courts, re-

2
Ham, A house; also a village or little town: This is a common name of many towns in England, as Nottingham, Buckingham, Welfingham, &c.

Hamlets. See Habibs.

Hambury or Hamburying of dogs. Is the fame with expeditating; Manwood's Forst Law, ca. 16. num. 5. says, this is the ancient term that foresters used for that matter, and num. 17. he adds, Conventus in his 5th canons, doth call the leaving of dogs, gena-fijae, which was a kind of cutting or maiming of dogs in the hom, which the old foresters called hamburying. See Esprit data.

Hamlet, an also Hambert, and Himpfelt, Are diminutives of hurn, which signifies habitation. Coad. Brit. vol. 6. p. 260. says, In the Kitton law, a field called Hambury, who also used hampert for an old house or cottage decayed, fol. 103. Hamlet, as Stow ueth it in Edw. 3. femeth to be the feast of a freeholder; for there he faith, The King bestowed two houses and nine hamlets of land upon the freemen of London, for the keeping of twenty shifts for his wife Queen Eleanora's dowry. See domus, making a difference between villam integram, villam dimum & hamletum, hath these words, Hamletam vero quia medietatem frigoris non obtinuit, hoc est ubi quinquies capitata plaga non fuerat apprehendens. The nature of Exon, 1 Ed. 1. mentions it thus: Las nomes de toutes les villes, & hamlers que font en fin cantouc, &c.

Dameletius, A hamlet.—Cum duas solida annui redditus in hamelio de Chetam. Will. Thorn.

Hamfarce, Is by some taken to be the same with ham-fame, i.e. The freedom of a man's house; from the Sax. bam, bomus, and fama, fame. See &c. of this word. Sax. bom, bomus, and fam, famae, immunitas, but it seems rather that hamfore is derived from the Sax. bom, bomus, and fam, familae, or fore, ier vel proprie. So that hamfare is a breach of the peace in a house; and this appears by Brampston, in Legibor Hen. 1. cap. 80. Si quid album in suo vel altero domo in his coloniis fuerit, tum non habetur. See &c. of hamdis and ham-fore. Sax. bom, bomus, and fam, familae, descipit, factit, homonoce vel farfamare, i.e. he is either guilty of a violent entry into the house of another, or of the breach of the peace in his own house; for by the denition it appears that the offences are not the same.

Cowell, edit. 1727.

Hamanna, A home-clofe, a small croft, or little meadow.


Hamanna, Some sort of fishing-tackle; perhaps the poles with which they beat the water, to drive the fish into the nets.

Cowell, edit. 1727.

Hamann-Court, Made an honour, &c. 31 H. 8. c. 6.

Hamfelt. Skene de vorbor, signifieth, writeth it Haimfetten; and deriveth it from haim, a German word, significeth a house, and sculben, that is, to seek, fetch, or procure burgher and word homace. In a charter of donation from King Edward to the church of St. Mary, Glyston, we have these words, Concedo libertatem et proprietatem, jura, consultationes & annos for EQUALITAS annuum terrarum quorum, i. Bergherth & hundred-feeta, alias

Vol. II. No. 86. HAN

Ordell & infingothes, homacne & frisberic & forfel & tol & team in omni regno mes, &c. It signifieth also a chancifhe or privilege so called, granted to the lords of manors, whereby they hold pleas, and take cognizance of the breach of the that immunity. Cowell, edit. 1727.

Hambyquatt, A foreury, a manual pledge, that is, an inferior undertaker; for head-burrow is a superior or chief instrument. Spelun.

Hand in and hand out, Is the name of an unlawful game, prohibited by 17 Ed. 4. c. 2.

Hand, Is four inches by the standard. Stat. 33 H. 8. 5. &c.

Handbrigth. Peace or protection given by the King, with his own hand. So among the compacts of Alfred and Gudrun, edit. 1. Et has ef? primaeditum ecclesias, per inter partis fiant, ut Regi hand-brigth sumper inconstans. This is the meaning of that privilege in the 15th chapter of the Laws of King Hen. 1. Hanc militia huminem in misericordia Regis, infradicto pacto quam per manum fuanas dubit alicui. This is what we call batery. Cowell, edit. 1727.

Handgun, Is an engine prohibited to be used, and carried about, by the statute 33 Hen. 1. c. 6. And though a dag was invented of late time, and after the making of the said act, and is not known by the name of a hand-gun, but by its own special name, yet the carrying a dag is within the act. See Co. lib. 5. fol. 71, 72. See Vitar.


Hand-warp, A kind of cloth made at Cockbalf, Bocking, and Brainters in Essex, and mentioned in the statute 4 & 5 Phil. & Mar. 5.

Hamattar. See Pinfarre.
HAW

Hawker, (French boucet, lieux) He who holdeth land in France, by finding a cost or thirt of mail, and to be ready with it when he shall be called, is said to have Bouceterium feudum; whereas Hauken wrighteth thus, Hawker or Hawkeh, Gallien lingua vulgaris pretoriam pro lari- catum, i. deum suffulto ad conditionis, ut ad eadem fisciurium ficius caperatibus fit præfis. Nam ut iure Latini proprius tegmen de lute factum, qua veritates in bello utendatur, & frequenti time autem pro anza armamenta integra superatur, ut sit amplius Gallus haubek propriis larinis annuis contrahatur, quam velut ext de mande apparellum. Histron in verb. feudal., scr. haubekterium feudum. Hawker, with our ancestors, seethem to signify as in France a thirt or cost of mail, and so feethen them to be used, 13 Ed. 1.

flit, cap. 6. though in these days the word is otherwise written, as barker, and signifies a weapon well enough known.

Hawke, In Domesday-Book signifies manor or dwel- ling-houses.

Hawke, Small vbsidi of burden to carry goods in the river Thames from Faversham, to London, such as are still called boys. Covell, edit. 1727.

Hawker, Those deceitful fellows that go from place to place, buying and selling brads, pewter and other merchandise, that are sought to be uttered in open market: The appellation seems to derive from their uncertainty, like those that with hawks seek their game where they can find it; you may read the word 25 Hen. 8. c. 9, and 33 Hen. 8. c. 4. We now call those hawkers that go up and down the streets crying new books, and selling by retail; and those that sell them by wholesale from the press are called Mercury's.

Hawkers of unflamed news-papers to be sent to the house of correction, 16 Geo. 2. c. 26, edit. 5.

Hawker and Pedlar. Stat. 9 W. 3. cap. 27, s. 1. There shall be paid to his Majesty by every hawk and pedlar, petty chapman, or other trading person, going from town to town, or to other men's homes, and travelling either on foot, or with horses or others, carrying to sell any goods, a duty of 4 l. for each year; and every person so travelling with a horse or other beast bearing or drawing burden shall pay 4 l. a year for each horse, or beast, falling above the other 4 l. Sel. 2. Every pedlar, &c. to travelling, upon receiving his licence shall pay unto such persons as the Lords Commissioners of his Majesty's Treasury shall appoint to be commissioners for licencing hawkers, pedlars and petty chapman, not exceeding three, or any person deputed by them, one moiety of the duty, and give security by bond, with one surety to be taken in his Majesty's name, for the payment of the other moiety at the end of six calendar months, unless the party shall choose to pay down the other moiety; in which case he shall be allowed 2 l. in order of prompt payment.

Sel. 3. If any such hawkers, &c. be found trading without licence, such person shall forfeit 2 l. one moiety to the informer, and the other moiety to the poor of the parish; and if any person so trading, upon demand made by any justice of peace, mayor, constable or other officer of the peace, any town corporate or borough where he shall so trade, shall refuse to produce his licence, he shall forfeit 5 l. to the churchwardens of the parish, to the use of the poor, and for nonpayment shall suffer as a vagrant, and be committed to the house of correction.

Sel. 4. The commissioners, or any two of them, are required upon their oaths aforesaid to grant a licence to every hawk, &c. for which licence the person shall only pay 1 l. unless such hawk, &c. shall travel with horse or other beast, and in that case there shall be paid 2 l. over and above the duties; and the commissioners shall keep a distinct account of the duties, and pay the money into his Majesty's Exchequer upon Wednesday in every week (unless a holy day) and then on the day after, and upon neglect of the same shall incur the penalties as other the officers of the Exchequer.

Sel. 5. If any person shall forge any licence, or travel with such forged licence, such person shall forfeit 50 l. one moiety to the King, and the other moiety to him that shall sue for the same, to be recovered in any of his Majesty's courts at Westminster, and shall be subj ect to such other penalties as for forgery.

Sel. 6. Any person sued for putting in execution this act, may plead the general issue Not guilty; and if the plaintiff be nonsuit, &c. such defendant shall have treble costs.

Sel. 7. If any confable or other officer shall neglect to be assiduous in the execution of this act, being required, and being thereof convicted by the oath of one witnesses before any justice of peace, he shall forfeit 40 l. to be levied by different fines of goods by warrant of such justice; the one moiety to the poor of the parish, and the other moiety to the informer.
H A Y

Sect. 8. It shall be lawful for any person to seize any such hawkers, &c., till he produce a licence, or if he be trading without a licence, for such time as he may give notice to the confable or some parish officer to carry such person before a justice of peace; which justice is re-
quired, either upon confession of the party or proof by
witness, that the person had so traded, and that the licence shall be produced before the justice, by warrant to cause the said 2d. to be levied by diffrents and sale of goods.

Sect. 9. This act shall not prohibit any person from selling acts of parliament, forms of prayer, procla-
mations, gazettes, licensed almanacks, or other printed pa-
ers licensed, or from selling act or making, by order or under
the order, of masters of goods within the kingdom, or their chil-
dren, apprentices, agents or servants, from carrying or
selling the goods of their own making; nor any tinkers, cooper,
coopers, glaziers, plumbers, hawkers menders or other per-
sons usually trading in mending kettles, tubs, household goods or hawkers, from going about and carrying mat-
ials for mending the same.

Sect. 10. There shall be kept in his Majesty's Exche-
quer in the office of the auditor of receipts one book, in
which all monies paid by virtue of this act shall be
entered.

Sect. 11. If any officer in the Exchequer shall misapply
any of the monies, such officer shall forfeit his office, and
be incapable of any place of trust, and shall pay the treble
value of any sums so misapplied to the persons grievances,
their executors, administrators or assigns, who will sue
for the same in any of his Majesty's courts at Westminster,
where no effon, &c., privilege of parliament, or other
privilege shall be allowed.

Sect. 12. Nothing herein shall hinder any person from
selling goods in any public mart, market or fair.

Sect. 13. It shall be lawful for the commissioners of
his Majesty's Treasury, out of the money paid by this
act, to pay to the commissioners, to the clerks or other
persons, such sums of money as they may desire for their
service.

Sect. 15. This act shall not extend to give power for
the licensing of any hawkers, &c., to sell any wares in
any city, borough, town or corporate market, other-
wise than might have been done before.

Thief duties are made perpetual, and made part of the
aggregate fund, 3 Ann. cap. 4. 7 Ann. cap. 7. and
1 Geo. 1. cap. 12.

Stat. 3 Ann. cap. 4. fett. 4. Every person who being
actually trading as a hawker, &c., shall not upon demand
have his licence ready, shall forfeit as if he had traded
without a licence; and in case any person shall lend his
licence, the peron lending, and the person trading under
our colour of the same, shall either of them forfeit 40 l. one
moteiy to the Queen, and the other moteiy to him that
shall sue for the same in any of her Majesty's courts of re-
cord.

Sect. 14. Persons trading in the woollen or linen ma-
ufactures of this kingdom, and selling the fame by
wholesale, shall not be deemed hawkers, pedlars or petty
chapmen, within any aét; but such persons, and those
immediately employed under them, may carry abroad and
sell the manufactures. See 23 Geo. 2. sect. 6.

Sect. 4. Geo. 1. c. 6. No maker or wholesale trader in
English bone-lace, shall be deemed hawkers, pedlar, or
petty chapmen.

HAP. (Hoya, French hoya.) An hedge, an inclosure,
anciently fenced with rails, as in Cont-Porth there were
such fences to fence in moss parks; sometimes it is used
for the park itself, sometimes for an hedge or hedged
ground. Universitatis capell. B. Petri Ebor. conscientia
ad firmam totam huyam nonam de Langerath cum eis ejusdem
huyam, bruera, martis, & embhab ais pictam. Rudolbin
inde animaduit nobis tempore pinguedini umam damnam,
& formosum tempore umam damnam, &c. 23 Kath. 13 Kalend.
Jan. anno 1279.

Hap and hapy-market. Regulations concerning the
hay-market at Westminster, 2 H. & M. jf. 2. c. 8.
Provisions for preventing fraud in the sale of hay and
thereof, 31 Geo. 2. c. 40.
HEI

Hedda

Hedda, the weeks-man, or canon or prebendary in a cathedral church, who had the peculiar care of the quire, and the offices of his for own use.


Cowell, edit. 1727. Hedonamus, (Gr.) A week. Julius Cæsar divided the year into twelve months, each month into four weeks, and each week into four days, according to the number of the seven planets. See more of this matter at large, &c. de week, genufser Hortus Hedonamus.

The is the name of an engine to take ship in the river Osyr; near York, ann 23 Hen. 8. cap. 18. and Hereford, which occurs in our records, may be the rent paid to the lord of the fee, for liberty to use those engines. Cowell, edit. 1727.

Hedramus, (Gr.) A week.

Hedmonus, for Hob. Every man, and Cowell, &c. of the fons of their, adam erit. 

Sectant paid Episcopi toque Cawell, of the boundary of his, and of his estate, at the beginning of the 90th, as in this charter of Adelise, wife of King Henry 1.

Seintiant præsidet & futuri quod ego Dei gratia Anglorum Regina, deti eeclesiae de Redings usque anno in Natali Domini centum solus de heda mea ad faciendum annuariiomin Domini mei Regini Hueni, & usi & finifter persons of the preminium felat qui fungent se, viarint & barker paterti de prædita heda mea London. Tiff. &C. Cartular, de Radinges, MS. fol. 5. a. Cowell, edit. 1727.

Hedugianum, Toll or cullom paid at the tithe or wharf, for landing goods, &c. from which culomary duties are exempted, by the King to some particular persons and societies.

Sintque abass & manum de Redinges & tames enram & res iforum quitie de hadegis & thewmes & omnibus exsillinium & confessuniis per tostum Angiam. Cartulari, Bastabie de Redingas, MS. f. 7. a.

Hedge-jubc, Is necessary stuff to make hedges, which the life for years, &c. may of common right take in his ground laid.

Hedge-breaking. See Wood.

Hegira, The Mahometan era, or computation of time, beginning from the flight of Mahomet from Meca, which was July 16, an. Christ. 622.

Pineare. See Pineate.

Hefir, (Harres,) Though the word be borrowed of the Latin, yet it hath not altogether the same signification with us that it hath with the Civilians; for they call Herefed, qui ex stelamante succedi in universam jux steltatoris; the Common law calls him heir, that succeeds by right of blood in any man's lands or tenements in fee; & by the Common law nothing palfale jure hereditatis, but only fee; moveables, or chattels immovable, are given by stelament to whom the steltator lifeth, or else are at the disposition of the ordinary, to be distributed as he in confidence thinketh meet. Causanes in Conflatud. Burg. pag. 929, hath a definition of harres, which, in Some, accordeth well with our law; for he faith, there is harres fanguinis & hereditatis. And a man may be harres fanguinis with us, that is, heir apparent to his father or ancestor; and yet may, upon defeiture, be delected of his inheritance, or at least the greatest part of it. Every heir having lands by descent, is bound by the binding act of his ancestor, if he be nameit. For qui fenti commodum, fentive debt & ouw. Co. on Litt. fol. 7. 8. Cowell, edit. 1727.

An heir, faith Lord Coke, in the legal understanding of the Common law, is he to whom lands, tenements or hereditaments, by the act of God and right of blood do descend, of some estate of inheritance. Co. Litt. 7. 8. 3 Co. 12. b.

The word heir in the notion of it implies, that the party has all theo legal qualifications which our law requires in all persons that represent or stand in the place of another, and is of such importance, that regularly without in the word heir no fee-simple can be created. Co. Litt. 9.

HEI

1. Of the feudal kinds of heirs, namely, the heir eiparent, the heir general, the special heir, the customary heir, and the barons fallus.

2. Of what conditions and covenants of the ancestor shall the heir take advantage; and by what conditions, covenants and contracts of the ancestor shall the heir be bound.

3. What allions may an heir commence and prosecute in right of his estate, and whether he shall be bound to answer his ancestor's debts and contracts.

4. What shall be assises in the hands of the heir.

HEI

1. Of the feudal kinds of heirs, namely, the heir apparent, the heir general, the special heir, the customary heir, and the barons fallus.

Heir apparent. Here we must observe, that no person can be heir apparent, until the death of his ancestor, according to the rule, Nemo of barons silentius; yet in common parlance he, who stands nearest in degree of kindred to the ancestor, is called, even in his life-time, heir apparent. Co. Litt. 8. a.

Also the law takes notice of an heir apparent so far as to allow the ancestor to bring an action of trespass for taking away his fon and heir, and makepliant with it, for the father being guardian by nature to his fon where his lands descended to him. Co. Litt. 37. Ratcliff's cafe. Co. Litt. 75. 84. Dyer 189. Vaugh. 180.

Also a person may take by purchase, or dejetitia persona by the name of heir, even in the life-time of his ancestor; as where a man devolves lands to A. and his heirs during the life of B. in trust for B. and after the decease of B. to the heirs males of the body of B. now living, it was held, that by the devile the remainder was immediately vested in the fon, and that the words heirs male now living, in a will, were a full description of the fon, who then was the heir apparent of B. and known by the devile to be so. 1 Pyn. 311. 334. Raym. 330. 2 Lev. 232. Barchet v. Durdant.

But the fon and heir hath no power over the inheritance during the life of the ancestor: Therefore if a fon and heir bargains and sells the inheritance of his father, this is void, because he hath no right to transfer; so if he releases, the law is the same. Kelw. 84. Co. Litt. 265.

But if the fon makes a covenant of the inheritance of his father, this paffes an eacute during the son's life; for it is a disfullin to the father, and the son, after the father's death cannot avoid it. For no man can allege an injury in another by a voluntary act of his own. Co. Litt. 265. a.

Neither is there any privity between the heir apparent and his ancestor, as to make a fine levied by the ancestor a bar within the 4. f. 7. and if the heir apparent be fied of lands, and the father levies a fine and dies, it shall not bar the heir; because he does not claim or derive any title to the land from his father, and therefore in that respect shall have five years to preserve himself from the fine: For the privies understood and intended by the act, are those who are privy not only in blood, but likewise in estate and title to the land of which the fine was levied, that is, those who must necessarily mention the covenator, and convey themselves thro' him, before they can make out their title to the eacute. 2 Inj. 535. 3 Co. 89. a. Hob. 333.

Heir general. The heir general or heir at Common law is he who after his father or ancestor's death hath a right to, and is introduced into all his lands, tenements and hereditaments. But he must be of the whole blood, not a bastard, alien, &c. See Deftruct and Coparatars.

None but the heir general, according to the course of the Common law, can be heir to a warranty, or sue an appeal of the death of his ancestor. Co. Litt. 14. a. orbit. 13. a.

If a condition be annexed to Borough English or Gavel-kind lands, and the condition is broken, the heir at Common law shall enter; for the condition is a thing of new creation, and collateral to the land: But when the eldest
The heir at law is bound by his ancestor’s alienations and dispositions, as also by his conduct and covenants, as far as he hath affets; but if a man covenants, that after his death his heir at law shall feid to the use of his yeouget son, this is void. 

If the ancestor agrees to convey or fell lands, and receives part of the purchase-money, but dies before a conveyance is executed, and a bill is brought against the heir, he will be decreed to convey, and the money shall go to the executor, especially if there are more debts due than the testator’s personal estate is sufficient to pay. 1 Vern. 51. Ab. Reg. 165.

So if a father conveys to a younger son by a defective conveyance, and dies, the heir at law in two cafes shall be compelled to make it good. 1. Where there is a covenant for further assurance, binding the heir; because the heir is bound by the covenant. 2. Where there is a provision made by the father in his life-time for the heir, or he hath such provision by defect from the father. See 1 Vern. 16.

Also the heir at law is bound by a decree obtained against the ancestor; which may be carried into execution two ways: 1st, If the decree is enrolled, the party may sue out a foro sine facias against the heir, to recover the greater part of the debt. But this is only after an enrollment, and not before: And the party must, at the return of the foro sine facias, sue for, if he hath any, against the decree.

2dly, The plaintiff may bring his bill of revivor, to carry the decree into execution: And this is the surest and safest way; where the title is uncertain. For the heir against the ancestor, and his heir does not claim under that title, but by virtue of another title, paramount, there the decree can never be carried into execution against him; as where an estate is decreed against a man, and his heir infills his father had no title thereto, or was only tenant for life thereof, the decree in that case can never be carried into execution against him; he is at liberty to controvert the justice and validity of that decree; he may make a new defence from what his ancestor did, and vary his cause as he shall be advised, and the parties go into a new examination of the matter, and hear the causa De non, and the court judge whether the decree be right or not, and may affirm or reverse it at their pleasure.

But where one man obtains a decree against another for a real estate, and the party dies before the plaintiff is put into possession, in that case if the heir at law claims the estate by defeunt under his ancestor, or a devisee under him, he shall never controvert the justice of the decree, though his ancestor should have misconceived his defence; nor shall he be at liberty to make a new defence, or enter into new proof so as to overthrow the former decree, especially where it appears to the court that the decree hath been of an ancient standing.

Such a decree in title claims per foeman doni, and as the statute De demis prefers the estate to him, his ancestor cannot grant or alien, nor make any rightfull estate of freehold to another, but for term of his own life. Lit. fett. 613.

If the issue in tail be attained of felony in the life of his father, and is pendant, upon the death of the donee, the donor cannot enter, for though the disability to take by defeunt remains after the pardon, yet the donor cannot enter against his own gift while there is any issue in being; and though the issue cannot by reason of such disqualification claim as heir to the donee, yet he may enter as a special occupant, for the gift is fill a good defignata persona, who shall take upon the death of the donee; but then the issue must take it, subject to the charges of his father, because he is to take it as the tenant left it, and consequently is to make good all charges which he left upon it. 2 Co. 166. a.

Custody heir. A custom in particular places varying the rules of defeunt at Common law is good; such as the custom of Gavel-kind, by which all the sons shall inherit, and make but one heir to their ancestor; but the general custom of Gavel-kind lands extends to farms only; but the Custom of them, that if one or more of them die without issue, all his brothers may inherit, is good. Vide tit. Defeunt, tit. Borough English and Gavel-kind. Co. Lit. 140. a.

But if a remainder of lands of the nature of Gavel-kind be limited to the right heirs of J. S. the heir at Common law shall take it, and not the heirs in Gavel-kind; for this remaining being newly created, cannot be reckoned within the custom. Co. Lit. 10. Hob. 31.

So the custom of Borough English, that the yeouget son only shall inherit, is good; but the younger brother shall not inherit by force of this custom, unless there shall be a particular custom to that purpose also. Co. Lit. 114. a. 286.

Heres fatus. An heres fatus is only a devise of lands, being made by the will of the testator, and has no other right or intrefet than the will gives him. 3 Co. 47. a.

It has been shewn in Chancery, that such an heir shall have the aid of the personal estate in discharging the debts of the testator. 1 Vern. 36. 7.

But this must be understood of an heres fatus of the whole estate, who shall have the benefit of the personal estate, but a devisee of particular lands shall not. Pres. Cymb. 3.

a. Of what conditions and covenants of the ancestor shall the heir take advantage; and by what condition, covenants and contracts of the ancestor shall the heir be bound.

Conditions and covenants real, or such as are annexed to estates, shall defend to the heir, and be alone shall take effect. 3 Co. 166. a.

And this is not only where there are express words, but also where there are none; for the law by implication referves the condition to the heir of the seoffor, &c. for being prejudiced by the disposition, it is but reasonable that he should take the fame advantage that his ancestor which received rights might. 4 Ed. 1st. 407, 472.

If a man felled of lands in right of his wife, makes a feoffment in fee upon condition, and dies, and after the condition is broke, the heir of the husband shall enter; for though no right defended to him, yet the title of entry by force of the condition which was created upon the feoffment, and referred to the seoffor and his heirs, descended. 5 Co. Lit. 194. 23. 30. a. Lit. 204. 23.

The heir shall take advantage of a nominum parce, for being incident to the rent, it shall defend to the heir, being a security or penalty to engage the payment of the rent; whoever therefore has a right to the rent, ought in reason to have the penalty which is to oblige the tenant to pay it. 4 Ed. 1st. 162. a.

If a man leaves for years, and the leevice covenants with the leessor, his executors and administrators, to repair and leave it in good repair at the end of the term, and the leissor dies, &c. his heir may have an action upon this covenant, for this is a covenant which runs with the land itself, but he is not named; and it appears, that it was intended to continue after the death of the leissor, inasmuch as his executors, &c. are named. 3 Lea. 97. Laughter ver. Williams. Stin. 505. 5. C. cited.

The plaintiff as heir declared, that his ancestor for indenturam suam, coeum aliarum partem figul at the leisseur
HE1

(comitting figlat) sit in curia profit, did demife, and that the leflee covenant to repair, from time to time, and to leave in repair, and then feid, that his ancesstor died Ann to W. 3, and for breach alcigned good prims Apr. 15. 3. and time not deuiding the premises were out of repair; after verdict for the plaintiff, it was moved in arrear of judgiment; 1. That the world figlat is wanting; 2. That pat the ten years incurred in the life of the ancesstor, and that this was a hard action; & per Hez Ch. J. the want of figlat, by the verdict and all the premises were out of repair in the time of the ancesstor, and continued so in the time of the heir, it is a damage to the heir, and the jury give as much in damages as will put the premises in repair; but hereby no damages are given in respect of the length of time they continued to be in such a condition; and the only time of the action brought to put the premises in repair: therefore per decem annos was frivolous; and he said, that this is not a hard action, and good damages are always given in thefe cases, because the damages recovered ought to be applied to the repair of the premises. 1 Sail. 141. Fruin v. Canpion.

If A. infeft B. upon condition, that if the heir of A. pays to B. £50. 20. t. then he and his heirs may re-enter; this is a good condition, of which the heir of A. may take advantage, and yet A. himself never can. Ca. Lit. 214. 4. 3. Having infeft three sons, William his eldest, Nathaniel his second, and Daniel his third; William died in the life-time of his father, leaving infeft only a daughter; afterwards the father devifes the estate in question to Ann his wife for her life, and after her death to his son Daniel and his heirs, provided that if Nathaniel doth within three months after the death of my wife pay to Daniel, his executors or administrators, the sum of 500 l. then the said lands shall come to my son Nathaniel and his heirs; the wife lived several years, and during her life Nathaniel died, leaving the plaintiff his heir; and the wife afterwards dying, the plaintiff brought his bill within three months after his death, praying, that upon payment of the 500 l. he might have a conveyance of the estate; and the principal point of the cause was, whether this 500 l. being to be paid by Nathaniel within a limited time, and he dying before that time came, whether his heir at law could now on payment of the money make a title to the lands; for it was agreed, that he was heir at law to the testator; and it was contended that he could not; that this was a condition precedent and merely personal in Nathaniel, who had neither jus in re, nor ad rem, and could neither have devised or releaved, or extinguished this condition, and being a bare possibility, and he dying before it was performed, his heir could not now on payment of the money make a title to the lands, for the devise to Nathaniel, yet that is not designed to give them any estate originally, but to denote the quantity of estate which Nathaniel was to take; and for this we are cited 10 Ca. Lambert's cafe. Phin. Bret and Rigan. On the other side it was insisted, that this was like the common case in Ca. Lit. 205. 1. 10. 19. that there is a feoffment made on condition that the seffor shall before such a day, &c. there is the seffor die before the day, his heir may perform the condition, for the reasons there mentioned; and that it being fo at law, it should still be confirmed more liberally in equity, where the letter of a condition is not always required to be literally performed; and for this were cited, 1 Chan. Ca. 89. 3 Chan. Ca. Birttie and Fielding. That the possibility of performing this condition was an interret or right, or scintilla juris, which veiled in Nathaniel himself, that he forfeved the testament; and therefore this differed from Bret and Rigan. 3. 19. that was only an equitable causa moratorii, he forfeited, defecnded to his heir, and might be performed by him; as before the statute De devin, the possibility of reverter defended to the heir of the donor; for this we are also cited, 2 Boud. Fiptsy and Rogers. Cro. Car. 358. Cro. Foz. 310. 9. 1s. 2s. 3d. Meth. Manning's cafe. The cause was first heard by the Master of the Rolls, was thought by him a matter of great difficulty, and therefore he appointed the counsel to speak to it when the court was full; afterwards it was decreed by my Lord Chancellor, with the assistance of the Master of the Rolls, for the plaintiff, on Lit. sess. 334. 335. And my Lord Chancellor said, that though a condition in strictness of law did not devolve the estate, the figure of the lease, the devise may take benefit by it by an inference; &c. and that Nathaniel might have released or extinguished the condition. 3 Bee. Att. 21. 22. Mich. 5. Gen. 1. between Marks and Marks, in Chanc. As the heir at law is the proper and only person, who can take advantage of conditions, &c. annexed to the real estate; so shall he be bound by all such conditions, &c. which run with the land, whether such conditions were annexed to the estate by the original seffor, grantor or immediate ancesstor. 1 Rot. Att. 421.

If a gift be made in tail on condition, that the donee should not die, then the donee hath infeft two daughters, and one of them devises them both enter and evict them both, because it was the original condition annexed to the whole estate, that no part of it should be discontinued. Ca. Lit. 165.

But here we must take notice, that no tenant in tail, nor his infeft can be refrained from aliening by fine and recovery, though they may be refrained from aliening by feoffment, or other tortious act, which amounts to a discontinuance. See Efnat.

So where one devised lands to A. and the heirs male of his body, provided, that if he does attempt to alien, that then intestate shall save, &c. and B. shall enter, and A. makes a feoffment in the name of B. &c. it was adjudged against B. and that the condition was void, because non confert what shall be adjudged an attempt, and how it should be tried. 1 Vent. 321. 3. Kim. 787. Priet and Wren.

Also where a condition is annexed to the estate given to the heir, and which goes in abrogation and refrain; thereof, the same shall in some cases be construed a limitation; for if it were a condition, nobody could take advantage of it but the heir himself. Dyer 316. To Ca. 41. 1 Vent. 195.

As if a devise be made in Borough Englishe to the wife of his heir, and after devise to his wife for life, re- mainder to his eldest fon, paying 40 l. to each of his brothers and sisters within two years after the death of his wife, &c. this is a limitation, and not a condition; for if it should be a condition, it would extinguish in the heir, and there would be no remedy for the money. Gra. Eliz. 204. Welld. and Hammond. 3 Ca. 260. 1. 2 Lem. 114. S. G.

So where one devised lands in fee, having infeft two sons and a daughter, devised to his youngest son and daughter 20 l. apiece, to be paid by his eldest son, and devised his lands to his eldest son and his heirs, upon condition, that they should not part, pay the fines, that then the lands should remain to his youngest son and daughter and their heirs, and dies, the eldest son enters, and does not pay the money; and it was adjudged, that the youngest son and daughter should have the land; for this, this devise to the eldest son and heir, being no more than what the law gives without devise, was void; 2ly. If this should be a condition it would be defeated by the tenant upon the eldest son, who was to perform it; therefore 3ly. It was held to be a devise to the eldest son only, or no longer than till he failed to pay the said sums, and then to the youngest son and daughter which gives them the land by way of limitation, upon his failing to pay the said sums. Cro. Eliz. 833. 819. Mar. 644. pl. 891. Noy 51. Hoyward and Prityy adjudged. Vaughan. 271. 2 Med. 26. S. C. cited.

One devises lands to A. his heirs at law, and devises other lands to B. in fee, and if A. shall die B. shall have the fee, or otherwise, he shall lose what is devised to him, and if it shall go to B. and dies; A. enters into the lands devised to B. and claims; and it was held, 1. That this was a sufficient breach to give title to B. 2. That if this should be a condition it would by the devisee thereof be merged and defeated; therefore it was held to be a limitation, which determined the eftate of A. and cast the posses-
tion upon B, without entry. 2 Mod. 7. Shuteburt
and Barber.

If, wherever the ancestor makes a conveyance or dis-
position on condition, which goes in restraint and abridge-
ment of the estate of the heir, he must have notice of it; for
having a good title by defect, he is not obliged to take
notice of such condition at his peril, as others must
do. 8 Cm. Franc's ch. 13.

As where A, charged with the estate of lands in fee, and
having issue only one daughter named B, by lease and release
conveys his lands to the use of himself, and after his death to the
use of B, in tail, provided the married, with the consent of
the trustees, or the major part of them, some person of
the family and name of Fitzgerald, or who should take
up the estate of the testator immediately after the marriage; but
if not, then the trustees to raise a portion out of the said
lands for B, and the lands to remain to C, afterwards.

A dies, and B marries one who neither was, nor took
upon him the name of Fitzgerald; and the only point
upon which judgment was given was the want of notice
in B, of the settlement, without which being heir at law,
and so having a title by defect, she was not bound ex
officio to take notice of the condition. 3 Mod. 28,
1 Levet. 809. Malon and Fitzgerald.

3. What actions may an heir commence and prosecute
in right of his ancestor; and where an heir shall be bound to
answer his ancestor's debts and contracts.

It is clear that the heir may bring any real action de-
tralural, in right of his ancestor, but cannot regularly bring
any personal action, because he has nothing to do with the
affair or personal contracts of his ancestor. 1 Co. Law.
164c.

Also if an erroneous judgment be given against the
ancestor, by which he logeth the lands, the heir may
bring a writ of error. 1 All. Tr. 747.

Godb. 337.

And if one hath lands on the part of his mother, and
loseth by erroneous judgment, and dies, the heir of
the part of the mother shall have the writ of error. 1 Leom.
261. 2 Sid. 56.

So the younger fon, when intitled to the land by the
custom of Borough English, shall bring the writ of error,
and not the heir at Common law, for this remedy
defends with the land. Owen 68. 1 Leom. 261. 4
Lem. 5. adjudged; and see Bridge. 71.

So if there be an erroneous judgment against tenant
in tail female, the issue female, and not the fon, shall bring
a writ of error. Dyer 90. 1 Leom. 261. 1 All. Tr.
747.

And if a man settles land to the use of himself and the
heirs of his body, the remainder to his own right heirs
and dies, leaving issue only a daughter, who levies a fine,
and leaves without issue, and J. S. brings a writ of error as
cousin and collateral heir to the daughter, yet he shall ne-
ever reverse the fine, for there could no right defend to
him from the daughter, because the had but an effate-
tail, which determined by her death without issue; and
it does not appear that the remainder in fee was in the
daughter as right heir; wherefore J. S. shall not reverse the
fine, quia de non appartenentibus & non extinentibus eodem
est ratio, especially in a court of judicature, where the
decides can take notice of nothing that does not come
judicially before them, and see appearing in the pleading.
Dyer 89. 1 Cm. Eliz. 459. 2 Leom. 36.

If J. S. binds himself and his heirs in a bond, and therupon
judgment is obtained against J. S. and J. S. makes his will, and his heir at law executor, and dies,
dying leaving lands which descended to his heir, yet he shall
not be able to have a writ of error as heir, for he is not privy to
the judgment; and when an extent is made upon him, it is
not a tenant, but after the lands are taken in execution, he
may have a writ of error. Syl. 38. 39. White and
Thom. per Rol.

Also the heir at law may, in right of his ancestor,
maintain an action for debt for rent referred on a lease
made by his ancestor, for the rent is part of the lands,
and incident to the rent; but for arrears of rent

incurred in the life-time of the ancestor, neither the heir
nor the executor could by the Common law maintain an
action, because they were considered as part of the
personal estate, and so to the executor, he could not
represent his testator as to any contracts relating to
the freehold and inheritance. 11 H. 6. 15. 19 H. 6.
41. Co. Lit. 162. a.

But now by the 32 H. 8. cap. 37. an executor may maintain an
action of debt for such accounts which were due.

If a nobleman, knight, esquire, &c. be buried in a
church, and have his coat of arms, and pennons with his
arms, and such other ensigns of honour as belongs to his
degree, set up in the church, or if a grave-stone or
altar be laid or made, &c. for a monument of him; in
such case the same is a memorial of the church be in the
parson, and that the said monument be annexed to the
church, or if he be not the parson, or any, take them or deface
them, but he is subject to the heir and his heirs, in the honour
and memory of whose ancestor they were set up. Co.
Lit. 18. b. For this see 1 Roll. Abr. 695. Noj 104.

Where the ancestor binds himself and his heirs in an
obligation, the obligee may sue the heir or executor,
or the administrator of the executor, at his election, and
may have execution of the land, defended to the heir; for
the Common law having allowed the action of debt against
the heir, he could have no benefit by the action, unless he
had consented to have the heir defend the execution of the lands
defended to the heir. Plat. 441. 3 Co. 12. a. Co.
T. 450. 1 And. 7.

But the body of the heir is protected, for it would be
most unreasonable to subjice the heir to the payment of
his ancestor's debts, any farther than to the value of the
lands defended. Dyer 81. pl. 62. 207. pl. 15.
Moir pl. 207. Co. Lit. 105. 207.

Also the heir must be expressly named, otherwise he
is not chargeable, and the reason why the heir is not
chargeable in this case, as the executor in case of a
bond entered into by the testator, without being named,
is this; by the Common law only the goods and chattels
of the debtor, and the annual profits of the land they
earof, and not the land itself, were liable to execution
for debt or damages, because the being the security
the creditor depended upon, they were liable in the hands
of his representative or executor, as well as in the hands
of the debtor himself; and hence it was, that the execu-
tor was made liable for the debt of the testator, so far as
he had chattels or affets, tho' he was not named in the
contract; but the land was not liable to execution, be-
cause it was preferred from the personal contracts and
engagements of the tenant, that he might be the better
able to answer the feudal duties to the lord, which were
owed to the government; and therefore if the land
was not being originally liable to the demand in
the hands of the obligor, must be much less liable in the
hands of the heir, who was not comprehended in the

But if A. had granted, for him and his heirs, to B. and
his heirs, such a rent out of his lands; in this case, the
heirs being comprehended in the contract, are bound to
make good the grant, so far as they have affets by defense
from the grantor; and this was allowed at Common law,
because the grantee of the rent had the land originally
in view for his security; and by granting it having for its
benefit in his power to disfrain the land for the rent, it was
beyond the heir, whether the land do answer the rent
by differe, or by an execution upon a writ of annexity. 1 Roll.
Dyer 344. b. Co. Lit. 144. b.

If the ancestor bind himself in a fiatute, recogni-
sance, &c. the heir is liable not only as tenant, but
also as purchaser; wherein he could not have his age; and
cannot oblige a purchaser, whether for valuable con-
deration, or without, to contribute, but one heir may
oblige another to contribute; as if a man feised of two
acre, the one defendable, according to the course of the
Common law, the other in Borough English, acknowledge
a fiatute, &c. the heir at law shall oblige the Borough
English to contribute; so one coparcellar shall oblige the
other
of or concerning any manors, messuages, lands, tenements or hereditaments, or of any rent, profit, term, or reversion, or reversion out of the same, whereas any person or persons at the time of the death of her, or afterwards shall be filed in fee-simple, in possession, reversion or remainder, have power to dispose of the same by his, her, or their last wills or entailments, shall be deemed and taken (only as against such creditor or creditors as aforesaid, his, her, or their heirs, executors, executors, administrators and assigns, and every of them,) to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none effect; (any pretence, colour, forged or presumed consideration, or any other matter or thing to the contrary notwithstanding.)

And for the means that such creditors may be enabled to recover their said debts, it is further enacted, that in the cases before mentioned every such creditor shall and may have and maintain his, her, and their actions and actions of debt upon his, her, and their said bonds and specialties, against the heir and heirs at law of such obligor or obligors, and such devisee and devisees jointly, by virtue of this act; and such devisee or devisees shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for a false plea by him pleaded, or for not confounding the lands or tenements to him defended.

Provided, That where there had been or shall be any limitations or appointments, or the defcription of or concerning any manors, messuages, lands, tenements, or hereditaments for the raising or payment of any real or just debt or debts, or any portion or portions, sums or sums of money for any child or children of any person, other than the heir at law, according to, or in pursuance of any marriage-contrakt or agreement in writing bona fide made before such marriage, the same, and every of them, shall be in full force, and the same manors, messuages, lands, tenements and hereditaments, shall and may be holden and enjoyed by every such person or persons, his, her, and their heirs, executors, administrators and assigns, for such estate or interest, as shall be so limited or appointed, devolved or disposed, until such debt or debts, portion or portions shall be paid, paid, and satisfied; and any thing contained in this act to the contrary notwithstanding.

And it is further enacted by the said statute, "That all and every devisee and devisees made liable by this act, shall be liable and chargeable in the same manner as the heir at law, by force of this act, notwithstanding the lands, tenements, and hereditaments to them devolved, shall be aliens before the action brought.

In the construction of this statute it hath been holid, that tho' a man is prevented thereby from defeating his creditors by will, that yet any settlement or disposition he shall make in his life-time of his lands, whether voluntary or not, will be good against bond creditors; for that was not provided against by the statute, which only took care to secure such creditors from any imposition, which might be suppos'd in a man's last sickness; but if he gave away his estate in his life-time, this prevented the defendant of so much to the heir, and consequently took away their right of distrain against him, unless the bond creditors had respect of the land descended; and as a bond is no lien whatsoever on lands in the hands of the obligor, much less can it be so when they are given away to a stranger. Acr. Ep. 149. Parfitio v. Wedon.

In debt actions, no plea pleaded is per diem on the day of the bill, the plaintiff replied specially, that the obligor (father of the defendant) died on such a day, and that the defendant (after the death of his father) and before the day of the bill, was on such a day, which was a day after the death of the obligor, had lands by descent from him in fee-simple, unde prædict, (the plaintiff) de debis prædictis satisfacit, ut, &c. H. prædict., & hoc paras' effe verificaret, unde petit judiciu, according to the above statute. To this the defendant made a frivolous rejoinder; and thereupon the

D d d plaintiff
plaintiff demurred. The question was, If the replication was good in pursuance of the statute; for it was objected that it was ill, because the plaintiff had put the word of the statute in the replication by the words, &c. de debito pradicto factis pratis, which ought to have been omitted; because the laturae is express, that after it it is matter of inquirit only ex affitis, and not to the point of the issue; and by this laturae the plaintiff is only recover, pro tantum, against the defendant, respect of the value of such aliened affects, and is not to have a general judgment against the heir, as at Common law upon a fallae plea; sed per cur. upon debate, this replication was held good, and as it ought to be, and that if auld, &c. de debito pradicto factis pratis had been omitted, it might have been a good cause of objection; for the laturae do not give occasion to alter any more of the form of the replication common in such cases, but only as to the time concerning affects by defent; and the conclusion, which (before the laturae) was to the country, must now be with an averment only, because the defendant may have an opportunity to answer the new matter alleged in the replication. Carth. 35. Rollflan and Hylter adjudged, 5 Mod. 122. S. C. adjudged, and that the statute was made not to create, but to prevent difficulties in pleading.

It seems that neither before nor since this statute the executor or administrator of the estate, after the person of the heir is not chargeable, but with respect to the land; and if before the laturae, the heir had aliened before action brought, he should not be charged for the profits he received; which is evident from the plea of rians per diem the day of the writ purchased; much less could his executor, or could he yet, unless some statute make him so: For an executor is but in nature of a trustee for the personalty, and not at all privy to the inheritance. Trin. 33 Car. 2. in C. B. between Baron Wifian and Danby adjudged. 3 Boc. Abr. 28.

If there be judgment in debt against two, and one dies, a faire facias lies against the other alone, reciting the death, and he cannot plead that the heir of him that is dead has affects by defent, at demand judgment if he ought to be charged alone: For at Common law, the charge upon a judgment being personal survived, and the laturae of Wifian. 2. that gives the elegit, does not take away the remedy of the plaintiff at Common law, and therefore the party may take out his execution with any way he pleases; for the words of the laturae are fit in electione: But if he should, after the allowance of the writ, and revival of the judgment, take out an elegit to charge the land, the party may have remedy by suggelion, or elfe by audit sua curia. 1 Lev. 30. Raym. 21. Per. Abr. 4 Edwa. and Smay 242.

If there be a fequestration for a personal duty against the ancestor where the heir is not bound, and the defendant dies, there is an end of the sequestration, and it cannot be revived against the heir; because neither the heir nor the lands are bound by such decree: But if the decree were upon a covenant that bound the heir, and the defendant died, such decree might be revived by sub poena scire facias against the heir to shew cause against the decree, if the decree be inrolled of record, or if not, by bill of revivor; and when revived against heir and executor (which is the usual and regular way), the sequestration also will be revived on motion, if, upon coming into court, cause is not shewn why the decree should not be revived: And in this case it hath been resolved, that the decree should have the same authority to bind the personal affects as a judgment at law, and therefore shall go pari passu to be paid off and discharged; but the lien of such executor of administrator on lands came by the laturae, which only gives an elegit for a moiety of the land in satisfaction of the debt, and therefore that could give no authority to lay a sequestration on the real estate for a mere personal duty, where the heir is not bound in the covenant. 1 Vernon. 143. 3 Lev. 325. 2 Vernon. 37. 89. 9.

4. What shall be affects in the hands of the heir.

Where the ancestor binds himself and his heirs, all his lands of freehold, and which defent in fee-simple, are affects by defent, and shall be liable, as far as they extend, to answer the ancestor's obligations. See Bro. tit. Affect. Fit. tit. Affect. 1 Roll. Abr. 269. tit. Affect. See Affix. A reversion after a lease for years made by the ancestor is perfect affects, so that the heir cannot pledge real reversion in delay of execution of the rent and reversion, though the plaintiff cannot have benefit of the reversion till the heir be determined. 1 Salt. 354. S. Far. 42. 2 Mod. 50—51. 1 Hurl. Plead. 320.

A reversion in fee expeendant upon the determination of an estate for life is good affects, and ought to be pleaded specially by the heir, and the plaintiff in such case may take judgment of it sum accommodi. Carth. 129. per Hylr.

But a reversion in fee expeendant upon an efque-tail is not affects, because it lies in the will of the tenant in tail to dock and bar it at his pleasure. 6 Car. 58. 1 Roll. Abr. 269.

If A. hath issue B. and C. and conveys lands to the use of himself for life, the remainder to B. in tail male, the remainder to his own right heirs, and A. des, and the reversion descends to B. his son, and B. dies seized, and the reversion descends to his son, who dies without issue, so that the tail is spent, and C. enters, those lands shall be affects to answer the debt of his father. Carth. 137. 3 Lev. 286. 3 Mod. 253. S. C. Kellow vs. Rouken. The lands, as has been observed, must defent to the heir; and therefore it was formerly held, that if he took by purchase, as if the tenator devised them to him, paying so much, or if he devised lands to one of the two, and his heirs at law jointly, that those lands were not affects, but if he devised one part to A. another to B. and another to his heir at law, this third part was affects. Car. Edia. 431. 2 Mod. 286.

By the statute of frauds and perjuries (29 Car. 2. c. 3.) it is enacted, that all lands came to the heir by reasons of a special occupancy, they shall be chargeable in his hands as affects by defent, as in cases of lands in fee simple, and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be affects in their hands.

Also by the said statute, par. 10. & 11. where lands are settled in trust, and defent in fee to the heir of of eyre give truth, the same shall be affects in the same manner as lands in possession, but he shall not, by reason of any plea or other matter, be chargeable to pay the condemnation out of his own affects. Vid. supra. 15 Edwa. 24 Edva. A demission of an inheritance is affects, for the heir having a right in equity, that ought in equity to be liable to satisfy a bond debt. 4 Chan. Ca. 148.

Tenant in tail suffers a recovery to let in a mortgage of 500 years, and then limits the land to the old uses, and makes his will, and devises all his lands for the payment of his debts; the redemption was limited to him his heirs and assigns; and the court thought that the equity of redemption of this mortgage should be affects to satisfy creditors, or a subsequent grantee of an annuity. Preced. Chan. 39. Paffet and Agin.

A right without an estate in possession, reversion or remainder is not affects till it be recovered and reduced into possession. 6 Car. 58.

For more learning on this subject, see 14 Vin. Abr. and 2 Boc. Abr. tit. Heir.

Vice apparent. See Drir.

Virtues. Is a female heir to a person, having an estate in possession, reversion or remainder, in a vacant land where there are a few joint female heirees, they are called coheiress. Stealing an heirees, and marrying her against her will, when felony, see Marriage.

Vic relaxing, (of the Saxon heers, i.e. heres, and lomi i.e. membre) The word here is a very expressive figurination than at first it did bear, comprehending all impiements of household, as tables, prefices, cupboards, ledgards.
bedsteads, raincoat, and such like; which, by the cus-

tom of some countries, having belonged to a house during certain defuncts, are never inventoried after the decease of the owner, as chattels, but accruing to the heir with the residue of his real estate. See Index of them. Our usefull file robolius quod ad edilum non facilis reversionem, itaque ex minuvisse omnium hereditarn ad hereditarn traditum, quartam mem-

brum hereditarni. And Co. in Litt. fol. 18. fays, Con-

fettudo hundrilli of Strefford in Com. Oxon. eod quod bere-
terum tenemntmn et in hundrilli parvam formam unam, quidem, poffit faciendum in sempiternam, utc. post equm. Anglice Hurey-loom, vinc. de quado armas gallaturnrs, utemifum, v. optimam pluvium, optimam caracum, optimum cypium, Et. Cowell. edit. 1727. A lady brought a bill in the King's Bench against a parson for taking among other things, the arms of Sir Hugh Wych her husband, and a fow to the chancel where he was buried; and the parson claimed them as oblations, and therefore that they did belong to him; and there 'tis said, that if one use to fit in the chances, and hath there a place, the parson can't claim his carps, livery and cunfion as oblations; nother ought he to have the said things: for that they were hanged there in honour of the deceased; and there-

fore by the same reason, though a grave-flone, coat of armour, tomb, &c. are annexed to the firehold of the parson, yet in regard the church is free to all the inhabi-

tants, for reasonable price. And the Ch. J. says, that the lady might have a good action during her life, in the cause aforesaid, because the herself caused the said things to be set up there, and after her death, the heir to the deceased shall also have his action, because (as the book fays) they were hanged there for the honour of his ancestor, and therefore they are in na-

ture of heir-leoms, which by the Common law belong to the heir, as being the principal of the family. The like law of a grave-flone, tomb, and the like. 12 Rep. 104, in Corwen's cause, cites it as 9 H. 4. 14. Dame White's cause.

And this agrees with the laws of other nations, Bertha, Cyfianant, fol. 13. cont. 20. Atton. dtn. si aquis arma in aliquo loco pofita delecta, free, &c. in et in 21 Ed. 48. In the bishopric of Carlire's cause, it appeared, that the ornaments of the chapel of a preceding bishop do belong to the succeeding bishop, and are merely in succession, although other entailments, in cafe of a sole corporation, do belong to the executors of the deceased parson, and shall not go in succession; so in the other cause, things ered in the church for the honour of the deceased parson, shall go to his heirs, as heir-leoms, as in manner of an in-


Trotter brought a memorable anno de, of the late Lord Petre against the wife of the first exec-

utor for a necklace of pearl, said to have been in the family for many generations, and worn as a personal ornament by the Lady Petre for the time being, or for de-

fault of such, by the Lady Dowager pro tempore; and to prove the property, an ancient inventory made by the defendant's husband, being executor of the Lord Petre, now interlaced, being found among the ancient evidences of the family, was allowed; for the mentioning this necklace in it fhew he did not claim it in his own right, and none but a madman will inventory more affairs than the laws doe to the houfehold: Now the Lord Petre were proprietor, or not, he himselfe could not be witness; yet the executor, by inventorizing it, charged himself with it as a sport, and there it shal be taken as such; and per Holt Ch. J. the wearing of a pearl is a conversion; and goods in gross cannot be an heir-leom, but they must be things fixed to the free-


Hefting. A brass coin among the Saxons, equivalent to our half-penny.

Hezford, or straw. Cowell. edit. 1727.

Hefwezlow. The hell-wall or end wall, that co-

vers and defends the rest of the building. From Saxon belcan, to cover or heal; whence a thatcher, firter or tiler, who covers the roof of a house, is in the weftern parts called a bellter.——Inflatus eldem Domine qua probem be-


Hemp and flax. Every perfon occupying 60 acres, to low one rood with hemp or flax, 24 H. 8. c. 4. 5 El. 8. c. 47. sect. 30.

Shall not be watered in any running fire or common pond, 33 H. 8. c. 17.

Foreigners using the trade of dressing flax, &c. to en-

joy the privileges of subjects taking the oaths, 15 Car. 2. c. 15. sect. 3. 4.

Duties on the importation of goods, and yard of flax or hemp import-

ed, 2 W. & M. sect. 2. c. 24. sect. 31. 32. 4 W. & M. c. 5. fett. 2.

The tith of hemp and flax afoarrant, 3 W. & M. c. 11 & 12 W. c. 3. 16.

Flax or hemp may be imported from Ireland duty free, 7 & 8 W. 2. c. 10. dnn. b. 2. c. 8.

Penalty on workmen imbezzling it, 1 Ann. b. 2. c. 18.

Bounty on the importation of hemp from the planta-

tions, 3 & 4 Ann. c. 10.

Hemp water rooted, &c. from the plantations, free from duties, 8 Geo. 1. c. 12.

Unduelle flax may be imported duty free, 4 Geo. 2. c. 27.

Medium of the duties on rough f lax, &c. for 7 years, to be an annual charge on the aggregate fund, 4 Geo. 2. c. 10. sect. 3. 4.

No drawback on the re-exportation of unwrought hemp to the plantations, 4 Geo. 2. c. 27. sect. 7.

Against frauds in manufacturies of hemp, flax, &c. 22 Geo. 2. c. 27.

Bounty on the importation of hemp and rough flax from America, 12 Geo. 3. c. 31.

Pentitute, (Qui ego inquitur keleios, from the German beneft, a war-horpe) With us it signifies one that runs on foot, attending upon a person of honour or wor-

ship. Scot. 3 Ed. 4. cap. 5. and 24 Hen. 8. cap. 13. It is written hermion, An. 6 Hen. 8. cap. 1.

Pentitute, A Conditional payment of money instead of hemp at Cleve House. From the Saxon henlina, galling and penning, denarius. Sint quiuti de chevogis & henderopy, & luifall & triferi, &c. Monat. 2 tom. 827. In a charter of Ecto. 3. confirming many privileges to the priory of Pulten, 23 Ed. 3.—Quiti latit de — Fen-

feldiis, fenujidelis, &c. in cenderopy, henderilip-

fy, & de mediihenn, & de chevogis, & henderopy, & Befecall, & triferi, &c. Mon. Ang. tom. 2. pag. 327. 2. De Frosse it may be hernepy, gallingnum, or a composition for eggs. But possibly it is misspelled be-

neropy for breveld-pon, or heade-pon. Cowell. edit. 1727.

Dentcurd, A duty to the King in Cambridgshire. Domedday.

Prenchen, (Saxon bengen) A prifon, gaol or houfe of correc-

tion. Si quis amisit dejultius, vel alienigena, ad tamen laborum veniat, ut amicum non habeat, in prima aca-


Praevitae, Significat quinquezantium missivicellae de latrone folypus aliqui confiderationes. Fleha. lib. 1. cap. 47. See Banvuit.

Pensflate, The fame with bussiayte, i.e. the ma-

ter of a family: From the Saxon kenfaffet, i.e. fixed

member. Na. omni liberorum rettituti-


dine dignus, fit horderfale, fit folivari, fit in hundinbe, & in phleg conifidit. Leges Canuti, cap. 40. See Vite

dertert.

Pren pumps, Olim Romersfoot & pofta Peterpence: From the Saxon henvuft, fenu, and penning, denarius. See Peterpence and Henderopy.——Omnis horderfale, vel va-

dat ad fefam 8, Petri, & qui non perferuet ad terminum illum defera eum Rame. Leges Edgari Regis, cap. 5, apud Bromptonum.

Perrad, or Parola, Italian heralds, Er. be-

rauds, quos hiber altero. Verfagov thinks it may be de-

rived from bere, and bears, powl magnanimus: As if he be called, The champ-

ion of the army. With us it signifies an officer at arms, whose busines is to denote war, to proclaim peace, or otherwise be employed by the King in marital meilages,
or other bulines: The Romans call them plurally Feueder, Polydore, lib. 19, desribus them thus: Habebit infepor ap-
paroires minifers, quas habebat dicunt, quorum praefibus
arumam Rex vacuitat; iit bell & parti mutui; deditus,
comitibus & Re farcis infignia optum, ac eorum funerat
curam. Nay more, They are the judges and examiners
of this law, withal all the solemnities at the coronation
of the Prince, manage combats, and such like: There
is one and the fame use of them with us and the
French, whence we have their name; and what with
them is of this work, see Lappamen, lib. 1. De Magny,
Praef. cap. Herald. There are divers of them with us,
whose titles being the chief, are called Rady at aer,
and of them Garer is the principal, instituted and created
by Henry the Fifth, Sto. Annas, p. 584. whole office
is to attend Knights of the Garter at their solemnities,
and to marhall the funerals of all the great nobility: as
Princes, Dukes, Marquesses, Earls, Viccounts and Barons.
And in the order of arms in England and France's guest, we read
that Edward the Fourth granted the office of King of
Heralds to one Garer, cum sedis & profequis ab antiquo,
&c. fol. 12. The next is Clarentian, ordained by Edward IV.,
for he attaining the dukedom of Clarencie, by the
dearth of his brother George, whom he beheded for aspiring
to the dukedom of Clarencie, which fell to the Duke of
Karl a, at a king, and called him Clarentian; his proper office is
to marshall and dispofe the funerals of all the other nobility, as Knights and Esquires,
through the realm, on the South side of Trent. The
third is Norrey, or North-ray, whole office is the fame on
the North side of Trent that Clarencie hath on this side,
as may well appear by his name, signifying the
Northern King, or King of the North-parts. Besides
these, there are 6 others properly called heralds, according
to their original, as they were created to attend Dukes,
&c. In maritial executions, viz. York, Lancaster, Somer-
set, Richmond, and Windsor. Lastly, There are four
others called Marbards or Purfaints at arms, reckoned
in the number of heralds, and do commonly succeed in the
place of the heralds, when they die, or are preferred;
and those are Bleuet-mytle, Range-croft, Range-dragon
and Postellin. These heralds are by some authors called
Namii fari, and by the ancient Romans Feudiati, who
were priets. Non Nuna Pompilius apud mius influxu-
timis in soto partes dedit, & in eam facerdotum soto
ordines consitutis, & septimam partes facram consitutis
colle gremio, qui sociales xuanient: Erant autem
ex spemis damius viri efti, & quorum partes in a eva-
ferunt, ut mails publico inter populos praefevat, exequia
palatium, palatium magni, in ea mandation, in ea
tributum. Corafulius Mibd, Juris Civilis, lib. 1. c. 16,
um. 12. Kings at arms are mentioned in flat. 14 Care,
2. 33. Of thefe, see more in Spelman's Gliifary. Cowell,
edant. 1727.
By the law of arms and heraldry, everyone who is
made dominant, whether he be of regional or national
court, ought to be laid betwixt two officers of arms be-
fore the Earl Marshal of England, or his deputy, and
before him are to go four officers of arms, whereof the
one is to bear his patent, another his collar of SS, the
third a coronet of brans double gilt; fourthly, a cup
of wine; and his patent shall be read before the Earl Mar-
chal, and his coronet, and his cup, and the wine poured
upon his head, and after
wards the wine poured upon his head. Lt. 248. 33 Eliz.
B. B. Detbick's cafe.
Herbage, (Herbgium.) Signifies the fruit of the
earth, produced by nature for the bite or mouth of the
cattle; but it most commonly used for a liberty that a
man hath to feed his cattle in another man's ground, as
in the forest, Lt. Gramp. Tor. fol. 197. Occurrit frequent
pro jure depofitum alium folum ut in foris, says the
learnad Spelman.
But if the herbage of a forest by patent may have trespass
for the graft, but not for trees or the fruit of them;
and he may take beas damage-seafant, and have
quire clauam fragi, and by such grant may inclose the
forest. D. 255. b. pl. 40. Trin. 11 Eliz.
Grantee of herbage may inclose, and may have action
of trespass quare clauam fragi. Arg. Trin. 21 Jul. B. R.
2 Roll. R. 356. cts D. 285. But tho' he that hath
herbage may inclofe, yet he that hath reasonable herbage
cannot bet. Arg. cites Grs. R. 159.
Grantee of herbage of a park cannot disfark it. Arg.
God. 419. Trin. 21 Jul. B. R. in the cafe of Lord Zou "
A leafe was made of a manor with all gardens, or-
chards, yards, &c. and with all the profits of a work,
excepting to lefser 40 acres, to take at his pleasure; per
Dyer, The wood is not comprised within the leafe, but
the leffe fhall only have the profits, as pawnage, herbage,
Herbarium anticus. The firft crop of grav or hay,
in opposition to after-math and second cutting. —Dicient
good of communi viza, & fae communi pastura, quorum funt
& anterus herbarium amonestam. Antq. Porochalis,
pag. 459.
Herberg, or Herbury. An in. Cowell, edant. 1727.
Herberger, or Herbynger, (from the French her-
berger, that is, jubiciis acceptis;) Signifteth an officer in
the King's house, who goes before and allows the nob-
men, and thereof the household's lodgings. Kitchin,
fol. 176. used it for an innkeeper.
Herbergagium. Lodgings to receive guests in the way
of hosts herberguia, quibus gratia, innum. 1420. Somner's Anno, pag. 248.
Hence out herberg or herbury, who provides labour
or hose-room, &c.
Herre, A harrow. Lat. hercia. Fleis, lib. 2. cap. 77:
Curucus & hercia reparaer, and in Domnsjy, per Gale,
fol. 760. Hacis Res, & unus jugum de ora & unus
Herse, The fame with heres; it signifies also a can-
diedick fit up in churches, made in the form of an
harrow, in which many candles were placed. Dis seputtus
& die mensis, &c. pro coraps fitis, &c. Centumplum, cum
ercia, i. e. Centurhia in heresium modum confecta, which
was filled with candles, and placed ad corapts cenotaphi.
Hercare, (from the French hercre, to harrow,) Har-
base & herciabant ad curiam Demini, i. e. they did plough
and harrow at the manor of the lord. 4 hist. fol. 270.
Herdwich, or Herewich, (Herduchus,) A grange
or place for cattle and husbandry. Et unus herewich-
Herdweich, Heudweich, Herheide, or herd, or
fommary labours done by the shepherds, herdmen, and
other inferior tenants at the will of their lord. Cowell,
edant. 1727.
Hercules, The King's edict, commanding his subjects
to the field: From the Saxon harres, exercitii, and falcis,
a mefen. Cowell, edant. 1727.
Hereditaments, (Hereditamenta,) Signify all such
things immoveable, be they corporeal or incorporeal, as
a man may have to himself, and his heirs, by way of in-
heritance; (see 32 fol. 8. cap. 2) or not being otherwise
bequeathed, do naturally, and of course descend to him
next heir of blood; and fall not within the com-
paraks of an executor or administrator as chattels do.
It is a word of large extent, and much used in conveyances
for the grant of hereditamenta, illes, feignioris, manors,
houses and lands of all sorts, charters, rents, servicia,
adwovons, commons, and whatever may be inherited,
will pads. Cas. in Eliz. fol. 6. Hereditamentum of una
quaad jure hereditario ad heredem transfert. Heredita-
menta corpora (according to Judge Doderidge,) are reve-
 nues local, and of annual value. Hiif. of Wales, fol.
90. condition is without quession an herediment.
3 Rep. 2. A. Trin. 25 Eliz. in the Marquis of Hncholby's
cafe.
Writ of error is an herediment, but by the Common
Law cannot be forfeited or cefhate. 3 Rep. 2. S. C.
HER

Uses were hereditaments; fo of this shall be puf- 
siffo fratus; but condition or use were not foftatable at 
Common law. 3 Rep. 2. b. in the Marquis of Uin-
cbeyter's cafe.

Hereditary revenue. The King how scied of the he-
roft, and post-office, 12 Car. 2. c. 24, 1 Jac. 2. c. 12. 
N'othing reained from the revenie of the 
post-office. 9 Ann. c. 10. sed. 43.

Heretick. (Saxon) Profeito militaris & expedita. 
See Stubbby. A military expedition, a going to war-
fare.

Heretofor. For including of commons in Hersfordhire, 
4 Jac. c. 11.

Heretick, (Saxon) Pecnin seu tributum admis exerci-
citus coloniunm. A tribute or tax levied for the main-
tenance of an army. See Stubbby.

Heretick, A sort of little fly, perhaps minows, or 
rather gudions. Cowell, edit. 1727.


Hercounne, or Heretickon. One who follows an 
army of rebels. Lamb. Leges Ina, cap. 15. In exercitu 
pradatorum. 

Heretical, which seems to be an appellation from 
the established religion; for which, and the several ways 
of determining, puzzling, and the difference between 
the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.

It seems difficult to determine what error shall: 
amount to hereby; and what not; yet the statute 1 Eliz. 
cap. 1. which erected the high convocation, having 
restrained it to such as are either determined by scripture, 
or by one of the 4 first general councils, or by some other 
council, by express words of scripture, or by parliament, 
was at this time, or ever, so general, as to be understood 
or practised generally the bent directions concerning this 
matter. 1 Hawk. P. C. 3. 4.

And it is said by my Lord Hale, that the Papal 
canonists have by ample and general terms extended hereby 
so far, and in such a manner, that without much in the 
difference between the civil and Imperial laws, Popifh canons, and the laws of 
England concerning hereby, see a large account in 1 Hal. 
Hift. P. C. 382 to 410.
Perrotich, The general of an army: From the Saxon here, exercitus, and regen, duces; but the Heretich were the barons of the realm, and inferior to arms at

counties. Interjunc Epigrafi, Comites, Heretich, Heretich.

Leg. H. 1. De Freiheit, Perrotchias, A leader or commander of military forces. See at large the name and office in the laws of Edward the Confessor, cap. 35. De Heretichis.

Perrettum, A court or yard for drawing up the guards or military retainers, which usually utilized before plate and

arms—Widmer, Langley Epigrafi Dunelmensis apud manuscriptum de Houlden confirmita teitas paras centocentales opus cemenarius, per quis transferunt ad heretum vol. pa-


Perigrina, Pulling by the hair; from the Sax. her, captivi, and grapa, capere: Si quis aliquem per capillas arripiat, tautum cemendatum quod de uno capilli fuerit, id efi, quingue decaries de beherigra. Leg. H. 1. cap. 94.

Perigalos, A fort of garment so called. Council, edit. 1772.

Periptos, (Heredita) Is in the Saxon tongue heregate, what is derived from here exercitus, and grat a beall, and in the time of the Saxons signified a tribute given to the lord for his better preparation towards war. Lambard in his Explanation of Saxon words, verba hercunum. Erat enim heretum militaris fejuscellis praefidii, quam, ebeucu ubsalu, dominus repertorius efferet. After munimentum, fays Spelman. Ann. by the laws of Cantatus, tit. De Heredita, it appears, that at the death of the great men of this nation, so many horses and arms were to be paid as they were in their respective life-times obliged to keep for the king's service. It is now taken for the beall a tenant hath at the hour of his death, due to the lord by cultum, be a tenure, or fee, for two menors, the hef piece of plate, jewel, or the beall piece of goods; the name is still retained, but the use is altered: for whereas by Lambard's opinion, it did signify so much as relief doth now with us: Now it is taken for the beall head of cattle that a tenant hath at the hour of his death, due to the lord by cultum. Kitchen, fol. 133, p. 12, makes a beall heriot, and beall-cumul: for interpretation whereof, you shall finde these words in Broke, tit. Heriots, no. 5. Heriot after the death of the tenant for life is heriot-cumul, Heriot-forseice is after the death of the tenant in fœc-fimple. In the book called The Terms of the Lea, 'tis said, that the heriot-cumul is often exprest by the person, or man, that holds by such fervice to pay heriot at the time of his death, and holdeth in fœc-fimple. Heriot-cumul is, when heriots have been paid time out of mind by cultum, and this may be after the death of tenant for life. And for this the lord may dilfrain or feize. See Plowd. fol. 95, 96. Drastum, lib. 2. cap. 36. Deft. and Stud. cap. 9. But of right neither the lord nor officer should take heriot, before it be preven-
ted at the next court holden after the tenant is dead, that such a beall is due for a heriot. If the lord purchase part of the tenancy, heriot-forseice is extinguished, but it is not so in heriot-cumul. Cl. 8 Rep. Tallot's. Cafe. If the lord ought to have a heriot when the tenant dieth, and the tenant devieth away all the goods; yet the lord shall have his heriot, for the law preferreth the cultum before the devile. Co. on Litt. lib. 3. cap. 3. pag. 185. See Dyer, fol. 193. nam, 58. This in Scottland is called her-

reatillus, compounded of bare. In Dan. it is called the Latin herbiz, and in Saxon, haeriot, and in Saxon, in herd, tribute or taxation. Skene de verb. feign, verb. hericidia. Heriots or the delivering up of arms at the decease of a tenant, did not obtain in England till the sovereignty of the Danes, and are first mentioned in the laws of Canute.

The book of Domfnify, and generally all monkish writers have, in their judgments, and their theorets, there was a very great difference between them. Heriot was often a personal, relief always a preial service. Heriots were first contrived to keep a conquered people in subjection, and to support the publick strength and military furniture of the kingdom. Reliefs for the private advantage of the lord, that he might not have inutilum proprietatem in the feignory. Reliefs were a feudal service, barriots before any feudal tenure. Vide Spelman of Bonds, cap. 18. See Kennet's Glossary in hercunum. Council, edit. 1727.

It is so thought by our sages that the theorets must be far more ancient, and to differ from reliefs, the original therefor seems to be thus. Anciently when the tenure were military, and for life only, the arms and war-horfe of the tenant, upon his death, went, together with the land, to the lord, being due to him, as having been purchased with the heriots of the land, or as having been originally granted by the lord for publick defense, and therefore be-

longed to the lord that he might beftow them on the succeeding tenant for the like service; but when the feud became inheritable, the reason of the heriot ceased, and then the arms and war-horfe went to the heir who succ-

ceeded to the land; yet in some mansions the cultum of the heriot was by particular agreement retained, or the lord referre it as parcel of his tenure: and though originally the heriot was the belt horse, yet it came in time to be the bust beast; for the tenants to disappoint their lords would often sell their arms and horses, and then of ne-

cessity, not give the lord by his tenure, the best beast in lieu of them, and so the heriot came to be esteemed the best beast ever after; and as it arose by cult-

um or tenure, after the feud became inheritable, hence we find in some manors a cultum of paying it in goods, and in some in money. Spelm. Glos. 287. Britsh, lib. 2. fs. 60. British gloss. See Kettell's gloss. It appears not only from Spelmans's conjectures, but likewise from the laws themselves of King Canutus, that the Danes were the first inventors of heriots, and that it was a political institution of theirs, whereby the Danisb

""
HER

If in replevin the defendant avows for an heir upon a lease made by indenture to A, his executors and assigns, for 99 years, if the said A. B. and C. or any of them, should for so long live, rendering rent, and rendering and paying after the death of the said A. his executors and assigns, has his heir or a benefant for a lease, or 50 sh. at the election of the lessor, his heirs or assigns and A. to J. and S. and dies, on whom the lessor dies; and upon an heir of the indenture it appears, that the clause for the heir was rendering, and paying to the lessor, in his heirs and assigns, after the death of the said A. B. and C. and every year for the term, or their rent in the name of an heir, or 50 l. &c. Then, if the heir be intitled to an heir on the death of A. B. or C. yet ought he to have it forth he not according to the indenture, and not to have avowed for an heir after the death of A. his executors and assigns, when there are no words which make an heir payable on the death of the executors or assigns. 

Regulations

HER

to A. for 99 years, if the tenant should so long live, re-

mainder to B. for 4000 years; and herein two questions were

made: 1st, Whether any heir should be paid, because the copyholder did not die feised; and as to this the court held clearly, that a heir was due and pay-
able; for notwithstanding the outlaw and dilsinein, he still continued legal tenant, and such dilsinein might have been by combination to defeat the lord of his heir. The second question was, to whom the heir should be paid; and to this the court held clearly, that the re-

mainder man for 4000 years could have no right to it, because the copyholder was never his tenant; and as to the grante for 99 years, Barkly Justice was of opinion, that it belonged to him; but hereof James Justice (they two only being in court) doubled, because that so infante the tenant died, it is with infinitae esse of the grante for 99 years was determined. March 29, Nervic and Nerrie. 2 Rel. Abbr. 72. S. C.

But if by the custom of a copyhold manor the lord may

grant a copyhold to three persons, to hold to them juc-
coffeis, &c, as in statutes in charters, & no alibi, for three

lives, and that on the death of every one of them the lord

should have his beet for an heir, and a grant is made to J. S. and his assigns, to hold to him for his own life, and the lives of two others: This at least is a good grant for the life of J. S. though not strictly purpous to the

custom, and the lord on his death shall have an heir-

but he shall not have an heir for the death of the Cejius jointure, because they were never his tenants. 6 Med. 93. & 1 Salik. 188. S. C.

It seems to have been always agreed, that for an

heri-
tho

cuffum the lord might seize the beet of the te-

rant, or what ever else was due as an heir, wherever


But according to some ancient opinions, the lord could

only dillain, but not seize for an heir-ervice; because

they lay, it lies in render, and not prender; also the

form of pleading is, that he was seized thereof by the

hands and head of the lord, which would be absurd, if the lord

had such a property therein that he might seize it as his


But it hath been solemnly adjudged, that for an heir-

ervice, or for a heir referred by way of tenant, the

lord could dillain or dilsin when the court agrees that the lord shall on his death have the beet, &c. the lord hath his election which beet he will take, and by seizing thereof reduces that to his posfection, wherein he had a property at the death of the tenant, without the concerning acl of any other person; and it is probable where the lessor relieves the death of the

robe, for there the lessor has his election which he will

pay, and being to do the first act the lord cannot seize, but must dillain. Pleas. 96. adjudged. Crs. Edin. 589.

Also though the lord may either seize or dillain for an

heri-ervice, yet he can only seize the proper beet of the ten-

ant, but he may dillain any man's beafts which are upon the land, and retain them until the


So it hath been ruled, that for a heri-ervise or ser-

cice the lord may seize as well in the manor as out; but

if he dillain, it must be in the manor. 1 Salik. 339. Mylin and Bennet; par. 7, 1 Stew. 81. S. P. 3 Med. 231. S. P. argued.

But it is said, that this liberty must be underfoot to

be annexed to ancient tenures, on which the lords had so many privileges, and not to be extended to those which are created within time of memory, upon particular re-

sources where the lease was made of lands for 99 years, if A. and B. should so long live, serv-ing a yearly rent and heir, or 40 l. in lieu thereof, after the death of either of them, provided, that no heir

shall be paid after the death of A. living B. and A. and B. being both dead, and consequently the lease de-

minished, was divided in opinion, whether the lessor could dillain for the heir or not. 1 Stew. 81. 3 Med. 231.
Regulations of the herring fair at Yarmouth, 31 Ed. 3. 
fl. 2. c. 2. 25 Ed. 3. 
The contents of barsrels of salmon, herrings and eels, with rules for their package, 22 Ed. 4. c. 2. 11 H. 7. 
c. 23. 13 El. c. 11. sect. 5. 15 Car. 2. c. 16. 5 Geo. 1. c. 18. sect. 13 & 15. 
Penalty of exporting flangers herrings not well salted, packed and casked, 5 El. c. 5. sect. 6 & 7. 
Allowance on the exportation of herrings, 5 Geo. 5 & 6 W. & M. c. 7. sect. 10. 9 & 10 W. 3. c. 44. sect. 15, 16, 17. 
5 Geo. 1. c. 18. Of white herrings from Scotland, 5 Geo. 6, c. 8. art. 8. 
Oath of exporting that herrings were cured with salt that paid duty, 5 Am. c. 29. sect. 6. altered by 6 Am. c. 12. sect. 3. 
Duty on red herrings for home consumption, 8 Geo. 1. c. 4. on white herrings, 8 Geo. 1. c. 16. 
Duties reduced, and taken off where only home-made salt is used, 3 Geo. 2. c. 20. sect. 14 & 15. 26 Geo. 2. c. 6. 
Duties on red and white herrings revived, 5 Geo. 2. c. 6. sect. 3. 
Estabishment of the British white herring fishery, 23 Geo. 2. c. 24. 26 Geo. 2. c. 9. 28 Geo. 2. c. 14. 
Office of the custom officer to view the vessels at their return, 23 Geo. 2. c. 24. sect. 15. 
Duties to Greenwich hospital to be paid before bounty is received, 28 Geo. 2. c. 14. sect. 10. 30 Geo. 2. c. 30. sect. 10. 
Staves of herring-barrels in Scotland to be half an inch thick, 29 Geo. 2. c. 23. sect. 4. 
Not to extend to the white herring fishery, 3 Geo. 2. c. 30. sect. 6. 
One shilling per barrel payable in Scotland on herrings for home consumption, 29 Geo. 2. c. 23. sect. 6. 
Further bounty on vessels employed in the white herring fishery, 30 Geo. 2. c. 30. 
Such net may be used in the herring fishery as are 
behalf adapted to it, 30 Geo. 2. c. 30. sect. 2. 
Penalty on obstructing those employed in the 
herring fishery, in the free use of ports, thores, &c. 30 Geo. 2. c. 30. sect. 7. 
For other matters, see Fifth and Sixth. 
Herring-fish. Seems to be a composition in money, 
as an equivalent for the custom of paying so many 
herrings for the provision of a religious house. Placent. term. 
Sta. Trin. 18 Ed. 1. 
Behold or Behold, (a corruption of the Latin beba.) A little loaf of bread. Domesday. Cowell, edit. 1727. 
See Ufque. 
Pelserum, In redundo vero Rex Athelstanum, post per 
acutiam vitium, declaratem de Eor. verius Beverlæcum, 
as nunbullis postfossus redimundus, cæstitulum per eam ihi de 
pastorum, dedit Dio & gloriosi confessori Johanni praebuit, 
sicut propterfescriptor ibidem Dei servientiam, quidam 
avertos, vulgariiter dictus hæc-corn, percipientia de domini 
& ecclesiæ in illis partibus, quas ministræ dictæ ecclesiæ 
usque in præsens percipient partibus & quidem. Mon. 
Angl. 2 par. fol. 367. b. 
Peter or Peter, a young cockerell: Quando Rex 
ihi venirebat, reddediat ei unusque carnata 200 hebras. 
Domesday tit. Coffee. 
Brbeuwltho, A frearly, from the Sax. bræu, brædmi 
ium, and borh, debitor, vel fidiusjor. Quia quia fidius 
jet, debitorrem se quanammodo confinitut. Du Frene in 
verso. 
Præan, Anciently Hingham and Hengistfield, 
was formerly a county of itself, and a franchize, where 
the King's writ went not: But by the flat of 14 Ed. 
hex. & Hexhambye fallth be within the county of 
Northumberland. See 4 Hydl. fol. 22. It was also of old a 
bishoprick by the name of Episcopatus Hinghamdæniæ. 
See Min. Angl. 2 par. fol. 91. 
Prebore. See Hydlbore. 
Præbore, Seems to signify a customary load or bur 
den laid upon the inferior tenants for mending or repair 
ing the ways or hedges. Cowell, edit. 1727.
But he who prescribes for a way, must first in certain whether it is a foot, horse, or cart-way. Vol. 163. adjudged upon demurrer.

If in bar of an action of trespass the defendant pleads that J. S. and all those whose whole estate he hath in certain lands, other themselves and their servants, time out of mind have used a way in or transthe place

where, &c. to the said lands: this is a good plea, but it is not the plot a case the said way is claimed, and the rather, because it is claimed by prescription, which ought not to be laid in certo loco. Vol. 163. adjudged.

If A. be not fee of a backside in a town, and the high-street is next adjoining thither to the East, and there is a gate in the backside which, and which is in the street, the gate being in the East next to the street, and A. is also feised in fee of a meadow and a piece of land near adjoining to the backside of the North of the backside, and by deed inclosed B. of the meadow and piece of land which are of the North of the backside, and by the same deed further grants to him, and his good liber ingressum, egressum, & regregum in, ad & extra samb canona pradissim in, per & trans predict, janam and backside; by force of this grant B. may go from the street through its gates, and over the backside, to the meadow or piece of land of which he is infeccted; but he cannot go thro' the said gate and backside to other places, to the street, without coming to the said meadow or piece of land; for the liberty is granted to him of ingress and egress in, ad & extra samb canona prado- sissim in, that this is made appurtenant to the premises before granted.

Vol. 163. 139. Edgell and Holman.

In trespass for breaking his chinks, if the defendant justify going over this clofe, because he hath used time out of mind to have a way over it from D. to Black- aire, and the plaintiff replies, that at the time of the trespass the defendant, went with his carriages from D. to Blackaire, & dehinc to a mill, this will not maintain his action, for when the defendant was at Blackaire, he might goither without he would.

Vol. 163. 139. Sanders and Myafs, and fee 1 Med. 190.

But it seems, that if a man hath a way for carriages from D. to Blackaire over my clofe, and after he purchases land adjoining to Blackaire, he cannot use the said way with carriages to the land adjoining, for then it may be very prejudicial to my clofe; but it seems, if I will help myself, I must serv. the special manner, and that he used it for the land adjoining.

Vol. 163. 394. A way cannot be claimed as appurtenant or appur- tenant to a house, because it is only an easement, and no interest.

If in bar to an action of trespass the defendant pleads, that J. S. and all those whose whole estate he hath in certain lands, time out of mind, and a farm tresspass, and their servants, they have had and used passaggio in, per & transthe place where, &c. to the said lands; this is a good plea, for passaggio is properly a passage over water, and not over land; and he ought to have prescribed in the way, and not in the passage, and should have used such words as are proper and known in the law. Vol. 163. adjudged.

A man may prescribe for a way from his houses throu' a certain clofe, &c. to church, though he himself has lands next adjoining to his said house, through which of necces- sity he must first pass; for the general prescription shall be applied only to the lands of others. Palm. 367, 388.


Upon trial of an action of trespass a case was made, that the place where the supposed trespass was committed was formerly the property of the plaintiff, who some years since built a front upon it, which has ever since been used as a way; but the defendant had land contiguous, parted only by a ditch, and that he had a bridge over the ditch, the other thereof refmct on the highway. And it was inflicted for the defendant, that by the plaintiff's making it a street, it was a dedication of it to the public; and therefore he might be liable to an indissision for a nuisance, yet the plaintiff could
could not sue him as for a trespass on his private property. _Sed per curiam:_ It is certainly a dedication to the public, or far as the public has occasion for it, which is only for a right of passage. But it never was underfoot to be a transfer of the absolute property in the field. So the plaintiff had judgment. _Stron._ 1004. _Hill._ 8 _Gen._

2. Sir John Lade v. Shepard. A man cannot allege, that he cannot use his way as well as he could before, but must plead that he could not use the way at all. _Craw._ 52. 53.

An ancient highway cannot be changed without an inquisition found on a writ of _Ad quod damnum._ Such change will be no prejudice to the public; and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; nor can the King's subjects in an action brought against them for going over such new way, justify generally, as in a common highway, but ought to shew specially, by way of excuse, how the old way was obstructed, and a new one set out; neither are the inhabitants bound to keep watch in such new way, or repair it, or to make amends for a robbery committed in it. _Cra._ _Car._ 265. _Vanh._ 341. _Yev._ 141. _Haw._ _P._ _C._ 201-2.

But it hath been held, that if a water, which hath been an ancient highway, by degrees changes its course, and goes over different ground from that whereon it used to run, this highway continues in the new channel in the same manner as in the old. _22 Aff._ 95. _1 Rel._ _Abr._ 390.

2. Who are obliged to repair the highway by the Common law, and where a person shall be liable by reason of inutility, tenure or prescription.

Of Common right, the general charge of repairing highways lies on the occupiers of lands in the parish wherein they lie; but it is said, that the tenants of the lands adjoining are bound to scour their ditches. _1 Rel._ _Art._ 39. _March._ 26. _1 Vent._ 90. 183. _8 _H._ 7. 8.

Also if a parish is part in one county, and part in another, the highways in one county are out of repair, the whole parish shall contribute to the repair; but there may be an agreement between the inhabitants, that the one shall repair one part, and the other the other; and such agreement is good between themselves, and for breach the one may have an action upon the case against the other; but in an indictment they shall take no advantage of such agreements, for as to the King they are equally liable. _1 Med._ 112. _1 Vent._ 256. _3 _Keb._ 301.

Therefore if the indictment is general against all the parish, all the parish shall be charged; but if it be intended to charge one part or precint of the parish, and all the ways within the parish, it must be alleged in pleading, that by special prescription, or _ratio tenura,_ such a part of the parish _de tempore dent,_ &c., have been charged with the repairation of the ways. _1 Vent._ 256. _1 Med._ 112. _3 _Keb._ 301.

But though the parish be obliged of common right to repair the highways in it, yet it is certain, that particular persons may be bound to repair the highway, by reason of inutility or prescription; as where he owner of the lands not inclosed, next adjoining to the highway, incloses his lands on both sides of it in which case he is bound to make a perfect good way, and shall not be excused by making it as good as it was before the inclosure, if it were then any way defective, because by the inclosure he takes from the people the liberty of going over the lands adjoining to the common track. _1 Rel._ _Abr._ 366. _1 Sid._ 464.

Allo it is said, that if one inclose land on one side, which hath anciently been inclosed of the other side, he ought to repair all the way; but that if there be no such ancient inclosure of the other side, he ought to repair but half the way. _1 Sid._ 464.

There still remains the old hedge time out of mind belonging to _A._ on the one side of the way, and _B._ having land lying on the other side, makes a new hedge.
HIG

the city of London,) that shall be assièd to the payment of any sufficiency to her Majestty, five pounds in goods, or forty shillings in lands, or above, during all such time as he shall stand so assièd, and not altered, and being none of the parties chargeable for the amendment of such parishes, but only the owners of the same, not more than two able men yearly to labour in the highways at the times appointed.

And it is farther enacted by the said statute, sect. 3. "That every other that shall occupy a plough-land in villages, lying in several parishes, shall be chargeable to the making of the ways within the parish where he dwelleth, as far forth, and in such manner and form as any person having a plough-land in any one parish, is or ought to be chargeable."

It was made a great doubt in the construction of these statutes, what should be accounted a plough-land within the purview of them; for thepettingwhereof it was enacted by 7 & 8 W. 3. c. 29. "That any person that shall have in his or her occupation, wood-land or other land, to the value of fifty pounds per annum, shall be adjudged and deemed to have a plough-land, as to all or any of the purposes within any of the statutes before that time made, or of concerning the highways; any thing in them, or any usage or custom to the contrary in any wife notwithstanding."

Alfo it is farther enacted by the above-mentioned statute of 22 Car. 2. c. 12. sect. 8. "That in such places where there are several carts or teams for the amend- ment of the highways, but the usage and practice is to carry stones, gravel, earth or other materials for such amendment, upon the backs of horses, or by any other kind of carriages; that in all such places the inhabitants ufo any such horses or other carriages, shall fend in such their horses as are accustomed to that kind of labou', and fuch other their carriages, with adequate persons to work with the fame, in like manner, and under the like directions, forfeitures and penalties, as by any former statute for repairing of highways, is appointed for carts and teams."

In the explication of these statutes, the following opinions have been held, 1. That clergymen are within these statutes in respect of their spiritual possessions, as much as any other persons in respect of any other possessions. 3 Keb. 255, 476. 1 Vent. 273. 2 Inf. 704. 1 Hanck. P. C. 204.—By Stat. 30 Geo. 2. c. 25. sect. 12. Persons for serving as surveyors of high ways, in the Militia, shall during the time of such service be exempted from personally doing any highway duty, common called surveyor-work.

2. That he who keeps a draught ought to send a team, though he occupy no land in the parish; and in like manner, who occupies a plough-land ought to send a team, though he keep no耕. 8 Geo. 186, 356. Dalt. cap. 25. 2 Keb. 619.

3. That notwithstanding the words of the statute 3 & 4 Ph. & Mar. cap. 6. extend only to the occupiers of land, yet if the owner neither occupy them, nor let them, but fuffer them to lie ftreight, he shall be charged as much as if he had occupied them, and the public ought not to suffer for his negligence. Palm. 280. 2 Red. Rep. 412.

4. That he who keeps a draught and but two horses, ought to attend with them at the time appointed, and to pay such duty as they are able to carry. Dalt. c. 26. sect. 5.

5. That it is no excufe for parishioners indifferently at law or not repairing their highways, that they have done their full work required by statute; for the statute being in the affirmative, doth not abrogate any provision of this kind by the common law. Dalt. cap. 26. 1 Hanck. P. C. 204.

6. The King's charter, or letters patent, discharging certain lands from the duty of contributing to the repair of the highways, are not sufficient to exempt lands from the charge of the repairing the highways, which by the statute Ph. Mar. and other subsequent statutes, are chargeable to be paid for that purpose. 3 Med. 96. 1 Red. and Whiteh.
lawed by the said justices in their special feffions, shall be collected and gathered by the said surveyor or surveyors of the highways; and if any perfon or persons refuse to pay the monies so all sanctioned on him or them, that then the fame shall be levied, and recovered by the said surveyor or surveyors, by distress and publick highway, beiefs or under three feet in breadth.

Alfo it is enacted by 8 & 9 W. 3. cap. 15. sect. 2. "That the justices of the peace of any county, city, division, ridings, liberty, or place, or the major part of them, being five at the least, at their quarter-feffions, may by order, or the afent of the owners, or may be interested in the said ground that shall be laid into the said highway; the said justices by the said statute imposed to impanel a jury before them, and to administer an oath to the said jury, that they will affiﬂe such damages to be given, and recompence to be made to the owners and others interested in the said ground, for their respective interests, as they shall think reasonable, not exceeding five and twenty years purchase for lands so laid out, and likewise such recompence as they shall think reasonable, for the making of a new ditch and fence to that side of the highway that shall be so enlarged, and also afﬁssion to any perfon that may be further afﬁssed, or suffer any damages by being concerned in the enlargement of such highways; And upon payment of the said money so awarded, or leaving it in the hands of the clerk of the peace of the respective county, for the use of the owner, or of others interested in the said ground, the interest of the said persons shall be for ever deducted out of them; and the said ground that shall be laid into any highway by virtue of the said act, shall be deemed a publick highway to all intents and purposes whatsoever; and the said justices shall have power to order one or more afﬁssions or afﬁdavits to be made, levied or collected upon all and every the inhabitants, owners, or occupiers of lands, houses, tenements or hereditaments, in their respective parishes or places that ought to repair the same, to such persons or persons, and in such manner as the said justices at such feffions shall direct and appoint; and the money thereby raised shall be employed and accounted for, according to the order and direction of the said justices, for the repair of the said highway, and for the making the said ditches and fences: And the said afﬁssions shall, by order of the said justices, be levied by the overseers of the highways, by ditches and sale of the goods of persons so afﬁssed, not paying the same within ten days after demand, rendering the overplus of the value of the goods so distrained to the owner or owners thereof, the necessary charges being ﬁrst deducted.

But it is provided by the said statute, sect. 2. "That no such afﬁssion or afﬁdavits made in any one year for enlarging of highways, shall exceed the rate of ﬁve per cent in the pound of the yearly income of any lands, townships, or hereditaments, or the rate of ﬁve per cent in the pound for personal efates.

Alfo it is further enacted by sect. 7 of the said statute, "That if now there be three or more seale shall be made by the said justices for laying out any ground for the enlarging of highways, the owners or proprietors of the said ground shall have free liberty, within eight month after such order, to cut down any wood or timber growing upon the said ground; or upon the neglect thereof, that the same shall be sold by order of the said justices;
and owners of such wood or timber shall receive the full of what shall be made thereof, the charges being first deducted.

"And it is further enacted by sect. 5 of the said statute, "That any person aggrieved by the order or decree of the said justices may appeal to the judges of assize at the next assize only to be held for the county where such decree or order shall be made; and any of the said justices or of the said justices may reverse the said former order and decree, as in judgment they shall think fit, and if affirmed, to award costs against such appellants for their vexation and delay, and to cause the fame to be levied by diftrusts and sale of the said appelkent's goods, rendering the overplus to the said applicants.

"And it is further enacted by the said statute, sect. 6. "That where any common highway shall be included after a writ of "Ad quod damnum issued, and inquisition thereupon taken, any perfon aggrieved by such inclosure, may make his appeal to the quarter-feqons of the county to be held next after such inquisition taken, which shall finally hear and determine such appeal; and if no such appeal be made, then the said inquisition and return entered and recorded by the clerk of the peace of such county at the quarter-sessions, shall be for ever afterwards binding to all persons whatsoever.

6. Of appointing surveyors of the highways, and how they shall attend to their office.

It is enacted by the 3 & 4 Will. & Mar. c. 12 sect. 1. "That upon the first and twentieth day of December in every year, unless that day be Sunday, and then on the seventh and twentieth, the constables, headboroughs, tithingmen, churchwardens, surveyors or surveyors of the highways, and inhabitants in every parish, shall assemble together, and the major part of them as are so assembled, shall make a lift of the names of a competent number of the inhabitants in their parishes, who have an interest in lands, tenements or hereditaments in their own right or their wives, of the value of ten pounds by the year, or a personal estate of the value of one hundred pounds, or are occupiers or tenants of houses, lands, tenements or hereditaments, of the yearly value of thirty pounds, if any such there be; or if there be no such person, then of the most sufficient inhabitants of such parishes, and shall return such a lift unto two or more of the justices of the peace in or near the division of the county in which their parishes lies, at a special feast to be held for that purpose within the said division, on the third day of January next following, unless it shall happen on a Sunday, and then to be the fourth of the said month, or within fifteen days after; for which purpose the said justices are required to hold a special feast at some place within that division where the parishes lies, and to give notice of the time and place where they intend to hold the same, to the constables, headboroughs, tithingmen, churchwardens, and surveyors of the highways of every parish within the said division, at least ten days before the holding of the said feasts; and the said justices shall then and there, out of the said lifts, according to their discretion, and the largeness of the parish, by warrant un- der their hand and appointment, appoint one or two more, as they shall think fit and approve of, being of like sufficiency as aforesaid, to be surveyor or surveyors of the highways of every parish within the division, or for any hamlet, precint, liberty, tithing or town, or of and in the same division, for the year ensuing; and the said surveyors or surveyors hereof, and constables, headboroughs, tithingmen or surveyors of the highways, for the time being, or some of them, be notified to the parson or prebendaries so nominated, chosen and appointed by the said justices within six days after such nomination, by serving him or them with the said warrant or warrants, and if he or they refuse or neglect to pay the said surveyors their fees, then the said surveyors shall apply themselves to any justice of the peace within the division of the county wherein such

Vol. II. No. 88.
highways are, and in default thereof to any neighbouring justice for the said county, and upon his or their making oath before such justice of the notice to the defaulter in manner aforesaid, the said surveyors shall repay all such charges as shall be allowed to be reasonable by the said justice, to be levied in manner as is likewise enacted by tit. 1 Gen. 1. 2. c. 57. sect. 2. All surveyors of the highways appointed by virtue of the act 3 Geo. 4 W. & M. cap. 12. shall within fourteen days after acceptance of their office, and every four months or oftner, if required by warrant from the justices of the peace, within all the highways, bridges, causeways, pavements, drains, ditches and water-courses belonging to such highways, with all nuisances or encroachments made upon them within the parish, township, village, hamlet, precinct, or otherwise, where they are surveyors, and give a true account in writing upon oath (for which oath no fee shall be taken by sect. 11. of this act) of all such highways, and especially of such defects as want to be repaired, and of the neglects of labourers, and of those who are obliged to find labourers or teams, to the justices at their special fessions; and all surveyors neglecting to give such account shall suffer the fine penalty, as if they had not time to execute the order of the said act and directed as by the said act is directed; unless they have some reasonable excuse, to be allowed of by the justices at their special fessions.

Also it is enacted by the above-mentioned statute of 22 Car. 2. c. 12. sect. 12. "That the surveyors shall appoint six days for the providing gravel, sand, and other materials, for the amendment of, and for working in the highways, having respect to the season of the year, and the weather, and giving notice publicly some convenient time before the several days, at which days all persons liable to the said work, shall attend and work accordingly: And the said surveyors, at the return of the defaults, shall make return every month after every default made, of such neglecting justice of the peace of the said county; and the said justice shall present the same at the quarter-sessions of the peace held next after such return made unto him; and the offenders shall respectively incur the fine forfeitures, pains and penalties, inflicted and appointed by the laws then in force for the amending of the highways."

It is enacted by 5 El. 1c. 13. "That it shall be lawful for the surveyors of the highways, for the better reparation and amendment of the ways within their several parishes and limits, where they shall be surveyors (if it shall be so to them thought necessary), to carry away, remove, and warehouse all small broken stones of any quarry or quarries lying and being within the parish where they shall be surveyors, without licence, controlment or imprisonment of the owner, so much as by their directions shall be deemed necessary for the amendment of the said ways; and that for default of any quarry lying within their several parishes and limits, or in default of rubble not to be found in any such quarry, it shall be lawful for every such surveyor, for the use aforesaid, in the several grounds of any person or persons being within the parishes and limits where they shall be surveyors, and near adjoining to the way wherein such repairoo shall be thought necessary, to carry away, remove, and warehouse all small broken stones of any quarry or quarries lying and being within the parishes where they shall be surveyors, without licence, controlment or imprisonment of the said persons, so much as by their directions shall be deemed necessary for the amendment of the said ways." But it is provided by the said statute, sect. 6. "That it shall not be lawful to any such surveyor, by virtue of the said act, to cause any rubbish to be dug out of any quarry or quarries, but only shall extend to such rubbish as shall be found there ready digged for the said quarry or quarries, and not otherwise by his or their licence and commandment; nor shall not extend or give authority to any surveyor to dig or cause to be dug any gravel, sand, or cinders in the houfe, garden, orchard, or meadow of any person, nor that it shall be lawful to any such surveyor to cause any more pits to be dug for gravel in any severall and inclosed ground than one only; and that the fame pit or hole so digged for gravel as is aforesaid, shall not by any way be in breadth or length, above twenty feet, nor shall be farther than the mouth; And it is further enacted by the said statute, sect. 6. "That every surveyor shall within one month next after such digging or pit made, cause the same to be filled and stopped up with earth, at the costs and charges of the persons; upon pain to forfeit to the owner of the land of the soil with which the said pit shall be made and digged, for every default five marks, to be recovered by action of debt, &c.

And it is farther enacted by the said statute, that every surveyor shall within the limits where he shall be surveyor, have authority to turn a water-course, or fitting of water, being in any highway or road, or any field of ground of any person whatsoever; next adjoining to the said ways, in such manner as the said surveyors shall think meetest.

But by tit. 26 Geo. 2. cap. 28. it is enacted; "That if any person shall, by reason of getting any gravel, sand, stones, chalk, or other materials, for any highway, or any other public use whatsoever, make or cause to be made any pit or hole in any common, heath, or waste ground, he shall forthwith cause the same to be sufficiently fenced off, during such time as it shall be continued open, and shall, within fourteen days after digging for such materials in any such pit or hole, cause the same to be defended, and if he shall not fill up the same, or cause it to be filled, and if he shall not fill up, slope down or fence off the same, and keep the said fence from time to time in good repair, one justice on view, or oath of one witnes, may order him to fill up, properly slope down, or fence off the same; and when any fence shall be set up, may order the same to be removed; and that if he shall not comply with such order in ten days after his receipt thereof, or the fence being left at his usual place of abode, and due proof being made, upon oath before any one justice, if the offence committed, of the service of such order, and of the refusal or neglect to comply therewith, such person shall forfeit not exceeding ten pounds, nor less than forty shillings, to be laid out in filling up, sloping down, or fencing off the same, and towards the repair of the roads in the parish or place where the offence shall be committed, and in such manner, as the justice shall direct; which forfeiture in case the same be not forthwith paid shall be levied by distress by warrant of justice, according to the law, practice, and usages, in this case hereunto, and in case of non-payment, to be sold by public auction by the justice or his deputy, and the money to arise by the sale of such goods, or the proceeds of the same, to be applied to the expenses of the said work, and after satisfaction of the same, the surplus to be paid into the county court, and applied to the expenses of the said work, and that this act shall be in force, and for the better accomplishment of the whole, and in case of any doubt in the meaning of any word or expression used in this act, the meaning thereof shall be the same as and in like manner as is used in the like words and expressions in the acts of 12 & 13. Eliz. c. 16, sect. 1. for highways and other public works, and the same words and expressions therein used shall be considered, as used in this act for like purposes; and for the better execution of the same."
It is ftaid, that the who wath lands next adjoining to a highway, it bound of common right, to fcor his ditches: but it is ftaid, that he who hath lands next adjoining to such lands, is not bound by the Common law fo to do, without fome special preftipation for that purpofe; and perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to people, is bound by the Common law to fop the fame; and it feems cleaf, that any perfon may jutfly the lopping fuch trees, fo far as to avoid the nuance. 1 Haw. 213.

However it is enfaed by 5 Eliz. 1. 13. fept. 7. "That the hays, fences, dikes, or hedges next adjoining on either fide, to any high or common faring way, shall from time to time be diked, fcoored, repaired and kept low, by the owner or owner of the ground or foil, which fhall be inclofed with the faid hays, fences, dikes, or hedges afofale, &c."

And it is farther enfaed by 18 El. 1. 10. fept. 5. "That where it shall not repair, dicit, or fcor any hays, fences, ditches, or hedges adjoining to the highway, or common faring way, according to the true intent of the above-menfioned statute of 5 Eliz. 13. fhall forfeit for every fuch offence ten fhillings, to be leved by the surveyors, &c."

And it is farther enfaed by 3 & 4 W. & M. 12. "If any owner or occupier of lands next adjoining to any highway, not twenty feet broad, fhall neglect to clean or fcor their ditches, gutters and drains adjoining to the faid highways, or caufe the earth taken out thereof to be carried away, and lay fufficient trunks, tunnels or bridges where any cut-ways are into, the faid highways, for the fpace of ten days after notice thereof given by a surveyor, &c. every fuch offender fhall forfeit five fhillings, &c."

And it is farther enfaed by the faid statute of 3 & 4 W. & M. 12. "That the poftells of the land next adjoining to any highways, where they are not twenty feet bread, fhall from time to time and at all times, keep their hedges plaited, cut or pruned, fa to none tree, bath or thard fhall fland or grow in fuch highway, nor bough or branch be fuffered to hang over the fame, or any part thereof; but the faid hedges fhall be kept cut and pared right up from the roots, and not permitted in any fорт to fpread into or hang over the highway, or any part thereof, to the end that there may be a free and clear paffage for the travellers, and all forts of carriages laden, without being any ways prejudiced or obftructed
by any hedges, trees, bushes, or branches whatsoever, and that the fun may freely shine into the fold ways to dry and amend the same.

Also it is further enacted by the above-mentioned statute of the 18 El. 1, cap. 5, sect. 6. "That every occupier of lands adjoining to the grounds adjoining to any highway, or common faring way, where any ditching or fouling should or ought to be as aforesaid, shall from time to time, as need shall require, ditch and scour in his own grounds so adjoining, whereby the water contained in the ditches over the ground next adjoining, may have pillage over such next ground so adjoining; on pain of forfeiture for every time so offending for every rod not to be ditched and scoured, twelve pence.

And by Stat. 7 Geo. 1. b. 2. c. 52. sect. 8. "If any person who ought to scour and keep open such ditches and water-courts adjoining to highways, and not to remove any annoyances shall, by the space of thirty days after notice given by the surveyors, neglect to do the same, or shall leave the earth of ditches foured in the highways for eight days, eath being made thereof by the surveyors before the justices at their special seions; such offender shall be fined by the surveyors for ditching not so foured and kept open to forfeit two shillings and fixpence, and for each other offence aforesaid, any sum not exceeding five pounds nor under twenty shillings, to be levied by ditches and file; which forfeitures shall be applied by the surveyors to the amendment of the highways: And the surveyors are authorized to order and keep open such ditches and water-courts, and to remove all annoyance, and where the ditches and drains are not sufficient to carry off the water, to make new ditches and drains through the lands adjoining, and keep them open.

Stat. 7 Geo. 2. cap. 9. sect. 1. "If the surveyors of the highways shall find any highway deep and foundrous, and the hedges adjoining to be so high as to prevent the benefit of the sun and winds, it shall be lawful for such surveyors to make presentment of such hedges to the justices of the peace, who live in or near the division where the highway is, at their special seions held for such purpoes; which justices, or two of them, are empowered to order and keep open the lands, where the hedges are, to presde to appear at the next public meeting of the justices, to shew cause why such hedges should not be new made or cut low; and if it shall appear that such highway is deep and foundrous, and damaged by the height of such adjoining hedges, the justices of the peace, or any of them, are required to direct the surveyors that the surveyors of the highways of the parish where such hedges are; directing such surveyors to leave notice in writing at the place of abode of such persons, that they are required to new-make or cut low the said hedges, within thirty days after such notice (provided such notice be given between the 8th of September and 8th of February); and in case of their neglect to do the same, the surveyors are required to cause the hedges to be new-made or cut low, so as such hedges be left three foot high above the bank.

 Sect. 2. Such persons as shall neglect to new-make or cut low such hedges, shall repay to the surveyors such reasonable charges as may have been laid to on that occasion, and in case of neglect to repay such expenses within fourteen days after the same shall have been demanded, the justices at their monthly or other public meeting, in or near the division where the hedges are situated, are to issue out a precept to the confederate and bothholders, or other officers of the place, requiring them to levy for the payment of such surveyors, such sums of money as the said expenses shall amount unto, upon the goods of such persons as have neglected to pay the same.

Sect. 3. Provided, that nothing herein shall alter the laws in relation to timber trees, which grow in hedges adjoining to the highways.

As to removing trees and bushes from the highways, it appears from the above mentioned statute of Winchelsea, cap. 5. that no small tree or bush, whereby a man may lurk to do hurt, ought to be suffered to stand within two hundred feet of either side of a highway leading from one market town to another.

And it is further enacted by the said statute of 5 El. 15. sect. 7. That all trees and bushes growing in the highways, should be cut down by the owner or owners of the ground so enlarged by the said statute of 18 El. cap. 10. sect. 7. That whoever shall not cut down or keep low all trees and bushes growing in or next adjoining to any the said ways, according to the intent of the above mentioned statute of 5 El. 15. should forfeit ten shillings.

As to the manner all other annoyances obstructing the highway are to be removed, it seems clear, that by the Common law any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use; also it seemeth, that an heir may be indicted for continuing an incroachment, or other nuisance to a highway, begun by his ancestor, because such a continuance thereof amounts in the judgment of law to a new nuisance 1 Hawk. 214.

But the common law not having been thought sufficiently to have provided against mickefs of that kind, it was enacted by the above mentioned statute of 18 El. 10. par. 7. "That no person having any ground adjoining to any highway, or common faring way, leading to any market town, shall cast or scour any ditch, and throw or lead or cast thereof into the highway, and suffer it to lie there by the space of fix months to the annoyance of the said highway, or common faring way; upon pain of forfeiture for every load of soil cast into the highway, or common faring way, in ditching or scouring, twelve pence: And that the surveyors may make fines through banks occasioned by the casting such soil into an highway.

And it is farther enacted by the said statute of 3 & 4 W. & M. c. 12. That no person shall lay in any highway, not twenty feet broad, any flone, timber, straw, dung or other matter, whereby the fame shall be any ways obstructed or annoyed; on pain to forfeit for every such thing, etc. And it is enacted by the same statute, That if any timber, stone, hay, straw, flubble or other matter for the making of dung, or on any other pretence whatsoever, shall be laid in any such highway as aforesaid, whereby the fame shall be any ways obstructed or annoyed, the owners or poileffors of the lands next adjoining to the said highway, shall clear the said way by removing the said timber, stone, hay, straw, dung or other matter, and have, take, and dispose of the same to his and their own use; and if any such owner or occupier of lands next adjoining to the said highways, shall neglect to clear the said ways of the said nuisances, he shall forfeit five shillings, etc.

As to the punishment of persons for taking away things made use of for the benefit of highways, it was enacted by the above-mentioned statute of 7 & 8 Will. 3. c. 20. "That every person who shall pull up, cut down or remove any part, block, great flone, bank of earth or other security, which was set up, placed, and made for securing any horse or foot eafy in a publick highway, from waggons, wains and carts, shall, upon complaint to any justice of the peace of the place or division where such offence shall be proved by the oath of one credible witnes, etc. forfeit twenty shillings, one moiety thereof to the surveyors, etc. and the other moiety to him that shall discover the same.
it is enacted by the above-mentioned statutes of 22 Geo. 2. c. 12, par. 6. and 7 & 8 Will. 3. c. 39. and also by 6 Ann. c. 29. and 9 Ann. c. 18. and 1 Geo. 1. sft. 2. c. 11. that no travelling waggain, wain, cart or carriage, wherein any burdens, goods and wares shall be carried or drawn, or whereof the said horse shall be as shall be employed in or about husbandry and manuring of land, and in carrying of hay, straw, thorn, untheaded, chalk, timber for shipping, materials for building, stones of all sorts, or such ammunition or artillery as should be for the service of his Majesty, his heirs or successors, shall at any time be drawn, or go in any common or public highway or road, above with five horses, oxen, or beasts in length, (except only where such five horses, &c. shall not be sufficient to draw such cart or waggon up any steep hill, or out of any foul place, in which case it shall be lawful to join any horses from any cart or waggon then travelling that road, with the consent of the owner or driver of such cart or waggon, to help such insufficient horses up such steep hill, or out of such foul place,) on pain of forfeiting five pounds, one moiety to the surveyor of the highways of the place where such offence shall have been committed, and the other moiety to him who shall recover thereof, and prosecute for the same, to be levied by diffrets of all or any of the horses, oxen or beasts of any person offending against the said statutes, which diffrets may be made by any person whatsoever, (without any warrant, as it is feemeth from 9 Ann. c. 18.) and the beasts or diffrets that shall be distrained are to be delivered forthwith to the surveyor of the highways, or other parish officer, of the place where the offence shall be committed; and if the said penalty be not paid within three days, the said surveyor or other parish officer may, by warrant of one justice of the peace, sell such horses, oxen, and delivered the same, or raised thereby to the said justice, who is to distribute the penalties in the manner above directed, rendering the overplus to the owner, the charges being first deducted; and if the offender shall immediately pay the said penalty to the person who shall make such diffrets, or to the surveyor, or other parish officer where the offence shall be committed, then the person so receiving the same shall deliver it to the next justice of the peace, to be by him distributed as aforesaid. Provided that if any person shall refuse or neglect to carry any of the said beasts by him distrained to the surveyor, or other parish officer as aforesaid, he shall forfeit twenty pounds, and all his goods, and every warrant of one justice of the peace, &c. And if any surveyor, or other parish officer, shall refuse or neglect to deliver any sum of money, or penalty by him received to the said justice, he shall forfeit twenty pounds, to be levied, &c. as aforesaid.

And it is further enacted by the said statute of 9 Ann. c. 18. That if any person employed by any carrier, or other person subject to the penalties mentioned in the said act, shall drive, or assist in the driving of any travelling waggon, &c. with more than six horses, &c. the person offending shall forfeit five pounds, to be levied, and disposed of in like manner as the forfutes before mentioned are directed and appointed.

Stat. 5 Geo. 1. cap. 12. sect. 1. No waggon, travelling for hire, shall go or be drawn with more than six horses; and no cart, travelling for hire, shall go or be drawn with more than three horses (four horses by 16 Geo. 2. c. 12. sect. 10. of eight objections. Why is not the person who feized, and is to have the benefit of the future reason of excluding informers where there is a penalty? Making proof muit mean legal proof. The other also is but natural justice. There are exceptions in the act as to one horse, or piece of timber, tho' drawn by ever so many, &c. It was discharges with costs. Stron. 1181. Hill, 16 Geo. 2. Rex v. Ber}]
As to empty carriages left in the highways, by flat.

30 Geo. 2. cap. 22. sect. 8. It is enacted, That if any person shall set, place or leave any empty waggon, cart, or dray, in any public highways, so as in any manner to interrupt or hinder the free passage of any other carriages, or of his Majesty's subjects, except only during such reasonable time as the same shall be loading; he shall, on conviction by confession, or oath of one witness, before one justice, forfeit any sum not exceeding twenty shillings by distress; and for want of sufficient distress, to be committed to the house of correction, or some other prison of the place in which the offence shall be committed, or the offender shall be apprehended, to be kept to hard labour for any time not exceeding one calendar month.

Sec. 12. That all penalties and forfeitures for offences against this act on the public highways, shall be applied one moiety to the informer, and the other moiety to the surveyor of the highways, in the parish where the offence shall be committed, to be by him applied in the repair of the highways within such parish.

Sec. 13. And if the offender shall refuse to discover his name and place of abode to the justice before whom he shall be brought, he shall be immediately delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction of the place where the offence shall be committed, there to remain until he shall declare his name and place of abode, to the said justice, or to some other justice of such place.

Sec. 14. And any person who shall fail to answer any question committed against this act, may, by authority of this act, and without any other warrant, apprehend the offender; and shall, with all convenient speed, convey or deliver him to a constable, or other peace officer of the place where the offence shall be committed, or the offender shall be apprehended, in order to be conveyed before a justice, there to be dealt with according to law.

Sec. 15. Provided, That persons punished by this act shall not be punished by any former law.

10. Nuisances by unlawful breadth and tire of wheels, and by riding upon carriages, or mischief-beaver of the drivers.

By the statutes 5 Geo. 1. c. 12. 14 Geo. 2. c. 45. 15 Geo. 2. c. 42. no travelling waggon for hire, (other than such as are employed in busbandry, and in carrying of cheets, butter, straw, corn unthreshed, coals, chalk, or any one tree or piece of timber, or any one stone or block of marble, carver, or the covered carriages of noble- men, or the carriages of any other person, or time of ammunition or artillery for the king's service) having the wheels bound with tires or tires of less breadth than two inches and a half when worn, or being fastened on with rude-headed nails, shall go or be drawn with more than three horses, between September 29 and April 15 yearly; on pain that every owner or driver thereof shall forfeit all the horses above three, with all gears, bridles, halters and accoutrements; to be seized, diarrained or otherwise recovered, as the number of horses above six in a waggon either in length, pairs or side-wags.

By the statutes 5 Geo. 1. c. 12. 6 Geo. 1. c. 6. 14 Geo. 2. c. 42. 17 Geo. 2. cap. 6. no person in London or Westminster, or within ten miles thereof, (unless it be with broad wheels upon turnpike-roads, 26 Geo. 2. cap. 30. sect. 5.) shall carry at any one load, in wagons or carriages, having their wheels fixed with iron, more than 12 feet of meal of five bushels each, or more than 12 quarts of malt, nor more than 7000 of bricks, nor more than one ton 12 cwt of coal, or coke; or be guilty of paying any one of the horses, with the gears, bridles and halters therewith used, on conviction in three days before one justice.

And by flat. 18 Geo. 2. cap. 33. the wheels of every car or wagon by mortal injury, shall be six inches broad in the felley, and not wrought about with iron, nor be drawn with above the number of three horses after they are up the hills from the water side; on pain of forty shillings, by warrant of one justice, by distress; and for want of distress, or non-payment in six days after demand, to be committed till paid: but this not to ex- tinct any other summons or suits, then or hereafter brought, for goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places. And any person within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire iron, provided it be six inches broad, and made flat, and not fet out with rose-headed nails.

By flat. 1 Geo. flat. 2. cap. 57. sect. 8. If any person driving any cart, dray or waggon, in the streets of London, shall ride upon the same, not having some other person on foot to guide the same, he shall on conviction before the justice of the said place, or before any one justice, be convicted of one witness, forfeit 10s. by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction for three days.

And by flat. 24 Geo. 2. cap. 43. sect. 8, 9, If any carter, drayman, carman, waggoner, or other drivers, shall ride upon the same in London, or within ten miles thereof, not having some other person on foot to guide the same, he shall on the like conviction forfeit 10s. in case such driver shall not be the owner of such carriages; and in case he be the owner, then any sum not exceeding 20s. to be recovered, levied, and applied, as by the aforesaid act of the 1 Geo. flat. 2. cap. 57. sect. 8. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as soon as conveniently may be before a justice; and if any person shall refuse, above, or prevent any person endeavouring to apprehend such offender, or when he is apprehended, shall refuse or endeavour to release him, he shall forfeit 20s. in like manner.

And, more generally, by the 27 Geo. 2. cap. 16. sect. 7. If the driver of any cart, car, dray or waggon, shall ride upon any such carriage, not having some other person on foot to guide the same, as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted 1) or if the driver of any carriage whatsoever, on any part of any street or highway, shall, by negligence or wilful misbehaviour, carry any kind of goods to any person contrary to the act of 1 Geo. flat. 17 Geo. 2. cap. 6. as respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted 1) or if the party shall not pay upon conviction the justice (by the afo) may commit him to the house of correction. 2 B. Jof. 187.

And by flat. 30 Geo. 2. cap. 22. sect. 7, 12. If the driver of any carriage within London or Westminster, or in any public street or common highway within the bills, shall by negligence or wilful misbehaviour intercept the free passage of his Majesty's subjects, he shall, on conviction by confession, or oath of one witness, before one justice, forfeit any sum not exceeding 10s. or shall be committed to the house of correction, for any time not exceeding one month, on the like apprehension of any of such justice.

And every such driver, offending in any of the aforesaid acts, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10s. or shall be committed to the house of correction, for any time not exceeding one month, on the like apprehension of any of such justice. And every such driver, offending in any of the aforesaid acts, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10s. or shall be committed to the house of correction, for any time not exceeding one month, on the like apprehension of any of such justice.

And every such driver, offending in any of the aforesaid acts, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10s. or shall be committed to the house of correction, for any time not exceeding one month, on the like apprehension of any of such justice.

And every such driver, offending in any of the aforesaid acts, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10s. or shall be committed to the house of correction, for any time not exceeding one month, on the like apprehension of any of such justice.
the offender shall be apprehended; and if there be no
officer present, then to some other officer for the use of the
poor as aforesaid.

And by sect. 9, 10. of the said statute, if the driver
of any wagon, cart, car, dray, or other carriage, on any
public highway, shall ride upon any such carriage, not
having some other person to drive the same carriage,
and the several carriages as are drawn by one horse only,
or by two horses abreast, and are conducted by some
person holding the reins, excepted;) or if the driver of
any carriage whatsoever, on any of the said highways,
shall, by negligence or willful misbehaviour, intercept the
free passage of any other carriage, or shall use any
offence on the said highways; or if the driver of any
emery or unloaded wagon, cart or other carriage, shall
refuse or neglect to turn aside, and make way for any
coach, chariot, chaise, loaded wagon, cart, or other loaded
carriage, he shall, on conviction by confession, or oath of
one witness, before one judge, forfeit any sum not
exceeding 20s. by distress; for want of sufficient distresses,
to be committed to the house of correction, or to some
other person of the place where the offence shall be
committed, or the offender shall be apprehended, to be kept to
hard labour for any time not exceeding one month. The said
defaults were and are made the object of the
repression of the highways in the parish where the offence
shall be committed, to be by him applied in the repair of the
highways within such parish.

Sect. 11. And if he shall refuse to discover his name
and place of abode to the justice before whom he shall
be brought, he shall be immediately delivered over to a
constable or other peace officer, and shall by him be con
victed to the common gaol or house of correction of
the place where the offence shall be committed, there to
remain until he shall declare his name and place of
abode to the said justice, or to other justice of such
place.

Sect. 12. And in many cases when any such offence
committed against this act, may by authority of this act,
and without any other warrant, apprehend the offender,
and shall with all convenient speed convey or deliver him
to a constable or other peace officer of the place where
the offence shall be committed or the offender shall be
apprehended, in order to be conveyed before a justice,
there to be dealt with according to law.

Sect. 14. And any person shall be admitted to be an
evidence, notwithstanding his being an inhabitant of the
place where the offence shall be committed.

Sect. 15. Provided, That persons punished by this act
shall not be punished by any former law.

11. How persons charged with offences relating to the high
ways are to be proceeded against; and how such persons may de
fend themselves.

It is enabled by the above-mentioned statute, 2 & 3 Ph.
& Mar. cap. 8. sect. 2. "That the steward of every
least may inquire of the oaths of the suitors of all
offences which shall be committed within the leet against
every article of the said statute, and to affils such fines
and amercements for the same, as shall be thought meet
by the said stewards: and in such case, the said
partnership, the quarter-feelions of every place may in
quire of the said offences which shall be committed within
the limits of their commission, and to affils such fines as
they, or two of them, whereas one of to be of the
guarum, shall think meet: And the steward of every least
shall make fines indented of all the fines, foresaid and
amercements for the defaults preferred before him,
and shall deliver the one part thereof sealed and signed
by him to the bailiff, and high constable of every hun
dred, rape, latte or wapentake, wherein the default shall
be preferred, and shall make the other part to the constable
and churchwardens of the parish wherein the defaults were
made, the fame to be yearly delivered within fix weeks
after the feast of Michaelmas: And the clerk of the said
place shall make the like effect indented of the fines,
&c. for the defaults preferred before the justices of the
place, &c. which effects shall be sufficient warrant to the said bailiff or high constable, to levy the said
fines, &c. by way of different: And if no sufficient dif
feres can be found by the said bailiff or high constable;
or if the said offender shall obstinately refuse to pay the
said fine, &c. and do not pay the same within twenty
days after a lawful demand of the same by the said offi
cer, he shall forfeit double the sum that he should before
have paid.

And it is farther enacted by the said statute, sect. 3.
That every of the said bailiffs and head constables, shall
at least once every year, betwixt the first day of March
and the last day of April, make a true account and pay
ment of all such sums of money (to the constable and
churchwardens of every parish wherein the offences were
committed, or two of them,) as he shall have collected
upon any of the said effect to pain of, to forfeit for every
time he shall not do, forty shillings.

And it is farther enacted by the said statute, sect. 4.
That all fines, &c. which shall be due for any offence
against the provisions hereof shall be to the churchwardens
of every parish wherein the offence shall be committed,
to be bestowed on the highways in the said parishes: And
the said churchwardens shall have authority to call the said
bailiff and head constable to account before the juf
tices of peace, or two of them, whereof one to be of the
county, to give an account, information or otherwise: the
which justices shall have authority to call the said
churchwardens to account, and to commit the said bailiff
and head constable to prison, till he shall pay all such arrearages as shall be adjudged by the said justices; and every of the said bai
liffs and head constables upon their accounts shall have
allowed for them, and shall make and pay, eight
pence for his own pains, and twelve pence for the fees
of the clerk of the peace, or steward of the leet, where
the effect indented of every several parish that they
shall deliver is as aforesaid; and the successors of every
churchwarden shall have the like action of account against
their predecessors, as is before appointed against the bai
liff.

And it is enacted by the above mentioned statute of 5
El. c. 13. sect. 8. That every surveyor shall within one
month after any default or offence against the said statute of
2 & 3 Ph. & M. c. 8. or the said statute of 5 El.
c. 13. present every year to the next justice of peace,
on pain to forfeit for every such offence in such
fort, not by him preferred, forty shillings: And that every
such justice of peace unto whom any such offence
shall be so preferred, shall certify the same presentment
at the next general county seisin; on pain to forfeit, for not
certifying of the same, any such presentment made in every
deliver, five pounds; and that the justices of peace of every county where the said offences shall be committed,
may inquire thereof at their quarter-feelions, and affils
such fines for the same, as they or two of them, whereof
one to be of the guarum, shall think meet:

And it is farther enacted by the said statute, par. 9.
That every justice of peace may of his own proper
knowledge, in the open general seisins, make presentment
of any highway not well and sufficiently repaired and
amended, or of any other default or offence, contrary to
either of the said statutes of 2 & 3 Ph. & M. c. 8. or 5
El. c. 13. and that every presentment made by any
such justice of peace upon his own knowledge, if not
arrears, shall be as good, and of the same force, strength
and effect in the law, as if the same had been preferred,
and adjudged by the oath of twelve men: And that for
such default so preferred, as is aforesaid, the justices of peace of the said county shall immediately
at the said general seisins, have authority to affils such
fines, as to them, or two of them, whereof the one to
be of the guarum, shall be thought meet: Saving to
every person that shall be touched by any such present
ment his lawful traverse to the same presentment, as he
might have under his privilege for his whole entry by the laws of this realm before the making of this statute.

It hath been holden in the execution of this clause, that
the party against whom such a presentment shall be made,
cannot take any traverse to the want of repair of such
highway: but it is agreed, that he may plead that some
other
other person ought to repair the same, and traverse his own objection to it do. Neither it is obvious upon what reason the former opinion is grounded, that he cannot traverse the want of repair of such highway, for since the statute expressly saves to every person, who shall be touched by any such pretention, his lawful traverse to the same, as he might have to an indictment of treliefs or forcible entry, and it is for the defendant to any such indictment may traverse the whole matter alleged against him, why may he not as well have the same benefit in the present case? And though the record of a justice seating by force of any statute as a judge, be not traversable; yet it seems hard by such a general rule, to make any force not traversable, which by the express words of the statute, which authorizes the making of it, is allowed to be traversable: It is true indeed, that a precentment in a court leet is not traversable, unless it touch the party's freehold; but I do not see why such a precentment in purvisance of this statute should have the like privilege, since the statute hath no mention of such precentments in courts-leet, but gives the like traverse as is allowed by law upon any indictment of treliefs, &c. 1 Hawk. P. C. 217.

It is further enacted by the said statute of 5 El. c. 13. sect. 10. That all such fines, &c. to be suffered by the said general precentments shall be enforced in such manner, and employed to such uses and intents, as in the said statute of 2 & 3 Ph. & M. are appointed.

And it is further enacted by the said statute of 18 El. c. 10. sect. 8. That all justices of assize, judges of oven and terriers, and justices of the peace in their fellowships, and stewards of leets, in their leets, shall hear and determine every offence, matter and cause, that shall grow, come, or rise, by reason of the said statute.

Also it is enacted by the said statute of 22 Car. 2. c. 12. sect. 9. That if any person shall fall in his respective day's labour in every year towards the repairing of the highways, or neglect to send his respective carriage, &c. referred to by the county courts, to be enforced in such manner as the next justices of the peace, who ought, upon proof by oath of one credible witness, to levy by diffrets and sale of goods, &c. for every day-labourer failing as is aforesaid, one shilling and sixpence; and for every man and horse that shall make default, three shillings; and for every cart with two men, ten shillings; for every respective day wherein they shall make default; which penalties shall be employed towards the repairs of the highway, &c.

And it is further enacted by the same statute, sect. 10. and 3 & 4 Eliz. & Mar. c. 12. That the affeiments to be made by levying in the several of these statutes for the repairs of the highways, shall be levied by diffrets and sale of the goods of every person so affeimented, not paying the same within ten days after demand, rendering the overplus to the owner, the necessary charges being first deducted.

It is enacted by the said statute of 22 Car. 2. c. 12. sect. 4. That all deferts of repairs of cauces, pavements, highways or bridges, shall be presented in the county only, where such cauces, &c. lie, and not elsewhere; and that no such affeiments or indictment shall be removed by certiorari, or otherwise, out of the said county, till such affeiment or precentment be traversed, and judgment thereupon given.

And it is further enacted by the said statute of 3 & 4 H. & M. c. 12. That all matters concerning highways, cauces, pavements, and bridges, mentioned in the said act, shall be determined in the county where the same do lie, and not elsewhere; and that no precentment, inditement, or order, made by virtue of the said act, shall be removed by certiorari out of the said county into any other court.

Yet it hath been resolved, That if the quarter-seffions, under pretence of the jurisdiction given them by these statutes, take upon them to do any thing manifielly ex-cedding the same, to as much as make a barrier on forayors of the highways to make up their accounts were a special seffion, their proceedings may be removed by certiorari into the King's Bench, and there quashed; for the quarter-seffions have no manner of power given them to intermeddle in any such affairs, but only by way of appeal. 1 Hawk. 218.

A certiorari was granted to remove an indictment for not doing the statute labour in the highways, on producing a precedent where it was done, in the case of Rex v. Eckford, 12 Geo. 1. Strange 849. Mich. 3 Geo. 2. Rex v. Eckford. 12 Geo. 1.

An order was made on the 7 & 8 Will. 3. cap. 29, for the parishes at large to repair the highways, the 6d. in the pound levied on the inhit not being sufficient. And a certiorari being moved for, it was objected 3 & 4 H. & M. cap. 12, had taken it away; to which it was an-

answered, that this act extended only to a bridge on a foulowk law, Sed per certiorari. They must both be taken together; the rate must be made in aid of the inhit, by virtue of the former law. So a certiorari was denied. Strange 944. Mielc. 6 Geo. 2. Rex v. inhabitants of Eckerfield.

Upon motion to quash a certiorari to remove an inditement against the defendants, at assizes, for not repairing a bridge; it was inflected, that by 1 Ann. cap. 18, the certiorari is taken away. To which it was answered, and resolved by the court, That this act extended only to bridges where the county is charged to repair; and that where a private peron or parish is charpe, and the right of suit in question, the act 3 & 4 H. & M. cap. 11., had allowed the certiorari, a certiorari shall not be refused to quash. Stran. 900. Easler. 4 Geo. 2. Rex v. inhabitants of Hammond.

It is enacted by the said statute of 3 & 4 H. & M. c. 12. That no person shall be punished for any offence against the said act, unless such offender be prosecuted for the fame within five months after the offense committed; and that no person who shall be punished for any offence, by virtue of the said act, shall be punished for the fame offence by virtue of any other act, or law whatsoever.

As to the manner offenders may defend themselves, it is enacted by the said statute of 3 & 4 H. & M. cap. 10. That no person shall be held criminally liable for any offence, or rate, or other act by the said justices of the peace, the general quarter-seffions of the peace may take such order therein as to them shall be thought convenient, and the same to conclude and bind all the said parties.

Also it seems to be implied in the construction of these as well as of all other penal statutes, that no one ought to be convicted of any offence against them, without having notice of the accusation made against him, and an opportunity of defending himself. And therefore I shall take it for granted, that generally no one ought to be punished for any of the above mentioned offences, without being called to account for his defence, and having the liberty to traverse the matter alleged against him; it is true that it is generally holden, that no traverse can be taken against a precentment by a justice of peace of his own knowledge, as to the want of repair; yet this opinion seems fully questionable. 1 Hawk. P. C. 219.

However it is certain, that in all other cases whatever is indicted or precentment in any court, except a court-leet, for any offence relating to the highways, may traverse the whole matter alleged against him in such indictment or precentment; but it is feemeth to be agreed, that he who is preferred for such an offence in a court-leet, can only traverse it by the act of the court, as passing thence, as changing with being bound to such repairs in respect of the tenure of his lands, &c. for which purpose it is certain, that he may remove it by certiorari into the King's Bench, and there traverse it; also there is no doubt but that after conviction, or upon a demurrer or confition, any one may take exceptions to any such indictment or precentment, and apply for want of prosecution in the court in diresctionwill very rarely suffer a man to take such exceptions, before such conviction or confition, without a certificate that the ways are in good repair. 1 Hawk. P. C. 219.

Therefore, for the better understanding in what cases it may lay to, in certiorari or precentment of this kind, I shall lay down, says Mr. fergeant Hawkins, the following rules concerning them.
First, That it is safe in every such indiction to fly both the place from which, and also the place to which the way supposed to be out of repair doth lead, yet except for want of such certainty, there sometimes been declared that a nuance can be indited for in these cases; but there is no necessity to fly that a highway leads to a market town, because every highway leads from town to town. 1 Hawk. P. C. 219.

2dly, That it is necessary in every such indiction expressly to fly in what place the nuance complained of is situated, which cause an indiction for flying a way at D, leading from D. to C. is not good; for it is impossible that a way leading from D. should be in D. and no other place is alleged. 1 Hawk. P. C. 219.

3dly, That every such indiction ought also certainly to fly to what part of the highway the nuance did extend, as by flyng how many feet in length, and how many feet in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge, against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to affix a fine answerable thereunto; same manner ground without thing added. All that an indiction for flying a certain part of the King's highway at K. is naught, for the uncertainty thereof. Alto it hath been resolved, that the place wherein such a nuance is alleged, is not sufficiently ascertained in such an indiction, by flyng that it contained so many feet in length, and so many in breadth, by ellimation. 1 Hawk. 319, 220.

4thly, That every such indiction must fly, that the way wherein a nuance is alleged, is a common highway, for which cause it hath been resolved, That an indiction for a nuance to a horfeway, without adding that it was a highway, is naught: and upon the same ground it fmethe also, That an indiction for a nuance to a common footway to the church of D. for all the parishioners of D. is not good; yet it seems, if to those last words, viz. for all the parishioners of D. had been omitted, such an indiction might be maintained. 1 Hawk. 220.

5thly, That it is not safe in an indiction against a common perfon for not repairing a highway, which he ought to have done in respect of the tenure of certain lands, barely to say that he was bound to repair it ra_ nson warrant to ground without thing added. All that an indiction for repairing a certain part of the King's highway, if he had been repaired, and that in an indiction against a bishop, &c. for not repairing a highway, in respect of certain lands, it ought to be flown in what capacity he ought to repair it, because otherwise it cannot be known in what capacity the process is to be awarded against him. 1 Hawk. 220.

6thly, That every such indiction the fact alleged against the defendant must be expressed in such proper terms, that it may clearly appear to the court to have been a nuance; and for this cause it hath been resolved, That a premissent for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, however it be obstructed, and a new way made in another place. 1 Hawk. P. C. 220.

But it hath been resolved, That an indiction against a man for flogging a highway in his own land, is good, without laying the offence done of & armi. Also it is said that a premissent that a highway in such a place is decayed by the default of the inhabitants of such a town, is good, without naming any perfon in certainty. But it hath been adjudged, that an indiction against particular persons must specially charge them every one; for which cause it hath been resolved, that an indiction against general for not repairing or conserving a street, that they, &c. non devulgata, did not rely upon, them. 1 Hawk. P. C. 220.

By that. 1 Geo. 1. B. 2. s. 52. fol. 12. Perfon's argued by any thing done on that act (except those who shall fill the nuance, and carry away the earth taken out of them, or shall obstruct the road, or fume, timber, fish or dung left in the highways, or who shall not remove any other annoyance by water.)

Courts may appeal to the next sessions, whose order shall conclude and bind all parties.


Stat. 5 Geo. 2. cap. 33. sect. 1. If any perfon shall wilfully and maliciously throw down or destroy any turnpike-gate, or any post, rail, or other fence belonging to any turnpike-gate, erected to prevent puffing without paying the toll directed by any act of parliament made or to be made, and shall be convicted before his Majesty's justices of affine, oyer and terminer and general gaol-delivery; every perfon so offending shall be adjudged guilty of felony; and the court before whom such person shall be tried, shall have power to transport such felon for seven years.

Sect. 2. If such offender shall return into Great Britain or Ireland before the expiration of seven years, he shall suffer death with the benefit of clergy.

Sect. 3. The commissioners appointed to put in execution any act of parliament for repairing the highways, or making rivers navigable, may out of the tolls discharge the costs of any action or prosecution, which shall be commenced or maintained by the pulling down or destroying any turnpike-gate, post, rail, or other fence, belonging to any turnpike-gate, or any turnpike house, or any lock, sluice, or other works, or any navigable river erected by authority of any act of parliament.

Sect. 4. If the commissioners, appointed to put any act of parliament in execution, shall not have power by erecting or maintaining any such gates, where they have not power to erect such gates, it shall be lawful for justices of peace in quarter-seions, upon complaint, in a summery way to hear and determine the fame, and to order the sheriff to remove such gates.

Sect. 5. This act shall continue for five years from the 24th of June 1732. [Further continued by several acts, and made perpetual by 27 Geo. 2. cap. 16.]

Stat. 8 Geo. 2. c. 20. § 1. If any perfon shall wilfully or maliciously pull down, or destroy any turnpike-gate, or any post, rail, wall, charge, bar or fence, belonging to any turnpike-gate set up to prevent puffing without paying any toll laid and directed by act of parliament made or to be made, or any house for the use of such turnpike gates, or any lock, sluice, or other works on any navigable river erected by authority of parliament, or forcibly refuse any person being lawfully required to pass any of the offences before mentioned; every perfon so offending shall be adjudged guilty of felony without benefit of clergy.

Sect. 2. If any perfon shall wilfully and maliciously draw up any good-gate, erected by authority of parliament upon any navigable river; erecting or maintaining, being convicted upon the oath of one witnes before two justices of peace for the county or place, or of the adjacent county, shall be sent to the house of correction and kept to hard labour for one month.

Sect. 3. Every offence afo said may be determined in any adjacent county in England.

Sect. 4. No attainer for any of the offences made felony by this act, shall work corruption of blood, loss of dower, or forfeiture of lands and goods.

Sect. 5. If any perfon shall commit any of the offences declared to be felony by this act; and being out of prifon shall discover and cause to be apprehended one or more, who shall commit any such offence, so as they be convicted; every such perfon, on conviction of the offenders, shall have his Majesty's pardon for the felonies afobefore.

Sect. 6. The inhabitants of every hundred in England, within which a turnpike-road is not exempted, shall make satisfaction for the damages, and the said damages may be recovered by action of debt, &c. in the name of the clerk of the peace of the county, without naming the name of the clerk of the peace; and the damages to be recovered shall be to the use of the trustees or proprietors of any turnpike or navigable river; (the same to be recovered against the inhabitants of such hundred not exempted.)
Gfuch indebted.

No fenders within fuch action, mages who fcffions in the quarter-feffions, fuch bearing fhall be fmal.

If any fuit fhall be brought for any thing done in purfuance of this act, the action fhall be laid in fuch county where the caufe did arife, and the defendant may plead the general iffue; and if judgment fhall be againft the plaintiff, the defendant fhall recover treble cofls.

This act fhall continue five years from the fifteenth of May 1735.

Continued afterwards by feveral acts, and made perpetual by c. 17, fect. 4.

Sect. 24 Geo. 2. cap. 43. [intituled, An act for the more effectual prevention of the turnpike roads in that part of Great Britain called England; and for the diffusion of penalties given by acts of parliaments, relating to the highways in that part of Great Britain called England, and for enforcing the recovery thereof; and for the more effectual punish- ing of marches occasioned by the drivers rigging upon coasts, drays, cars and waggons in the city of London, and within ten miles thereof.]

Sect. 11. And whereas severa! acts have been made, as well for repairing and amending divers publick roads in that part of Great Britain called England, as for punishing marches, or committed upon or to the highways, the good intentions whereof have not been answer- ed for a due execution of the faid laws; for remedy thereof, and as a further encouragement to informers, Be it enacted, &c. That all penalties and forfeitures im- posed by this or any former act, fhall from and after the thirtieth day of September in the year 1753, be wholly given to and velled in the informer, or perfon who fhall fuc for the fame; any law or statute to the contrary notwithstanding;

And every fuch informer or profesfior fhall and may from thenceforth fuc for and recover fuch forfei- tures or penalties by this or any of the faid acts imposed, in the fame manner as the fame are severally and respectively directed to be fuied and recovered, or by action at law to be brought by fuch informer or profec- tor, in any of his majesty's courts of record at Pfiff- maflner, in manner following, that is to fay, Where any perfon fhall for fuch offence be liable to pay any pecuniary penalty or forfeit, or to fuch action at law to fuc for the fame by action of debt, in which it fhall be fufficient to declare that the defendant is indebted to the plaintiff in the fum of being forfeited by an act of parlia- ment, intituled, and where the penalty or forfeiture is of any horfe or horfes, gelding or geldings, mare or mares, or other goods, by an action of trover againft the perfon liable to fuch penalty or forfeiture, in which the value of fuch horfe or horfes, gelding or geldings, mare or mares, or other goods, is or are liable to the forfeiture, fhall be given

Sect. 16. No coriariar shall be granted for removing any other or proceedings of juftices of peace concerning the matters in this act.

Sect. 17. When complaint of abufe or excess of power in any of the officers or fcrucy of the fecondary or quarter-feffions, or of fuch actions as ascribing one another 

Sect. 8. If any clerk of the peace fhall commence fuch action, and fhall die or be removed before recovery, no fuch action fhall, by fuch displaee or death, be also eaf; but it fhall be lawful for the clerk of the peace next succeeding, to prosecute fuch action.

Sect. 9. No action fhall be profeufed to recover dam- ages by virtue of this act, until information upon oath be made within fix days before fome juftice of peace, who fhall make fuch fatisfaction, fhall be repaid out of the tolls of the turnpike way pulled down.

Sect. 2. Where any of the offenders fhall be convicted within twelve months after fuch offence, any hundred, who fhall make fuch fatisfaction, fhall be repaid out of the tolls of the turnpike way pulled down.

Sect. 7. If any perfon fhall affidavit any collectors of the tolls or any of thefe men in the execution of their office, or fhall forcibly pafs through any turnpike-gate or fence, without paying the toll, or if any perfon fhall carry away forcibly or detain any collectors of the toll, as fO they fhall not be able to return to their duty for three days; in any of the fad caifes, the party offending, upon com- miffion by fome juftices of the county, fhall forfeit five pounds; one moiety to the informer, and the other moiety to the conforable of the parish where fuch offence fhall be committed, to the use of the truftees or undertakers of any turnpike or naviga- ble river, to be levied by warrant of the juftices by dif- treff and fale of goods; and for want of diftreft, the party offending fhall by warrant of fuch juftices be fent to the common gaol of the county for fix months; and if fuch party fhall offend a second or third time, he fhall forfeit ten pounds in manner aforesaid; and for want of diftreft, fhall be fent by two juftices to the common gaol for one year, and fhall give security at the quarter-feffions for his behaviour for seven years.

Sect. 10. It fhall be lawful for fuch collectors of the toll to feize any perfon guilty of the offences before mentioned, and fhall perfon to carry before a juftice of peace; and fuch juftice is authorized to oblige fuch perfon to give fecurities at the next term of the quarter-feffions, to holden for the division or place where fuch offence fhall be committed; and for want of security to commit the perfon to the common gaol till give security.

Sect. 14. If any coftable refuse to execute any war- rant under the hands and feals of a fufficient number of commiffioners or undertakers of any turnpike or navigable river, to be levied by warrant of two juftices to be fent to the common gaol for one year, and fhall give security at the quarter-feffions for his behaviour for seven years.

Sect. 12. It fhall be lawful for fuch collectors of the toll to feize any perfon guilty of the offences before mentioned, and fuch perfon to carry before a juftice of peace; and fuch juftice is authorized to oblige fuch perfon to give fecurities at the next term of the quarter-feffions, to holden for the division or place where fuch offence fhall be committed; and for want of security to commit the perfon to the common gaol till give security.

Sect. 13. If any coftable refuse to execute any war- rant under the hands and feals of a fufficient number of commiffioners or undertakers of any turnpike or navigable river, to be levied by warrant of two juftices to be fent to the common gaol for one year, and fhall give security at the quarter-feffions for his behaviour for seven years.
"the highways." This seems to be descriptive only of such offences as are the objects of turnpike acts, such as passing without paying the toll, taking off horsecars or waggons, paying the toll grossly, and the like, but whether such and is the offence of failing or neglecting to do the statute labour. Besides this, the intention of sect. 11. of this act is for the encouragement of informers, by giving the whole penalty to them for their own benefit. Now the surveyors of the highways can never be within the meaning of this clause, because by the 23 Car. 2. and 1 Geo. 3. be bound to inform: The words are, "he shall give an account thereof, and it is a mischiefe in him to omit it. If the clause in question should extend to the highways in general, the confecution of falsifying and not only by an affidavit upon land; because if the penalties, which by the former acts were ordered to be applied towards repairing them, were wholly vested in the informer, there would be no funds for that purpose. But what seems absolutely decisive of this point is the recital in sect. 28 Geo. 2. cap. 17. sect. 15, which immediately follows the next act.

Stat. 26 Geo. 2. c. 50. [intituled, An act for the amendment and preservation of the publick highways and turnpike roads of this kingdom, and for the more effectual execution of the laws relating thereto.] Whereas by the great number of highways, turnpike roads, vehicular traffic, and carriages, and their various weights and burdens, and increase and upon the same, the small breadth and narrow dimensions of the fields of the wheels of such waggons and carriages respectively, the great part of the said highways and turnpike roads of this kingdom, and the excessive weights and burdens loaded and carried and in upon the same, and the small breadth and narrow dimensions of the fields of the wheels of such waggons and carriages respectively, the great part of the said highways and turnpike roads are become ruinous, and almost impassable, and unless a speedy remedy be had in the premisies, all the provisions made by law for the highways and roads, and for maintaining and keeping the same in repair, will in great measure be rendered ineffectual and compensating, and commencing to be thereby greatly prejudiced and obstructed: Wherefore for remediuing and preventing the said misciefs and inconveniences for the future; it shall not be lawful for any waggons, wain, cart or wheel-carriage whatsoever (other than and except as herein after-mentioned) to travel, pass or be drawn in any turnpike-road, unless the felies of the wheels of every such waggons, wain, cart or wheel-carriage respectively, be of the breadth or gauge of nine inches from side to side at the least; and every owner or owners of such waggons, wain, cart or wheel-carriage, drawn, driven or conveyed in or upon such turnpike-road, carriage, draught or direction, tenor and true meaning of this act, shall, for every such offence, forfeit and pay the sum of five pounds, to be recovered and applied in such manner as herein after-mentioned, or otherwise shall forfeit and lose any one of the horsecars or beasts of draught, drawing such waggons, cart or wheel-carriage, not being the thall or thall horse, together with all geers, bridles, halters and accouterments, to such horse or beast of draught respectively belonging, to the sole use and benefit of the owner or owners who shall feize or detain the same.

Stat. 2. And the owner or owners making such feizure, carriage, or direction other to deliver the horse, beast and things so seized and detained into the custody of the confiable of any other parish officer of any town, parish or place, in or near the place where such feizure or directions shall be made; and every such confiable or parish officer respectively, in and are hereby required to take and receive the same into his and their custody, and safely keep the same, and till the person or persons making such feizure or directions shall upon oath make proof, before some justice or justices of the peace of the offence committed; and the said justice or justices before whom such proof shall be made, and are hereby required to send his or their proctor or such confiable or parish officer immediately to deliver the horse, beast and other things so forfeited to the party or parties, who feized or detained the same, to and for his and their own use and benefit; paying such reasonable charges for keeping and securing the same, as such judicature or justices shall allow or direct; but in case no such proof shall be made within three days next after such seizure or direction, or within the said three days at any time after, and being feized or restrained, shall be returned back to the owner or owners thereof; such owner or owners paying reasonable charges for keeping and securing the same.

Stat. 3. Provided always, That nothing in this act contained shall extend or be construed to extend to any carriage or waggons, waggon, cart or other wheel-carriage, and other carriage thereupon or for calk, nor shall any thing in this act extend or be construed to extend to any waggons drawn by less than five horses or beasts of draught, or to any other wain, cart, or other wheel-carriages drawn by less than four horses or beasts of draught, or to any waggons, wain, cart, or other wheel-carriages, excepted where the same to be drawn in or upon any turnpike-road, with any number of horses or beasts of draught, and also for any waggons or other four-wheel carriage, having the felies of the wheels thereof of such breadth or gauge as aforesaid, to travel, pass, or be driven upon any turnpike-road as aforesaid, with any number of horses or beasts of draught exceeding nine feet; and for any cart or other two-wheel carriage having the felies of the wheels thereof of the breadth or gauge aforesaid, with any number of horses or beasts of draught not exceeding five, without being subject and liable to be weighed at any crane, machine, or engine, or to the additional toll of forty shillings granted and made payable for every waggons or other carriage drawn by six horses, by 24 Geo. 2. cap. 43.

Stat. 5. Provided, that it shall and may be lawful for any waggons, wain, cart or carriage other, having the felies of the wheels thereof of such breadth or gauge as aforesaid, to travel, pass or be driven upon any turnpike-road, or within any districts, for the extinguishing of the same, or the raising of such waggons, waggon, or carriage, excepted where the same to be drawn in or upon any turnpike-road, and to be for the extinguishing of the same, or the raising of such waggons, waggon, or carriage, excepted where the same to be drawn in or upon any turnpike-road, or exceed any number of horses or beasts of draught not exceeding eight, and for any cart or other two-wheel carriage, having the like wheels, with any number of horses or beasts of draught, not exceeding five, without being subject to any penalties or forfeitures for cauing the same to travel, pass or be driven by any greater number of horses or beasts of draught, than are now allowed by law.

Stat. 6. And whereas in and by several acts of parliament made and passed for amending and repairing particular highways and roads within this kingdom, several high and extraordinary tolls and duties are upwards, and to be levied and paid for waggons and other wheel-carriages, drawn by more than a certain number of horses or beasts of draught therein respectively mentioned, with an intent in effect to prohibit the passing of such carriages, and thereby the better to preserve the said roads: It shall and may be lawful for and to the trustees appointed or to be appointed, in or by virtue of any such act of parliament now in force, or now depending in parliament respectively, for repairing and mending such particular highways and roads as aforesaid, and for many other purposes, and for the better carrying on their respective duties; and they are hereby authorized and required to mitigate, lessen and reduce the said high and extraordinary tolls and duties, for or in respect of such waggons or other wheel-carriages only, having wheels of the breadth or gauge herein before preferred, in such manner.
manner as no greater toll or duty be demanded or taken for the fame, than is provided and directed by the said acts respectively to be paid and taken of wagons and other four-wheeled carriages drawn by five or four horses or beasts of draft; and the said trustees within their several districts, or any nine or more of them respectively, are hereby authorized and required to give directions in writing to the several colliers within their respective districts, to take and receive such tolls and duties and no other.

Sect. 11. And it shall and may be lawful to and for all trustees appointed, or to be appointed by any act or acts of parliament made or to be made for the repairing or amending any highway or highways within this kingdom, or any two or more highways, and they are hereby authorized and required, by writing under their hands to order the felies of the wheels of all wagons, wains, carts or other carriages, which are or ought to be of the breadth or gauge herein before directed and prescribed, to be measured and gauged at any turnpike or toll-gate, erected or to be erected upon any part of the highway or road in or upon which such waggon, wain, cart or carriage respectively shall travel, pass or be drawn.

Sect. 12. Provided, That in case it shall appear to the satisfaction of the surveyor or surveyors, gate-keeper or gate-keepers of any turnpike-road, that the felies of any wagon or wheel-carriages, travelling or pausing upon any such turnpike-road, were original, and had been made of the breadth of nine inches, and by long usage and wearing shall have been reduced to, and become of less breadth or gauge; then and in such case, it shall and may be lawful for such wagon or wheel-carriage to travel, pass or be drawn at any such turnpike-road, so as the felies of all the wheels thereof be of the full breadth of eight inches at least; and the owner or owners of such wheel-carriage shall not in such case be subject liable to the penalties herein before inflicted and directed to be levied for driving, or causing to be drawn, wagons and carriages the felies of the wheels whereof are under the breadth of eight and above the inches aforesaid.

Sect. 13. And if any person or persons shall hinder or attempt to prevent or obstruct the measuring or gauging the felies of such wheels, or the feizing or disarming any horse or beast of draught, hereby directed to be forfeited for the offences hereinbefore mentioned, or shall use any violence to any person or persons employed or concerned in such measuring, gauging, feizing, disarming, as aforesaid; every person so offending shall for every such offence forfeit and pay the sum of ten pounds.

Sect. 14. And in case any person or persons shall drive or act as the driver or drivers of any wagon, wain, cart or carriage, having wheels the breadth or gauge wherein the direction and true intent and meaning of this act, or drawn with more than the number of horser hereby respectively appointed (except as is herein before excepted) upon any turnpike-road, that then and in every such case, it shall and may be lawful to and for the confible, right-thingman, or surveyor of the highways, or any other inhabitant of the parish or place where the offence shall be committed, and to and for the surveyor or surveyors of the said turnpike-road, and to and for any person or persons to be appointed by the trustees, or any five or more of them, to apprehend and take, or cause to be apprehended and taken such person or persons so driving or acting as driver or drivers as aforesaid, before one or more justices or justices of the peace for the county, riding or division where the said offence shall be committed; and upon conviction thereof either by the confession of the party, or by the oath of one or more credible witneses or witnesses to the said justices, or by the seales of any such person or persons so offending shall respectively forfeit and pay for every such offence the sum of five pounds, to be laid out, applied and recovered in such manner as other penalties hereby imposed are hereby directed and appointed to be recovered and applied; and in case any person or persons so offending shall have no goods and chattels, wherein immediate distresses may be had and made for the same; then it shall and may be lawful to and for such justices and justices of the peace, by warrant under his or their hand and seal, or hands and seals, to commit the offender or offenders to the custody of any officer or officers of the peace within the space of one month, or until he or they shall have paid the said sum of five pounds.

Sect. 15. And if any owner of any wagon, wain or cart, travelling for hire, shall drive or cause to be driven, drawn or conveyed such wagon, wain or cart, in or upon any highway or highways, or on any turnpike-road, without having his and their several names and places of abode written or printed in large legible letters upon the tilt or other conspicuous place of such wagon; every person so offending shall for every such offence be subject and liable to such and the same penalties and forfeitures, as the owners of wagons or carriages having the felies of the wheels thereof whose breadth or gage aforesaid are, are made subject and liable by this act; and if any person or persons shall so write or print, or cause to be written or printed, any false or fictitious name on such wagon, wain or cart as aforesaid, every owner of such wagon, wain or cart, shall publicly use on any turnpike-road as aforesaid, with such false or fictitious name, shall for every such offence forfeit and pay the sum of fifty pounds.

Sect. 16. And the several penalties and forfeitures inflicted and directed to be forfeited and paid upon this act, and not hereby otherwise provided for, shall and may for the time being be enforced and levied on any person or persons who shall use or resort in form and prosecute for the fame, either by action of debt, bill, plaint or information in any of his Majesty's courts of record at Westminster, with treble suits of costs, in which no protection, wager of law, or more than one, shall be allowed, or by a summmary way or proceeding before any two or more justices of the peace for the county, riding or place, where such offence shall be committed at the option of the person or persons who shall prosecute for the same; and for which purpose it shall and may be lawful to and for such justices to hear and determine any of the offences against this act, and to receive the complaints of the person or persons aforesaid and required and required to be given in and for the form and in the manner and according to the form or information exhibited, or complaint made in that behalf, within ten days after such offence committed, to summon such party or parties accused; and the said writs or petitions to be either sides; and and in case the party accused shall not appear upon such summons, then, upon oath made of the committing any of the facts above-mentioned by one or more credible witnises or witnesses, to issue a warrant for apprehending the party offending within the jurisdiction of such justices; and upon the appearance or contempt of the party accused in not appearing (upon the proof of notice given) to proceed to the examination of the witnesses or accusers on oaths, to give judgment or otherwise dispose accordingly as the said justices shall think fit; and the said judgment of such offence, either by the view of such justices or any of them, or any such information as aforesaid, or on confession of the party accused, to award and issue warrants for the levying any pecuniary penalties so adjudged, together with the costs of such prosecution, on the goods of the offender, and to cause false to be made thereof in case they shall not be redeemed within five days, rendering to the party the overplus (if any there be) and where goods of such offenders cannot be found, to commit such offender to prison, there to remain for the space of three months, or until such pecuniary penalty or penalties be paid, and if any person or persons shall make false or fictitious statements or complaints, or shall within five days after such notice given enter into a recognizance with two sufficient sureties, before one or more justices or justices of the peace of and
for such county, riding, liberty or place, where such appeal shall lie, to try such appeal at the quarter-sessions of the peace to be held for such county, riding, liberty or place, next and immediately after such notice given; and the said Justices upon hearing the matter of the said complaint, or upon due proof made to them of such notice of the county or part of it, as well as the person or persons by them they shall not prosecute the said appeal shall and may at their dispositions mitigate the penalties or forfeitures incurred by the party complaining, or vacate or set aside the conviction or convictions, or set the party or parties free from the said or any other £20.6. imprisonment, to carry into execution the fame, with such costs as to them shall seem reasonable; and also by their order or warrant to cause such costs to be levied by dittrefs and sale of the goods of the person or persons to give such notice of appeal as aforesaid, and for want of sufficient dittreffer to commit the party or parties to the common goal of the county, riding, liberty or place, wherein such appeal shall be heard and determined, for any time not exceeding two months, or until payment of such costs shall be made; and if the person ordered to pay such costs shall happen to live in any county, riding, liberty or place, without the jurisdiction of the said court, it shall and may hereby give such notice, within the peace of the county, riding, city, liberty or place, wherein such person shall inhabit; and every such Justices is hereby authorised and required, upon request to him for that purpose made, and upon a true copy of the order or warrant to cause such costs produced before him by some credible witnesses upon oath, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by dittreffer and sale of goods of the person ordered to pay the same; and if no sufficient dittreffer can or may be had, to commit such person to the common goal of the county, riding, city or liberty, for any time not exceeding two months, or until payment of such costs as aforesaid.

Sec. 17. And all the pecuniary penalties and forfeitures recovered and levied by virtue and in pursuance of this act shall be paid, applied and disposed of in manner and form, that is to say, in the first place, to the use of the person or persons who shall inform and sue for the same, and the other moiety thereof to the trussers for repairing the road where the said offence shall be committed, or to such person or persons as they, or any five or more of them, shall by writing signed with their hands order, direct or appoint, that the same may be applied for and towards the repairing of the said road.

Sec. 18. And all the laws made or hereafter to be made by any act or acts of parliament, whereby toll-gates or turnpikes are or shall be enacted to be made and erected, or tolls or dues for amending turnpike-roads or any other roads, or any other laws relating thereto, shall from henceforth be put in due execution; and for that purpose the trussers empowered to act under the authority of the said several acts respectively, or any five or more of them, are hereby required at their next and other publick meetings from time to time to make proper rules and orders, for the more effectual putting the laws in execution, and to appoint such person or persons as they shall think fit, effectually to carry on prosecutions for offences committed against this act, or any of the said laws, within their respective limits and districts; and to give strict charge and commission to their trussers and to the Justices of the several road districts, or any other officers or persons against any of the said laws shall come to his or their knowledge, to have been committed upon the said turnpike-roads respectively in those several districts, to give immediate notice thereof to one of the trustees belonging to the said roads, who shall forthwith procure a meeting of the trustees belonging to the said roads, or any five or more of them, who shall give immediate directions for prosecuting such offences.

Vol. II. No. 89.

Sec. 19. And this act shall be openly read in the presence of the said trussers as often as there shall be a meeting of the said trussers, and all those officers of them: And if any such officer shall be found to have been negligent in his duty required by this act, or to have omitted giving notice as aforesaid, every such officer shall be forthwith removed from his office by the said trussers respectively, for the want of them, and is hereby for ever after rendered incapable of holding any office whatsoever under the said trufit.

Sec. 20. And no person or persons who shall keep any viuailuing-house, ale-house, or other house of public entertainment, or who shall sell any wine, cider, beer, ale, spirits or other strong liquors by retail, shall be capable of taking, holding or enjoying any benefit of any of the roads, or the places of trust or profit under the trussers of any act of parliament made or to be made for erecting turnpikes respectively, or of farming the tolls thereby granted and made payable, during such time as he shall keep such viuailuing-house, ale-house or other house of publick entertainment, or shall sell any wine, cider, beer, ale, spirits or other strong liquors by retail.

Sec. 21. And in case any action or prosecution shall be commenced and prosecuted in pursuance of this act, under the authority of any of the said trussers or their substitutes, or any five of them; in every such case for the want of any of the said trussers respectively, or any five or more of them, shall out of the profits arising by the tolls of such turnpike road, allow and pay to the beneficiary so much as the costs allowed by the said trussers or their substitutes shall fall short of reimbursing him his just and reasonable expenses.

Sec. 22. Provided, that nothing in this act shall be construed to oblige the said trussers to commence or prosecute, or cause to be commenced or prosecuted, any action or proceeding for any such offences, unless upon the confession of them. And if any person or persons hereby authorized to make such application or witness can be had and produced, to prove the commission of such offence.

Sec. 23. And it is hereby further enacted by the authority aforesaid, that if any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this act, then and in every such case such action or suit shall be commenced and prosecuted within fix calendar months next after the fact committed, and not afterwards; and the same and every such action or suit shall be brought in the county, riding or place, where the person against whom such action or suit shall be brought is a resident, and not elsewhere; and the defendant or defendants in every such action or suit, shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and that the same was done in pursuance of or by the authority of this present act; and if the said shall appear to have been done, or if any such action or suit shall be brought after the time herein before limited for bringing the same, or be brought in any other county or place than as aforesaid, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall be nonsuitcd, or if the defendant or defendants shall have appeared; or if upon demurrer judgment shall be given against the plaintiff or plaintiffs; the defendant or defendants shall and may recover treble costs, and have the like remedy for recovery thereof, as any defendant or defendants hath or have in any other cases by law.

Stat. 28 Geo. 2. c. 17. Sd. 6. The trussers appointed by or under the authority of any act of parliament made or to be made for repairing and amending turnpike-roads, or any five or more of them, shall by the direction of the said trussers or their substitutes, or any five or more of them, if they shall give immediate directions for prosecuting such offences.

K k k the
THE fame shall come to any turnpike-gate, with an intent to avoid the payment of any part of the tolls or duties to be thereat collected; each and every person being owner of such waggon or carriage, and being thereby convicted of being the truete of such tolls or duties, or any three or more of them, or one or more of the said fuperiors, or juflices, or warrant under the hand and seal of theoftware tolls or duties or any three or more of them, or the faid juflices or juries, rendering the overplus to the owner (if any) on demand, after deferting the reasonable charges of making fuch diffrets and fees, to be fettled by fuch truete in any one or more of such tolls or duties or any three or more of them, or by the faid juflices or juries; and each and every driver of fuch waggon or carriage, fo offending and being thereof convicted as afoforeaid, shall be committed to the house of correction for the space of one month; and in cafe any collector or receiver of the tolls or duties at any gate or turnpike, where to which any of thefe wheels or engines, or the weight of the weights or the breadth or gage of nine inches from fide to fide, to pafs or repafs through any fuch gate or turnpike without weighing thereof and being thereof convicted in manner as afoforeaid, fuch collector or receiver fo offending shall be committed to the house of correction, to be there kept to hard labour for the space of one month.

Sect. 9. Any waggon, win or other four-wheel carriage, not having the breadth of their wheels of the breadth or gage of nine inches from fide to fide, may travel, pafs or be drawn upon any turnpike road, provided every fuch waggon, win or other four-wheel carriage, be not drawn by more than fix oxen in pairs and two horfes, or eight oxen in pairs and one horfe; and that any cart or other two-wheel carriage, not having the felies of their wheels of the breadth or gage afoforeaid, may travel, pafs, or be drawn upon fuch turnpike road, provided fuch cart or two-wheel carriage be not drawn by more than fix oxen or neat cattle in pairs and one horfe, or four oxen in pairs and two horfes.

Sect. 11. In all cafes where by virtue of any act or acts of parliament now in force, the toll or duty on horfes or other beasts drawing or paffing thro' any turnpike bar or gate, doth not amount to more than the fum of one half-penny for every horfe drawing any wheel-carriage whatfoever, not having the felies of their wheels of the breadth or gage of nine inches from fide to fide, or to more than one penny for two horfes drawing any fuch carriages as afoforeaid, or to more than three halfpence for three horfes drawing any fuch carriages as afoforeaid, the truete or any five or more of them appointed by virtue or under the authority of fuch acts of parliament, shall and may, if they fhall find the fame neceffary, upon con- fidering the flate of their repective tolls, collect double the former tolls or duties, in cafe fuch tolls or duties do not exceed one halfpenny, and three halfpence in cafe the fame do not exceed one penny, and two-pence in cafe the fame exceed halfpence, may call for the additional tolls or duties which are direcdt to be taken by this act, in cafes where the prefent toll or duty amounts to two-pence or more upon the horfes drawing any carriage, in fuch and the fame manner as if such toll or duty was laid upon the carriage.

Sect. 15. Any act may be lawful for all courts, and all and every juflices or juries of the peace, before whom there shall be any action, information or proceeding, for any penalty or forfeiture inflied by any act or acts of parliament made or to be made for repairing and amending turnpike-roads, or any way resorting to or con- cerning the public road, riding, division or place, where the offence fhall be committed, upon the oath of one of more credible witnifes or witneffes, fhall forfeit and pay the fum of five pounds, which fur, in cafe the fame be not forthwith paid, fhall be levied by difcretes and sale of the offender's goods and chattels, by warrant under the hand and seal of the said truete or any three or more of them, or the faid juflices or juries, rendering the overplus to the owner (if any) on demand, after deferting the reasonable charges of making fuch difcretes and fees, to be fettled by fuch truete in any one or more of such tolls or duties or any three or more of them, or by the faid juflices or juries, and as such and every driver of fuch waggon or carriage, fo offending and being thereof convicted as afoforeaid, fhall be committed to the house of correction for the space of one month; and in cafe any collector or receiver of the tolls or duties at any gate or turnpike, where to which any of thefe wheels or engines, or the weight of the weights or the breadth or gage of nine inches from fide to fide, to pafs or repafs through any fuch gate or turnpike without weighing thereof and being thereof convicted in manner as afoforeaid, fuch collector or receiver fo offending shall be committed to the house of correction, to be there kept to hard labour for the space of one month.}

any forfeiture or penalty inflied as afoforeaid, to examine into the real merits of fuch prior forfeiture, action, information, proceeding or conviction; and if thereupon it fhall appear that the fame was not done, made or profec- cuted eflentially, to recover and apply the penalty or for- feiture to fide, fhall and may be made to the true and real ends and purpofes, for which fuch penalties or forfeitures were enacted, but to favour the offender; fuch prior forfeiture, action, information or conviction, fhall be deemed to be fraudulent and null and void to all intents and purpofes whatsoever; and every fuch act, juftice, verdict, or defree of the supreme court of this kingdom, to determine and give judgment, as if no fuch prior forfeiture, action, information or conviction had been made, had, profecured or obtained.

Sect. 13. No perfon fhall be qualified or capable of acting as a truete in the execution of any fuch act as afoforeaid, unlefs he fhall be in his own right, or in the right of his wife, in the actual pofterion or receipt of the rents and profits of lands, tenements or hereditaments of the clear yearly value of forty pounds, or profecured of or intitled unto personal estate alone, or real and personal estate together, to the value of eight hundred pounds, or fhall be intitled to and profecured of or intitled unto personal and real estate together, the value of eight hun- dred pounds. So help me God.

and if any perfon fhall profecute to act contrary to the true intent and meaning thereof, every fuch perfon fhall for every fuch offence forfeit and pay the fum of fifty pounds to any perfon who fhall fuc for the fame; to be recovered in any of his Majesty's courts of record at btit im- minifter by action of debt, or on the cafe, or by bill, fuit, or information wherein of, in the estate or property, of any one of the laws, nor more than one imparlance fhall be allowed.

Sect. 14. Every owner or owners of any common stage-waggon or cart, from and after the faid twenty-fourth day of June, having the felies of the wheels of lefs breadth and gage than nine inches, or fix inches from fide to fide, which are not made, or are not obliged by law to write or paint, or caufe to be written or painted, upon his or their waggon or cart, paint or caufe to be painted upon the tilt of every fuch waggon or cart which has a tilt, and upon the most confpicu- ous part of fuch waggon or cart which has not a tilt, the following words in large and legible characters, that is to fay, COMMON STAGE-WAGGON, or CART, as the cafe may be; and if any owner or owners of any fuch waggon or cart, from and after the faid twenty-fourth day of June, travel with or by himfelf, or under the name of afoforeaid waggon or cart, or any other name or names hereby required to be painted as afoforeaid, he fhall forfeit and lofe one of his horfes or beasts of draught, (not being the fhaft or tilt horfe) together with all the gears and accoutements to fuch horfe or beast of draught belonging, to the fole use and benefit of the perfon or persons which haf followed and taken the fame, and for the perfon or persons making fuch forfeiture or diftrefs fhall proceed in like manner, and be intitled to the like remedy, as is directed and given in cafes of forfeitures of horfes by the faid act made in the twenty-sixth year of the reign of his present Majesty.

And whereas many perfon are deterred from prosecuting offences committed against theveral turn- pike laws, and it is inconvenient to others being upon journeys, or engaged on necessary business, to profecute the fame as the law now stands: And whereas many
laws have been made for and relating to turnpike-roads since 24 Geo. 2, and more acts of the same kind have likely been enacted, so that any person or informer may at his election sue for and recover any forfeiture or penalty, imposed by this or any aét or acts of parliament made or to be made for erecting turnpikes for repairing and amending turnpike-roads, or by any other act or acts, in the manner as such forfeitures and penalties are respectively and severally directed to be sued for and recovered, or by action at law, to be brought by such informer or prosecutor in any of his Majesty's courts of record at Westminster, in manner following, that is to say, in the suit, the plaintiff shall be liable to any such private party or corporation, it shall be lawful to sue for and recover the same by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of being forfeited by an aét intituled, An aét to amend an aét made in the twenty-fifth year of the reign of his present Majesty, intituled, An aét for the amendment and prejudice of the publick highways and turnpike-roads of this kingdom; and for the more effectual execution of the laws relating thereto; and where the penalty or forfeiture is or shall be liable to any such private party or corporation, it shall be lawful to sue for and recover the same by action of trover against the person liable to such penalty, in which the value of any such horse, beast of draught, or other goods, as is or are liable to the forfeiture, shall be given in damages without any proof of any seizure or demand.

Sec. 17. And every surveyor of any turnpike-road, and every toll-gatherer, and all such persons employed by commissioners and truresses appointed for the repairing roads, as receive salaries or rewards, who shall wilfully neglect to seize any supernumerary horse or horses driving in any wagon, wain or cart, contrary to the true intent and meaning of this and the said recited aét, and shall also wilfully neglect to lay such information upon oath before one or more of his Majesty's Justices of the peace for the county wherein such offence was committed, or before any body of commissioners for raising turnpike-roads or other meetings, as the by said recited aét is directed, shall, upon due information made upon oath before one or more of his Majesty's Justices of the peace for the said county or place, forfeit the sum of ten pounds; five pounds thereof to be paid to the informer, and the rest for the use of the commissioners and truresses in such manner as the commissioners and truresses for such respective turnpikes shall think fit.

Stat. 30 Geo. 2. c. 28. This aét was to continue only for seven years from the 24th of June 1758; it is therefore expired on the 24th of June 1765: But part of it is continued for the further term of seven years by the following aét passed last session.

Stat. 5 Geo. 3. c. 38. (Intituled, An aét to continue part of an aét made in the thirty-third year of the reign of his late Majesty King George the Second, intituled, An aét to render more effectual the several laws now in being for the amendment and preservation of the publick highways and turnpike-roads of this kingdom; and for making further provisions for the preservation of the said roads.)

Sec. 2. Whereas by an aét made in the thirtieth year of the reign of his late Majesty King George the Second, intituled, An aét to render more effectual the several laws now in being for the amendment and preservation of the publick highways and turnpike-roads of this kingdom, it was, among other things, enacted, That during the time of seven years, to be computed from the 24th day of June one thousand seven hundred and fifty, every person driving, or causing to drive, such truresses appointed to or appointed to be appointed, by virtue or under the authority of any aét of parliament made or to be made, for making, repairing or amending turnpike-roads, or such person or persons as are or shall be authorised by them, shall and may do and commit any of the abovesaid forfeitures or penalties, and take for every wagggon, wain, cart or carriage, having the felles of the wheels thereof of less breadth or gage than nine inches from side to side at the leaf, at the bottom or side thereof, or for the horses or beasts of draught drawing the same, one half more than the toll or duties which shall be payable for any such carriage, or vehicle, or by any aét or aét of parliament made or to be made for making, amending or repairing turnpike-roads; except carts or carrasses drawn by one horse or two oxen, or by two horses or four oxen, having the felles of the wheels thereof of more than nine inches from side to side at the bottom from side to side: And it is by the said aét recited, That there are in several acts of parliament made for making, amending and repairing turnpike-roads, exemptions allowed from payment of costs in particular cases in the said afts respectively mentioned, and liberties allowed in particular cases to pay horse tolls than are charged upon other waggons, carts or carrasses, passing through turnpike-gates or bars; and that it would tend to the advantage and preservation of turnpike-roads, to confine such exemptions, liberties, privileges and advantages, to carryages with wheels of the breadth or gage of nine inches, or thereof; and that it would be reasonable to extend such time asfofaid, no perfons shall, by virtue of any of the said afts of parliament, have, claim or take, the benefit or advantage of any exemption from tolls or part of tolls, or to pay lesser toll for or in respect of any wagggon, wain, cart or carriage, or horses or horfes drawing the same, or in other carrasses of the turnpike-gates or bars, to pay, unless such wagggon, wain, cart or carriage, have felles of the wheels thereof of the breadth or gage of nine inches, except as before excepted: And it is therefy also enacted, That, during the time afofaid, it shall not be lawful for any wagggon or carriage, having felles of the wheels thereof of the breadth or gage of nine inches as afofaid, to pass upon any turnpike-road, or through any turnpike-gate or bar, unless the same be drawn by horses or beasts of draught, in pairs; provided, that where there is an odd horse or beast of draught, belonging to such wagggon or wain, it shall be lawful for such odd horse or beast of draught, to draw such wagggon or wain, together with the other horses or beasts of draught, drawing in pairs; and provided, that such horses, or beasts of draught, do not in the whole exceed the number of horses, or beasts of draught, allowed by law; and that it shall not be lawful for any wagggon or wain, having the felles of the wheels thereof of less breadth or gage than nine inches, to pass upon any turnpike-road, or through any turnpike-gate or bar, if the same be drawn by horses, or beasts of draught, in pairs, and not by oxen: And it is hereby likewise enacted, That any persons, or any of the persons hereby enacted, who shall, for the benefit of the owner of any common flag-wagggon thereby prohibited, shall be punished for the same by indictment or information, and shall, at the election of the prosecutor or informer, for every such offence, be subject to and liable to the like penalties and forfeitures as the owners of waggon and carriages, having the felles of the wheels of less breadth or gage than nine inches from side to side, are made subject and liable to, by an aét made in the twenty-sixth year of the reign of his late Majesty King George the Second, intituled, An aét for the amending and preserving of the publick highways and turnpike-roads of this kingdom; and for the more effectual execution of the laws relating thereto; to be paid and applied to such uses and purposes, and to be levied and recovered as is hereby directed; and that no composition shall be made for or in respect of any wagggon, wain, cart or carriage, having the felles of the wheels thereof of less breadth or gage than nine inches, as is hereby before enacted, except as excepted; And whereas it will tend to the advantage and preservation of turnpike-roads, that so much of the said aét as is herein before recited, shall be further continued —
ed from the said twenty-fourth day of June one thousand four hundred and sixty-five, for, and during the time or term of seven years.

Sec. 2. Provided always, That nothing herein contained shall extend, or be continued to extend, to continue a clause, or words, of any statute, so as to take away or destroy the continuance of the said act, the trustees appointed or to be appointed by virtue of or under the authority of any act of parliament made or to be made for making, repairing, or amending turnpike-roads, and such person and persons as shall be authorized by them, shall and may, and they are hereby required and shall, if having, and shall, wains, carts and carriages, having the felleys of the wheele thereof of the breadth or gage of nine inches from side to side, at the bottom or sole thereof, and drawn according to law, to pass through any turnpike-gate or gates, bar or bars, within one hundred miles from London, up on paying only so much toll, or duty as shall not exceed one half of the full toll or duties payable for such wains, carts and carriages respectively, or for the horses, or beasts of draught, drawing the same, by virtue of any act or acts of parliament made or to be made for making, repairing or amending turnpike-roads; but the said clause, or any matter and thing therein contained, shall from and after the said twenty-fourth day of June one thousand four hundred and sixty-five cease and determine; except the wheels of such waggons and wains shall be fixed thereto, in the manner hereafter described and directed.

Sec. 3. And if it further enacts, That from and after the said twenty-fourth day of June, the trustees appointed or to be appointed by any act of parliament, passed or to be passed for the making, repairing or amending any turnpike-road, or any person authorized and appointed by them, shall, during the time aforesaid, permit and allow, or permit and allow, to waggons, carts and wains of all sorts, having the next or any smaller wheels, the use of the breadth and gage of nine inches from side to side, of any road of the highway, or any other place, where such road or highway is, or may be, continued, and shall be, by virtue of any act or acts of parliament, hereby authorized and directed, to be made and constructed, or to be used and employed, for the carriage of goods, waggons, carts and carriages, and every thing thereunto belonging; and if any person or persons shall think him, her or themselves, aggrieved by the determination of such justice, he, she or they may appeal to the general quarter-feelions of the peace, who shall finally determine the matter, and allow such carts not exceeding forty thollings to either party, as such felleys shall think fit; in which case no certiorari shall lie or be brought.
or any five or more of them, to receive and take, over and above the sum (as aforesaid, in the feu of 20s. a hundred weight, for every hundred weight which each fuch waggon, together with the loading thereof, shall weigh, over and above the weight of fix tons; and also the sum of 20s. a hundred weight, for every hundred weight which each fuch cart or other carriage, with the loading thereof, shall weigh, over and above the weight of three tons; and that the money arising from fuch additional duties of 20s. a hundred weight, shall be applied to the repair of fuch highway or highways, where fuch gate or gates, bar or bars, are or shall be placed; any thing contained in the failing thereof to the contrary notwithstanding.

Sect. 6. Provided always, That nothing in an aét, intituled, An aét for the prefervation of the publick roads in that part of Great Britain called England, paffed in the 14th year of his late Majefty King George the Second; nor in an aét, intituled, An aét to explain and amend an aét paffed in the 14th year of his Majefly's reign, intituled, An aét for the prefervation of the publick roads, in that part of Great Britain called England; and so much of an aét paffed in the third year of the reign of King William and Queen Mary, intituled, An aét for the better repairing and amending the highways, and for fettling the rates of the carriage of goods, paffed in the 21st year of his faid late Majefty, nor in this aét, fhall be underftood to compel the truftees of fuch turnpike-road to erect any crane, machine or engine, for the weighing carts, waggons or other carriages, having wheels of the breadth of nine inches, or to weigh the fame.

Sect. 7. And whereas inconveniences have arisen from making hedges or other fences, and from ploughing or breaking up the fole of lands or grounds near the middle or centre of turnpike-roads; for remedy thereof, Be it further enacted by the authority aforesaid, That after the term of one year from the paffing of this aét, no person shal make, any hedge or other fence, on any turnpike-road not included on both sides, within the dilance of thirty feet, or plough or break up the fole of any land or ground within the dilance of fifteen feet, from the middle or centre of any turnpike-road made or to be made within this kingdom: And if any person fhall hereafter make, or cause to be made, any hedge or fence contrary hereto, within the dilance of thirty feet from the middle or centre of any turnpike-road, it fhall be lawful for the truftees for the care of fuch road, or any five or more of them, to cause fuch hedge or fence to be taken down at the expence of the person or persons to whom it belong; and in cafe fuch person fhall neglect or refuse to pay fuch expence to the faid truftees, or fuch person or persons as they, or any five or more of them, fhall appoint to receive the fame, it fhall and may be lawful for any one or more juftices or juftices of the peace for the county or place where the offence fhall be committed, by warrant under his or their hand and feal, or hands and feals, (which warrant fuch juftice or juftices is and are hereby authorized and empowered to grant) to levy the fame by diffrfs and fale of the offender's goods and chattels, rendering the overplus to the owner on demand: And if all men were to pafs into three classes, the leaff, the middle, and highbfe; and were valued at four pounds, the clas they were in; that is, if any injury was done, fatisfa(lion was to be made according to the value or worth of the man to whom it was done. The leaff were thofe who were worth ten pounds, or two hundred fhillings, and they were called vii diuuentori, or rubredians, to the number of 12, and were valued at six hundred fhillings, and were called fahbuidernmen, and their wives fahbuiderna; the highbfe were valued at twelve hundred fhillings, and were called rooffhuiderna, and their wives rooffhuiderna.

VOL. II. NO. 89.

lungs, to eithet party, as fuch feffion fhall think fit; in which cafe fuch warrant fhall be or be brought.

Sect. 9. And whereas the faid truftees of fuch turnpike-roads are not fufficiently impowered to punish nafances in the feveral roads under their care; Be it therefore further enacted by the authority aforesaid, That the faid truftees of the feveral roads refpe(vely, or any five or more of them, shall be hereby required, if they fhall think fit, to direct prosecutions by indictment or information, againft the offender or offenders for any nafance done, committed or continued in, or upon any of the turnpike-roads under their care refpe(vely, at the expence of the revenues belonging to fuch turnpike-roads refpe(vely.

Sect. 10. And be it enacted by the authority aforesaid, That if any action or fuit fhall be commenced against any perfon or perfon for any thing done or acted in purfance of this aét; then, and in every fuch cafe, fuch action or fuit fhall be commenced, or proceeded within fix calendar months next after the fact committed, and not afterwards; and the fame, and every fuch action or fuit, fhall be brought in the county, riding or place, where the perfon, againft whom fuch action or fuit fhall be commenced, doth ordinarily habit and reside, or in the county or riding where the fact was committed, and not otherwise.

Piggywagmen. A reward of 40l. is given for the apprehending and taking of a highwayman, to be paid within a month after conviction by the sheriff of the county, Ct. 4 & 5 Will. & Mar. c. 8. See Felony, Robbery.

Biggetts. See Game, Pigbypax.

The feitifs. The foids were every where added in deeds after the in capis rei Responsible, and were valued with the fame hand as the deed, which witnelfes were called, the deed read, and then their names entered: And this claffe of fawt fawtis in subjects deeds continued till the reign of Hen. 8. but now is quite left off. Co. in Litt. fal. 6.

Hinde. (John, ferjeant at law) The manor of Burh- ton, now allured to him and his heirs, 32 & 35 Hen. 8. c. 24.

Pindus homines. A society of men; from the Sax. Hindene, scutitates: for in the time of our Saxan ancestors every perfon in every fociety was divided into three classes, the leaff, the middle, and highbfe; and were valued at four pounds, the clas they were in; that is, if any injury was done, satisfaction was to be made according to the value or worth of the man to whom it was done. The leaff were thofe who were worth ten pounds, or two hundred fhillings, and they were called vii diuuentori, or rubredians, to the number of 12, and were valued at six hundred fhillings, and were called fahbuidernmen, and their wives fahbuiderna; the highbfe were valued at twelve hundred fhillings, and were called rooffhuiderna, and their wives rooffhuiderna.

VOL. II. NO. 89.

Liffate.


Bird. Domofyng vel intrafus familia, Inter Pla. To camepten capicula. 48. MS.

Pigf. A Subject; from the Sax. Hitran, obstet. But it feems rather to fignify one who ferves in the King's hall to guard him; but the bird, audo, and men, boms. Du Frene. Cowell, ed. 1727.

Bird or Pig. A little wood. Domofyng.

Battle. See Hytre.


Plafoner. The benefit of the law; from the Sax. lage, les, and fac, libertas.

Plafon. An unlawful company, from seven to thirty-five. Sfi de hoth fuict accipiant, aliter per centum viginti bidas, vel ex comedat; that is, he who is accufed for being at an unlawful space, it pur himelfe firi fucamamentatio quod qui 120 bidas effematur; or, let him clear himfelf by a mulit, which is called libes. Cowell, ed. 1727.

Rheidhit. A mulit fet on him who is in a riot. From the Sax. beth, turma, and late, compaffion.

Hant-men. An ancient gild or fraternity at Newe- eiflge upon Tyne, who dealt in flea-coal. they are men- tioned lat. 21 ft. 1. cap. 3.

Polters, or Polfiers, (Habborit) Errant multit greges, legit armamenta, et mulieri equs, ad sumn munum agili, sub Edwardo 3. in golia mercenari. Ddict (ut tre) vel ab ifqamendati efi, an hobby appellato, vet putius a gal. hobell, tunica. Tabula clafis deferbenis in exercitu ejfdom Edwardi Caeferis dafentem, anno 1350, fci habent. Sub comitis Kilbarras, henaries 1, knigbuses 3, figurnes 38, hobers 27, etc. They were light lorifemen, or certain te- nants, who, by their tenure, were bound to maintaine a little light nog for certifying any infamy, or fuch like peril towards the fea fide, as Pontifh. fct. Of which you may read 18 Ed. 3. ft. 1. e. 27, et ejfdomen, Jat. 5. cap. 8, and Cam. Briton, ft. 274. Differ. vocubul. d. paterat. ft. 10, Saks, Hages, Grom, darius, and hobefurs. See Pris. Animad. on J. Inf. f. 307. Hobefures, Rot. Par. ft. 21 Edw. 3. Sometimes the word signifies thofe who ufed bowns and arrows, vna. Pre war- da maris tempefae gerae, pro heroderiae fegretaria inueni- ratis, &c, Thorn. Anno 1364. So in the Monaglic. Pre maritme & apparatius hominum ad arma harclario- rum jefegitum. Cowell, ed. 1727. Diclus fallis. It feems to be a bace, hole or keffer pi of fait. In which habbit Re Edwardus domos xi. & f. in v. plateis habhob Hit E. fi Jam partem. In Teopacque pate or. fialum & ii. hokce rediun vi, fii. & vii. denar. In afio pateo Haberius xvii. fialum. In tertio pateo Mi- delmic xii. fialum. & partes de i. hocoe rediun vi. fildus & vii. denar. Ex Libro Domeday, Worcefsire.

Barletto, or Porquequet, is an old French word for a knight of the poff, a decayed man, a bafeft car- rier. The Hogs, ed. 1727. Qui factam ferua rapi- nen ne fat fortis ne quos per bocketteus, parent que la waite ne fat enfue. Stat. Ragman, Cowell, ed. 1727.

Hog:Tozrs. Dompmp. Was a duty given to the landlord, that his tenants and bond-men might recknorize that the King had conferred any benefice on them, during the second Tuesday after Easter week. Cowell, ed. 1727.
in Advent and Lent, St. Wulfstan, t. 3 Ed. 1. c. 31.

Shew of wool prohibited on Sundays, St. Cec. Ed. 2. c. 7.

Fairs and markets not to be kept on Sundays and principal festivals, except four Sundays in Autumn, St. Wulfstan, t. 3 Ed. 1. c. 5.

Sheemakers in London not to full or fit on their goods on Sundays, St. Wulfstan, t. 3 Ed. 4. c. 7. 1 Jac. 1. c. 22. f. 99.

Days to be observed as fish days, 5 Ed. 2. c. 6. f. 19.

What holy-days and fasting-days shall be kept, 5 & 6 Ed. c. 3.

Penalty of not refraining to church on Sundays and holy-days, 1 Ed. 1. c. 7.

Wednesday not to be a fish-day, 27 Ed. t. 11.

Vi-ruellers prohibited to utter fish on fish-days, 27 Ed. t. 11.

The penalty of eating fish on fish-days diminished, 33 Ed. t. 7. fett. 22.

Regulations of licences to catch fish in Lent, t. 1 Jac. 1. c. 29.

The fifth of November to be kept as a day of thanksgiving, 3 Jac. 1. c. 1.

The punishment of using sports on the Sunday, 1 Car. 1. c. 5.

Carriers, drovers, butchers or bakers, not to travel or export meat on Sunday, 3 Car. 1. c. 2. 29 Car. 2. c. 7.

The 29th of May to be an anniversary thanksgiving, 12 Car. 2. c. 14.

The 20th of January to be kept as an anniversary day of honour, 12 Car. 2. c. 30. fett. 25.

The 2d of September to be annually kept as a fast in London, 19 Car. 2. c. 3. f. 28.

No warres to be expoed to sale on the Sunday, 29 Car. 2. c. 7.

Except in ellas in innis, etc. or milk, ibid. fett. 3. or muckel, 10 & 11 W. 3. c. 24. fett. 14.

Coachmen or chimney men ply on the Lord's day, notwithstanding the 29 Car. 2. c. 7. 9 Ann. c. 23. fett. 27. 45.

Perfons not to travel in boats, etc. on the Sunday, 29 Car. 2. c. 7. fett. 22.

The Isle of Man, etc. 2 Ed. Carlise restored, 10 Ann. c. 12. repealed 1 Geo. 1. c. 28. See Calendar.

Behold, Rock falt may be used in it's fall-works, 6 Ann. t. 12. fett. 2.

Homage (Homagium,) Probably derived from beamps, because where the tenant does this service to his lord, he says, I become your man; it is also called mancet. Co. Litt. fel. 64.

The French word import us much as fides eicentiorum; for in the original grants of lands and tenements by way of fee, the lord did not only tie his tenants to certain services, but also took a submition, with promis and oath to be true and loyal to him as his lord and liege. The submition was and is called homage, the form whereof you have the second figure 17 Ed. 2. in these words: When a freeman shall do homage to his lord, of whom he holdeth in chief, he shall hold his hands together between the hands of his lord, and shall say thus: I become your man from this day forth for life, to serve you, and to bear your homage, and shall owe you my faith, for the land I hold of you, and the faith that I owe unto our Sovereign Lord the King, and to such other lords. And in this manner the lord of the fee, for which homage is due, taketh homage of every tenant as he cometh to the land or fee, withall, lib. 9. c. 1. except they be women, who perform not homage, but by their husbands. Yet Fitzherbert in his Nat. Evec. s. 577. faith the contrary. The reason of this, Skena gave to the verb. sign. verbo Homagium, because homage specially concerneth service in war. He faith also, That consecrated bishops do no homage, but only fealty; and yet we find the archbishop of Canterbury, and the bishop of York, on his knees to our Kings at their coronation; and it has been held, that the bishop of Sothor in the Act of Mon., is homager to the Earl of Derby. And in the Reg. Orig. fel. 266. a woman taking lively of lands holden by Knight's service, must do homage, &c. Concerning the homage of consecrated bishops, see Hakluyt, and Fuller. This is observed in these words: By our law a religious man may do homage, but may not say to his lord, Ego devois homin us offerter, because he hath professed himself to be only God's man; but he may say, I do unto you homage, and to you shall be faithfull and loyal. See of this Britton, cap. 67. Homage is also taken in some cases to signify the pertinent respect or duty, as in the place where the services are to be performed, as in the French, homager, homage, homagium. In their Latin of the word, and otherwise. Homage is sometimes used for the jury in a court baron. Smith de Rep. Ang. lib. 2. cap. 27.

The reason is, because it confineth most commonly of such as owe homage unto the lord of the fee; and these, by the Feudal Law, called Persons of Fee. Of homage you may read in the 29th chapter of the Grand Charta of Normandy, and others not used by us. See further in Hateman suisfit. de feudis, pag. 801. read Skene de verb. sign. tit. Homagium, to whom you may also add a large discourse in Specul. Durb. called Speculum etiam de feudis tertiis. Homage is sometimes used for the jury in a court baron. Smith de Rep. Ang. lib. 2. cap. 27.

Homage anfeetrel, is, where a man and his anfeetrel, time out of mind, held their land of their lord and his anfeetrel by homage; and if such lord have received homage, he is bound to acquit the tenant of his homage, and to give him the free services of all other lords above him of every manner of service; and if the tenant hath done homage to his lord, and is impelled, and vouches the lord to warranty, the lord is bound to warrant him; and if the tenant lief, he shall recover in value against the lord so much of the lands as he had at that time of the oath and homage. To this effect Littleton; upon which Coke says, in his example here put, There must be a double prescription both in the blood of the lord and the tenant; and therefore I think, there is little or no land at all at this day held by homage anfeetrel. Yet (as one averse) in the manors of Harington in Hereforshire, whole lord is of the same name, and
HOMICIDE, properly so called, is either against a man's own life, (called self-murder, or felis de se,) or the life of another. Homicide against the life of another either amounts to felony, or does not. That which amounts not to felony, is either justifiable, and causes no forfeiture at all, or it is involuntary, but loses the forfeiture of the party's goods.

1. Of self-murder, or felis de se.

2. Of justifiable homicide.

3. Of excusable homicide.

4. Of manslaughter.

5. Of murder.

1. Of self-murder, or felis de se.

In this, as well as all other felonies, the offender ought to be of the age of discretion, and corpus mensis; and therefore, that an infant killing himself under the age of discretion, or a lunatick during his lunacy, cannot be a felis de se.

1 Hauk. P. C. 67, 69.

2. Of justifiable homicide.


But here I cannot (says Mr. serjeant Haukinst) but take notice of a strange notion, which has unaccountably prevailed of late, that every one who kills himself must be non corpus de se; for it is said to be impossible that a man in his fenses should do a thing so contrary to nature and law, as to his own destruction.

If this argument be good, self-murder can be no crime; for a madman can be guilty of none. But it is wonderful that the repugnancy to nature and reason, which is the highst aggravation of this offence, should be thought to make it impossible to be any crime at all, which cannot but be by the forcing occasions the moral disposition, that none but a madman can be guilty of it; may it not with as much reason be argued, that the murder of a child or a of a parent is against nature and reason, and consequently that no man in his fenses can commit it? But has a man therefore no use of his reason, because he acts against right reason? Why may not the pations of grief and discontent tempt a man knowingly to act against the principles of nature and reason in this case, as those of love, hatred, and revenge, and such like, are too well known to do in others.


Homicide laws have always had such an abhorrence of this crime, that not only he who kills himself with a deliberate and direct purpose of so doing, but also in some cases he who maliciously attempts to kill another, and in pursuance of such an attempt unwillingly kills himself, shall be adjudged in the eye of the law a felis de se; for wherever death is caused by any act done with a murderous intent, it makes the offender a murderer; and therefore if A. discharge a gun at B. with an intent to kill him, and the gun break and kill A. or if A. strike B. to the ground, and then hastily falling upon him wound himself with a knife, which B. happens to have in his hand, and die, in both these cases A. is felis de se for he is the only agent.


But if B. being so assaulted, had been driven to the wall, and holding up a pitchfork or knife, flanding in his defence, and A. had hastily run upon the same, and been slain, B. should be judged to kill him in his own defence. And for the same reason, perhaps in the case above, if B. after he had fallen to the ground, had holden up his knife or sword in his defence, and A. had fallen thereon, and been slain, B. should be judged to kill him di se defendendo; for here B. exerts his strength in his own defence, and so does, as is received by A. 1 Hauk. P. C. 68. S. P. C. 16. H. P. C. 28. 29. Pult. 119. b. Crom. 28.

He who kills another upon his defence or command, is in the judgement of the law as much a murderer, as if he had done it merely of his own head, and the pardon

the family has continued there many ages, is one W.J., a tenant, who can procure to hold his land of Thomas Whitney, Esq. the present lord, by homage ancestr:ed. Cawd. ed. 1727. Homicide, 1 is a jury in a court baron, confounding of the homage paid to the lord of the fee; and thee by the Feudalists are called Pares curiae: They in- quire and make prefrontments of defaults and deaths of tenants, admittances, and forraders in the lord's court, &c. Kitch. Homicage, One that does, or is bound to do homage: An Anold Bishop of Ely in the 6th of Man was said to be homage to the Earl of Derby. See Homicage. Homaggio regis duando, Is a writ directed to the escheator commanding him to deliver seisin of lands to the heir that is of full age, notwithstanding his homage not done, which ought to be performed before the heir has livery, or his lands; except there fall out some rea- sonable cause to hinder it. F.N.B. fol. 269. Homicagiireducme, To renounce homage, when the vassal made a solemn declaration of disowning and defying his lord. For which there was a sort of form and method prescribed by the feudalatory laws. — Item reedere patriet Dominum homagium, feam non habuerat, propria capitata inimiciae, praeterea ab heribus praeceptator apellam faunas, & sic dixit homagiam. Brotan. lib. 2. cap. 35. fol. 35. This is the meaning of that passage in Richardus ‘Hugelafidis de Bello Standard, p. 321. ili poque Robertus reddito homagio quod ei fecertur — ad fines focus revocet ef. And of Mort. Prift. f. 211. where it is noted per dominum factum, simul etenemento, homagium, quia in principis hujus guerre homagium faum reddiderat Regi Francia. Cawd. ed. 1727. Homofoken, or Hamfoken, and Hamfolk, (from the Sax. bami, i. e. domus, habitations, and sect, libertas, immunitas, ) is by Broniun. lib. 3. tract. 2. c. 23. thus de- fined: Hoomfokeno (fchool) domus contra pacem De- minis Regis, vel infultus factus in domo extra pacem Domini. It appears by Rojald, that in ancient times some men had an immunity to do this. St quis homfocom violatores, iure Angilam Regii: emendat 5 lib. LL. Canuti. cap. 39. Homfokeno. Si quid prior tenet placitum in curia frons de his qui infringantur domum vel curiam alecium ad homogamiam, vel furandum, vel quicquid afferatum est, vel aliquod aliud facendum, contra voluntatem illius qui debet domum vel curiam. Ex Reg. Priora. de Cokesford. See Ham- foken.

Hoomfoken, Is also the privilege of freedom which every man has in his house; and he who invades that freedom is properly said facere homfoken. This I take to be what we now call burglarly, which is a crime of a very heinous nature, because 'tis not only a breach of the King's peace, but a breach of that liberty which a man hath in his house, which, as we commonly say, fhoul be his cottage, and therefore ought not to be invaded. Broniun. lib. 3. tract. 2. cap. 29. Du Cange. It is also taken for an impunity to those who commit this crime, viz. Homefoken, Ioct. 6. quietus offe de amer- ciamenitis pro ingreffa bolfitti violenter et fius laesur, & contra pacem Regii, & quod tencati placita de bolfijiendi transgressio in curia ejus. W. Thoro. p. 2930. See Dall. Homicide. (Homicidium,) Is the killing of a man, and is divided into voluntary and coafal: Homicide vol-untary is that which is deliberate, and committed of a fet purpose to kill; coasal is done by chance, without any intention to kill. Homicide voluntary is either with pre- cedent malice, or without. The former is murder, and is a felonious killing through malice prepended of any per- son living in this realm, under the King's protection. Wiff. jur. par. 2. Symbol. tit. Indictments, sect. 37. & c. qno 51. where you may see divers subdivisions of this matter. See Dall. & W. Tho. lib. 14. cap. 3. Bract. lib. 3. tract. 2. cap. 4. 15. 17. Beiron. lib. 5. cap. 6. 7. R. Taylor. cap. 6.

Offences against the life of a man come under the ge-neral name of homicide, which in our laws signifies the killing of a man by a man. 1 Hauk. P. C. 66. Brac-ten. lib. 5. c. 4.

1
.

H O M
killed

upon

not looked

is

as

Tl

H O M
inafmucli as his

fclo de fe,

was merely void, as being againft the law of God
But where two perfons agree to die together,
and man
and one of them at the perfuafion of the other buys
ratjbane, and mixes it in a potion, and both drink of
bought and made the potion, furvives
it, and he who
by ufing proper remedies, and the other dies, perhaps it
is the better opinion, that he who dies (hall be adjudged
a filo de fe, becaufe all that happened was originally
owing to his own wicked purpofe, and the other only put
it in his power to execute it in that particular manner.
aflent

:

Hawk. P. C.

I

And

what fuch an offender

as to

Moor 754.

68. cites Keihu. 136.

fliall forfeit,

it

mull be owing to fome unavoidable neceffity, t«
which the perfon who kills another mu(t be reduced,
without any manner of fault in himfelf.
i Hawk. 69.
2. There muft be no malice coloured under pretence
of neceffity, for wherever a perfon who kills another,
afls in truth upon malice, and takes occafion from the
1.

appearance of neceffity to execute his own revenge, he is
guilty of murder.
2 Rol, Rep.
i Hawk, P. C, 69.
Kelynge 28,
120,121.
cap. 4.

According to the opinion of the old books, (which
refpedl feem to be contradi<3ed by others more
modern,) it feems that one may fet forth a fa(St, amount3.

in

feems

It

this

alfo all chattels real

ing to juftifiable homicide, in a fpecial plea to an indiflment or appeal of murder ; and that the fame being found

whereof he is pofTefled either jointly with his wife, or in
her right ; and alfo all bonds and other perfonal things in
adtion belonging folely to himfelf ; and alfo all perfonal

true, he fliall be difmiffed, without being arraigned, or
enforced to plead Not guilty.
And indeed it feems extremely hard, that a (herifF or judge who condemn or

dear, that he
which he hath

things

in his

a£tion,

in

forfeit

(hall

own

ai.d,

all

and

right,

fome

as

which he was

chattels

fay,

or perfonal

real

entire

chattels in

with another,
on any account except that of merchandize But it is
faid, that he (hall forfeit a moiety only of fuch joint
chattels as may be fevered, and nothing at all of what
i
he was polielfed of as executor or adminiftrator.
Hawk. P. C. 68. cites many authorities.
However the blood of a felfo de fe is not corrupted,
nor his lands of inheritance forfeited, nor his wrfe barPlow. Cam.
i Hawk. P. C. 68,
red of her dower,
261. b. 262. a.
Alfo no part of the perfonal eftate is veiled in the
King, before the felf-murder is found by fome inquifition ; and confequently the lorfeiture thereof is faved by
pofleffion to

intitled jointly

:

i Hawk.
a parui)n of ihe cfFence before fuch finding,
1 Saund. 362.
5 Co. 110. i.
P. C. 68.
3 In/i. 54.
I Sid. 150, 162.
But if there be no fuch pardon, the whole is forfeited
immediately afier fuch inquifition, from the time fuch

wound was given, and all
i Hawk. P. C.

mortal

intermediate alienations
68.

avoided.

are

5 Co. no.
fuch iiiquifitions ought to be by the coroner fuper vifum corporis, if the body can be found, and an ini
quifinon fo taken, as fome fay, cannot be traverfed.

H.

P. C. 29.

And

Hawk. P. C.
But

if

H. P. C.

29.
3 I„Ji. 55.
the body cannot be found, fo tiiat the coroner,

68.

who

has authority only fuper vifum corporis, cannot proceed, the inquiry may be by juftices of peace, (who by

power to inquire of all
Bench, if the felony were
the county where ihe faid court fits; and

their commijTion have a general
felonies,) or

committed

in

in

the King's

fuch inquifitions are traverfable by the executor,

,Hawi. P.C.bg.
141,
Alfo

Z^JhsS-

H. P. C.

2().

iffc.

tb.is

offence being in the na-

add, that the party
I

Hawk.

in

fuch manner murdered

69.

Therefore if cither the premilTts be infulficient, as if
be found that the party flung himfelf into the water,

Uf Jic feipfum emergit, which is nonfenfe, (becaufe emergo
fignifies only to rife cut of the water,) or if there be
ftc feipjum murdravit,
wanting the proper conclufion,

y

1 Hawk. 69.
is not good.
3 Lev. 140.
3 Mod. ICO. 2 Lev. 152.
Yet if it be full in fubftance, the coroner may be ferved with a rule 10 amend a dcfecfl in form, i Hawk, 69.
I Keb. 907.
I Sid, 225, 259.
3 Mod. loi.

the inquifition

By the rubrick in the Common Prayer, before the
burial ofKce, (confirmed by fiat. 13 iJ ij^Car, 2. c. 4.)
perfons who have laid violent hands upon themlelves,
iliall

2,

it is agreed, that no one can plead a fa£l amounting
to homicide fe defendendo, or by mifadventure, but that
in fuch a cafe the defendant muft plead Not guilty, and

give the fpecial matter in evidence
And it is alfo agreed,
that where a fpecial fa£f, amounting to juftifiable homi:

is found by the jury, the party is to be difmiffed,
without being obliged to purchafe any pardon, i^c.
i

cide,

Hawk.

6g.

Juftifiable

That

ture.

homicide

is

either of a publick or private na-

of a publick nature

is

fuch as

occafioned

is

by the due execution or advancement of publick juftice.
That of a private nature is fuch as happens in the juft
defence of a man's perfon, houfe, or goods,
i Hawk.
P. C. 70.
As to juftifiable homicide in the due execution of publick juftice, the following rules muft be obferved.
1. The judgment, by virtue whereof any perfon is put
to death, muft be given by one who has jurifdiftion in
the caufe ; for otherwife both judge and officer may be
guilty of felony,
1 Hawk. P. C. 70.
Dalt. cap. 98.
10 Co. 76.
22 Ed. 4. 33. a. H. P. C. 35.

And

therefore if

the court of

Common

Pleas give

judgment on an appeal of death, or juftices of peace on
an indictment of treafon, and award execution, which is

who gave, and the officers
executed the fentence, are guilty of felony ; becaufe
thefe courts have no more jurifdidlion over thefe crimes
than mere private perfons; and their proceedings thereon
are merely void, and without any foundation.
I Hawk.
P. C. 70.
executed, both the judges

who

But
pafs,

the juftices of peace,

if

arraign a

man

on an indlflment of trefcondemn him, and

of felony, and

he

inquifitions of

all

himfelf.

it

But

I

2 Lev.

ture of indiftments, ought particularly and certainly to
fct forth the circumftances of the fact ; and in the conclufion

execute a criminal, &c. fhould be forced on a frivolous
profecution to hold up their hands at the bar for it, i^c.

not have that

Of jujlifable

office ufcd at their

interment.

homicide

be executed, the juftices only are guilty of felony,
and not the officers who executed their fentence ; for the
juftices had a jurifdidtion over the offence, and their
proceedings were irregular and erroneous only, but not
void.
H. P. C. 35. Dalt. c. 98.
I Hawk. P. C. 70.
2. The judgment muft be executed by the lawful officer.
Indeed it was formerly held, that any one might
as lawfully kill a perfon attainted of treafon or felony,

a wolf or other wild beaft

demned

in

;

an appeal of death, was delivered to the relato be executed by them.

tions of the deceafed in order
I

Hawk,

13. «.

But

I Inji. 128. b.
2 AJf. pi. 3,
70.
Plow. Com. 306.

at this day, as

it

feems agreed,

if

juftlfiable

homicide, the following rules are

prcmifcd by Mr. Serjeant Haivkins.
Vor..

II.

N".

90.

P. C.

S.
b,

3

the judge,

gives the fentence of death, and, a fortiori, if

InJI.

who

any private

perfon execute the fame, or if the proper officer himfelf
do it without a lawful command, they are guilty of fe-

Bro. Appeal, 69.
I Hawk. 70.
27 JJf. 41.
execution muft be purfuant to, and warranted
otherwife
it
is
judgment,
without
authority ; and
by the
confequently, if a (herifF behead a man where it is no
lony,
3.

The

part of the fentence to cut off the head, he

Concerning

as

and anciently a perfon con-

felony.

S.P.C.

I

Hawk.

13.

70.

35

//. 6, 57. b.

is

guilty of

Bro. Appeal f.

HP.C.ib,2i2,

Mmm

Juftifiable


H O M

Justifiable homicide in the due advancement of public justice, relates either to criminal or civil causes. As to the first, it may be justified in several cases: as if a person having actually committed felony will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended, or define himself, or put his goods or persons in the power of the constables, officers of police, or any without a warrant from a magistrate, he may be lawfully slain by them. 1 Hawk. P. C. 70. 37. 22 Aff. 55. Brs. Cor. 87. 89. S. P. C. 13. 3 Inf. 221. Dub. cap. 98. H. P. C. 38. Com. 30. 7.

If an innocent person be indicted for felony, where, in truth, no felony was committed, and will not suffer himself to be arrested by the officer who has a warrant to that purpose, he may lawfully be killed by him, if he cannot otherwise be taken; for there is a charge against him upon record, to which he is bound to answer. 1 Hawk. P. C. 71.

If a criminal, endeavoring to break the goal, affults his gaoler, he may be lawfully killed by him in the affay. 1 Hawk. 71.

If those who are engaged in a riot, or a forcible entry, or detainer, stand in their defence, and continue the force in opposition to the command of a just peace, &c., or resist such just endeavour to arrest them, the killing of them may be justified; and so perhaps may the killing of dangerous rioters by any private persons, who cannot otherwise suppress them, or defend themselves from them, inasmuch as every private person seems to be authorized by law to arm himself to the full extent of the public peace. 1 Hawk. 71. Com. 30. 6. 153. b. H. P. C. 37. Pech. 121.

If treafurers in a foileet, chace, park or warren, or any inclosed ground where deer are kept, will not render themselves to the keepers, upon hue and cry made to stand by; King's peace, but fly from, or defend themselves against them, they may be lawfully by force of the statute de malfactoribus in pariis, and 4 Will. & Mar. cap. 10. 1 Hawk. S. P. C. 13: b. Com. 30. b. Dyer 328. 57. 3.

If either of the parties fighting in a combat allowed by law, for the trial of some special case, be slain, he who kills him is justified, and the death of the other is imputed to the just judgment of God, who is preferred to give the victory to him who fights in maintenance of the truth. 1 Hawk. P. C. 71. Dub. cap. 98. Plow. Com. 9. b. 3 Inf. 221. 37 H. b. 214.

If a public officer in the due advancement of justice in civil causes may also be justified in some cases: As where a thief, &c., attempting to make a lawful arrest in a civil affair, or to take one who has been arrested and make his escape, is repelled by the party, and unavoidably kills him in the affay. 1 Hawk. P. C. 71. 1 Lev. Rep. 169. 1 Hawk. 5. 6. 31. Dub. inf. 65. Com. 34. Dub. cap. 98.

And in such case the officer is not bound to give back, but may stand his ground and attack the party. 1 Hawk. P. C. 71. H. P. C. 37.

But no private person of his own authority can arrest a man for a civil matter, as he may for felony. 1 Hawk. 71. Com. 38. Neither can the thief himself lawfully kill those who barely fly from the execution of any civil process. 1 Hawk. 71. H. P. C. 37.

As to justifiable homicide of a private nature, in the just defence of a man's person, house or goods, it may happen either by the killing of a wrong-doer, or an insolent person, in the making of such defence. And, first, the killing of a wrong-doer in the making of such defence, may be justified in many cases; as where a man kills one who affaulfs him in the highway to rob or murder him; or the owner of a house, or any of his servants, or lodgers, &c., kill one who attempts to burn it, or to commit in it some violent, or other felony; or a woman kills one who attempts to ravish her; or a servant coming suddenly and finding his master robbed and slain, falls upon the murderer immediately and kills him; for he does it in the height of his fury, and under just apprehension of the person making the attempt upon himself; but in other circumstances, he could not have justified the killing of such an one, but ought to have apprehended him, 1 Hawk. P. C. 71. 72. 24 H. 8. cap. 5. Dub. cap. 98.

Neither shall a man in any case justify the killing another by a pretence of necessity, unless he were himself wholly without fault in bringing that necessity upon himself; for if a man, in defence of an innocent person, &c., kill any person whatsoever, he is guilty of manslaughter at least; as where divers rioters wrongfully detain a house by force, and kill those who attack it with lions, and endeavour to burn it. 1 Hawk. 72. Com. 37. 7-5.

Neither can a man justify the killing another in defence of his house or goods, or even of his person, from a bare private trespafi; and therefore he that kills another, who claiming a title to his house, attempts to enter it by force and shoves at it, or that breaks open his windows in order to arrest him, or that perils in breaking his hedges after he is forbidden, is guilty of manslaughter; and he who in his own defence kills another that affaults him in his house in the day-time, and plainly appears to intend to beat him only, is guilty of homicide fo defendendi, for which he forfeits his good, but is pardoned of course; yet it seems, that a private person, and, a furtiari, an officer of justice, who happens unavoidably to kill another endeavouring to defend himself from it, it supposes dangerous rioters, may justify the &c., insomuch as he only does his duty in aid of the public justice. 1 Hawk. 72. H. P. C. 40. 57. Coryn. C. 35. Dub. cap. 98.

And I can see no reason, says Mr. Jerjeant Hawkin, why a person, who without provocation is assailed by another in any place whatsoever, in such a manner as to make it a murder, and as he is charging a pistol, or pulling at him with a drawn sword, &c., may not justify killing such an affiant, as much as if he had attempted to rob him: For is not he who attempts to murder me more injurious than he who barely attempts to rob me; and can it be more justifiable to fight for my goods, or persons, and life, or to be taken, and it is not more justifiable to be able to reason, that a man in such circumstances may lawfully kill another, but it seems also to be confirmed by the general tenor of our law-books, which speaking of homicide fo defendendi, supposes it done in some quarrel or affray; from whence it seems reasonable to conclude, that where the law judges a man guilty of homicide fo defendendi there must be some precedent quarrel, in which both parties always are, or at least may justify be supposed to have been, in some fault; so that the neces- sity to which a man is at length reduced to kill another by the manufacture presumed to have been owing to him- self; for can it be imagined, that the right of self-defence is founded on the highest reason, will adjudge a man to forfeit all his goods, and put him to the necessity of pur- chasing his pardon, without some appearance of a fault. And too it may be said, that there is none in chance- medley, and yet that the party's goods are also forfeited by that. I answer, That chance-medley may be intended to proceed from some negligence, or at least want of sufficient caution in the party, who is so unfortunate as to commit it, so that he doth not seem to be altogether faultless. Besides, one of the reasons given in our law- books for such homicide fo defendendi forfeits goods, is because there is a person, or a true man is killed; but it seems fur- fird, That he who apparently attempts to murder another, which is the most heinous of all felonies, should be esteemed such, when those who attempt other felonies, which seem to be much les criminal, are allowed to be killed as downwright villains, not defenting the protection of our law. 1 Hawk. 72. Aud. 41. Com. 37. 28. Dub. cap. 98. S. P. C. 15. a. 3 Inf. 57. Bov. 33. Dub. 98.

However, perhaps in all these cases, there ought to be a distinction between an affault in the highway and an affault in a town; for in the first case it is fast, that the person that is to justify killing the one that assaults is the one that is moti- vating back at all; but that in the second case, he ought to retreat as far as he can without apparently hazarding his
3. Of execuable homicide.

Executable homicide is either per injuriam, or de tendendo. Homicide per injuriam, or by misadventure, is where a man in doing a lawful act, without any intent to kill, and without any criminal negligence, suffers a person to be killed in the act of doing a thing, in which case the rider is guilty of homicide per injuriam, and he who gave the blow, of manslaughter. 1 Hawk. 73. 3 H. P. C. 58, 59.

Where a workman, having first given loud warning to all persons to fland clear, flings down a piece of timber from a height, and thereby kills one who happens to be underneath: But if any person flings down such a piece of timber idly in play, or even a workman fling it down in the streets of a town, where the danger is apparent in respect of the number of persons continually passing by, he is guilty of manslaughter. 1 Hawk. 73. 3 Keyst. 40. 4 Bro. 68. c. 4. 4 H. P. C. 31. 3 Bro. 292.

Where workmen flres through stones, rubble, or other things, from a house, in the ordinary course of their business, by which a person underneath happens to be killed: if they look out and give timely warning to those beneath, it will be his defence in misadventure; if without a labourer being at work with a hatchet, the head thereof flies off, and kills one who flands by. 1 Hawk. P. C. 73. 6 Ed. 4, 7, 8. Bro. Cor. 59, 148.

Where a third person whips a horse on which a man is riding, whereasupon the horse flies out, and runs over a barrel in which the rider is guilty of homicide per injuriam, and he who gave the blow, of manslaughter. 1 Hawk. 73. 3 H. P. C. 58, 59.

And if a man happen to kill another in the execution of a malicious and deliberate purpose to do him a personal hurt, by wounding or beating him; or in the wilful commission of any unlawful act, which necessarily tends to his own destruction, he may be charged with the murder of the person which he has killed. 2 Hawk. 68. 1 H. P. C. 31. 3 Keyst. 40.

If any one flot at any wild fowl upon a tree, and the arrow killeth any reasonable creature after off, without any evil intent in him, this is by misadventure; for it was not unlawful to shoot at the wild fowl: But if he had shot at a cock or a hen, or any tame fowl of another man's, and the arrow by mischance had killed a man; if his intention was to feal the poultry (which must be collected from circumstances,) it will be murder by reason of that felonious intent; but if it was done wantonly, and without that intention, it will be merely manslaughter. 2 Hawk. 258. 9.

The rule before laid down supposeth, that the act from which death ensued, was malum in se. For if it was barely malum in se, as shooting at game by a person qualified by statute to keep a gun for that purpose; the case of a person offending, will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game under certain penalties, will not, in a question of this kind enhance the accident to the degree of a felony. 3 H. P. C. 34.

Neither shall he be adjudged guilty of a les crime who kills another, in doing such a wilful act as shews him to be as dangerous as a wild beast, and an enemy to mankind in general; as by going deliberately with a horse used to strike, or discharging a gun among a multitude of persons, or throwing a great stone, like a piece of timber from a house into a street, through which he knows that many are passing; and it is no excuse that he intended no harm to any one in particular, or that he meant it to do for sport, or to frighten the people, 1 Hawk. P. C. 74. 2 H. P. C. 32, 44. 3 H. P. C. 57. 2 Hawk. 260.
HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.

HOMICIDE, &c.
pot, or other dangerous weapon at the party, is within
the equity of the words, having a weapon drawn; for
penal statutes are construed strictly against the subjedt,
and favourably and equitably for him. 1 Hawk. 77.
1 John 3:43. 3 Lvo. 266.

6. But where one has no need to lay the conclusion of the
indictment contra formam statutis, because the statute makes
no new offence, but only takes away the privilege of the
clergy from an old one, and leaves it to the judgment of the
Common law, from whence it follows, that a perfon
indicted on the statute, may be found guilty of nothing
but generally. 47. From the same reasons it has been
harmonized, That if both an indictment lay, and a verdict
also find, a fact to be contra formam statutis, which cannot
possibly be so, as A. and B. aided and abetted C. contra
formam statutis, yet neither such indictment nor verdict
are void, but A. and B. shall be dealt with in the same
manner as if the words contra formam statutis had been wholly omitted, because the sub-
stance of the indictment being found, they may be re-
jected as surplus and fendeeks: And, at fortury, therefore
it is certain, that they shall do not an indictment or verdict
containing a fact which may be within the
1 hawk. 77. H. P. C. 58, 266. Allen 47

5. That as these words, contra formam statutis, do not
vitiate an indictment which would be good without them;
so also, That they will not supply a defect in a vicious
one, which otherwise specially prejudice the statute.
1 hawk. 77. H. P. C. 58.

5. Of murder.

Homicide against the life of another, amounting to fel-
ony with malice, is either murder or petit treason. And
first of murder, which anciently signified only the private
killing of a man, for which, by force of a law introduced
by King Canutus for the preservation of his Datos, the
town or hundred where the fact was done, was to be
arrenered to the King, unless they could prove that the
murderer, before or after the murder, offered or com-
mit a libel, which was called aeuslibe, or could procure the offender, &c. And in
those days, the open willful killing of a man through
anger or malice, &c. was not called murder, but voluntary
homicide. 1 Hawk. 78. Bratt. 134 b. 135. a. Ke-
lyng 124. a. Bradt. 121. a.

But to the Civil law concerning Englishire having been
abolished by 14 Ed. 3. 4. the killing of an Englishman or
foreigner through malice propeeny, whether committed
openly or secretly, was by degrees called murder; and
13 Ric. 2. 1. which re.JFrames the Karen's pardon in cer-
tain cases, does in the preamble, under the general name of
murder, include all such homicide as shall not be par-
doned without special words; and in the body of the act
expresses the same by murder, or killing by await, af-
fault, or malice prepended. And doubtles the makers of
25 H. 8. cap. 1. which excluded all willful murder of
malice prepended from the benefit of the clergy, intended
to include open, as well as private, homicide within the
word murder. 1 hawk. 78. S. P. C. 18 b. 19. a.

By murder therefore at this day we understand,
the willful killing of any subjedt whatsoever, through malice
forethought, whether the perfon slain an Englishman or
foreigner.

Not only he who by a wound or blow, or by poisoning,
strangling or foming, &c. directly causes another's
death, but also in many cases, he who by wilfully and
deliberately doing a thing which apparently endangers an-
other's life, and thereby occasion his death, shall be ad-
judged to be a murderer. 1 hawk. 78. 3 Indl. 48. H. P.
53. Pam. 438.

And such was the case of him who carried his fick fa-
ther, against his will, in a cold frosty season, from one
town to another, by reason whereof he died. 1 Hawk.

Such also as it is the case of one, who, by the neglect of
a child, left it in an orchard covered only with leaves,
in which condition it was struck by a kite, and died thereof.
1 hawk. 79. Cron. 24 b. Dall. cap. 93.

1 Vol. II. N°. 50.

H O M

H O M

And in some cases a mean shall be said, in the judge-
ment of the law, to kill one who is in truth actually
killed by another, or by himself; as where one by durec
of imprimation compels a man to accuse an innocent
perfon, who on his evidence is condemned and executed;
or where one has occasion to kill him self or another;
or where one lays positon with an intent to kill a man,
which was afterwards accidentally taken by another,
3 Indl. 91. Dall. cap. 93 supra eb. 1. 7. Plew. Com.
478.

Also he who willfully neglects to prevent a mischief,
which he may, and ought to provide against, is, as some
have, in judgment of the law, the actual cause of the
damage which ensues; and therefore if a man have an ox
or horfe, which he knows to be mischiefous, by being
used to goe or drinke at those who came near them, and
do not tie them up, but leave them to their liberty, and
they afterwards kill a man; according to some opinions,
the owner may be indicted, as having himself killed him;
and this is agreeable to the Mofsical law. According to
as it is agreed by all, such a perfon is guilty of a very gross
misdemeanor. 1 hawk. 79. Fina. Gronle 311. S. P.

Also it is agreed, That no perfon shall be adjudged by
any act whatever to kill another, who doth not die thereof
within a year and a day after; in the computation whereof,
the whole day on which the act was done shall be reck-

But if a perfon hurt by another die thereof within a
year and a day, it is no excuse for the other, that he
might have recovered, if he had not neglected to take
care of himself. 1 hawk. 79. 3 Indl. 53. Kelby 26.
1 Eth. 17.

As to the place where such killing is within the con-
sequence of the law, it seems, that the killing of one who
is both wounded and dies out of the realm, or wounded
out of the realm and dies here, cannot be determined at Com-
mon law, because no other can try a jury of the
neighbourhood where the fact was done. But it is agreed,
that the death of one who is both wounded and dies be-
yond sea, and it is said by some, that the death of him
who dies here of a wound given there, may be heard before
determined the confable and martial, according to the
law of the King, if the King, it is said, by being examined
by the privy council, may by force of 33 H. 8. cap. 23. be
tried (in relation to the principal
offenders, but not as to the accessaries,) before commis-
sioners appointed by the King, in any county of England.
1 hawk. 79. 3 Indl. 48. Pult. 51. Cr. Lit. 75.
1 And 195.

A murder at sea was anciently cognizable only by
the Civil law, but now by force of 27 H. 8. 4. and 28
H. 8. 15. it may be tried and determined before the
King's Commissioners in any county of England, accor-
ding to the course of the Common law; yet the killing
of one who is at land of a wound received at sea, is nei-
ter determinable at Common law, nor by force of either of
these statutes; but if it be tried by the confable and martial,
or before the commissioners ap-
pointed in pursuance of the aforesaid statute of 33 H. 8.
23, 1 hawk. 70. 3 Indl. 48. 49. 1 Lem. 1770. H.
P. C. 54. 3 Indl. 48.

And it is said by some, that the death of one who died
in one county, of a wound given in another, is not indict-
able at all at Common law, because the offence was not
complete in the county wherein the wound was
made only of what happened in their own county. But it hath
been held by others, That if the corps were carried into
the county where the stroke was given, the whole might
be enquired of by a jury of the same county. And it is
said, that appeal might be brought in either county, and the
case from a jury returned to the other county.
And at this day, by force of 2 & 6 Ed. 24. the whole
is triable by a jury of the county wherein the death shall
 happen,
Hawk.

Hawk.

Hawk.

Hawk.

Bro. sudden i But Braar Kelynge H. Dalt. Buljl. 7<7«, which Hawk.

Latch with of Hawk. Siran. the 80. him consequently cumftances deliberate he had agreed. to deliberately in the adjoining English county, but appeals must still be brought in the proper county. 1 Hawk. 8o. Cro. Cas. 247. 1 Jem. 255. 2 Lev. 118. Latch 12. 118.

And it was anciently holden, That the caufing of an abortion by giving a poifon to, or striking a woman big with child, was murder: But at this time, it is faid tribus, a general opinion, and not more, unless the child be born alive, and die thereof, in which cafe it feems clearly to be murder, notwithstanding some opinions to the contrary. And in this refept also, the Common law feems to be agreeable to the Medicall, which is as to the purpose thus expreafed; If men thrive and hurt a woman with child, fo that her fruit depart from her, and yet no malchifh follow, he fhall be purely painiflied, according as the woman's husband will lay upon him, and he fhall pay as the judges determine; and if any malchifh follow, then thofe fhall give life for life. 4 Hawk. 80. Bratt. 131. 3. P. C. 21 Bratt. 131. G. 97. 3. Cro. 5. 2 aff. 2. Br. Cro. 68. Dull. cap. 93. Exodus, cap. 21. v. 22. 23.

It feems also agreed, that where one counfels a woman to kill her child when it fhall be borne, who afterwards kills it in pursuance of fuch advice, he is an accessory to the murder. 1 Hawk. 8o. Dyer 316. 3. Igft. 51. 52.

As to what killing shall be adjudged of malice prepene or murder; it is to be obferved, that any former effept of doing malchifh may be called malice; and therefore that not fuch killing only as proceeds from premeditated hatred or revenge again the perfon killed, but alfo in many other cafes, fuch as is accompanied with circumftances that fhew the heart to be prevaltly wicked, is adjudged to be of malice prepene or afterwards, and consequently murder. 1 Hawk. 8o. Kelvyse 127. Sran. 766.

And according to this notion, it is thought proper to consider, 1. Such murder as is occasioned through any exaftion upon an olhcr party, by whom who is fit in particular; which feems to be moft properly called experif malice. 2dly, Such as happens in the execution of an unlawful action, principally intended for fome other purpofe, and not to do a perfonal injury to him in particular who is ftit, in which cafe the malchifh feems to be purely fuch to be implied. 1 Hawk. 80. Kelvyse 129, 130.

To murder in the firft fente, fuch as fhew a direct and deliberate intent to kill another, as poifoning, flaving, and fuch like, are fo clearly murder, that there are not any queftions relating thereto worth expreafing: But the cafes which have borne dispute, have generally happened in the following inftances. 1ft. In dwell-ling. 2dly, In killing another without any provocation, or but upon a fight one. 3dly, In killing one whom the perfon killing pretended to hurt in a lefs degree. 1 Hawk. 80.

As to the firft influence of this kind, it feems agreed, that wherever two pirates in cool blood meet and fight on a precedent quarrel, and one of them is killed, the other is guilty of murder, and cannot help himself by alleging that he was firft fhock by the decalced; or that he had ofen decline to meet him, and was prevalt upon that occaflon to flay him, it was his only intent to vindicate his reputation, or that he meant not to kill, but only to disarm his adversary: For fince he deliberately engaged in an act highly unlawful in defiance of the laws, he muft at his pleafe abate the confquences thereof. 1 Hawk. 8o, 81. 1 Buffle 86, 87. 2 Buffle 414, 415. 2 Rol. Rep. 365. 3 Buffle 171. 6 H. P. C. 48.

And from hence it clearly follows, that if two per-
HOM

HOM


But the law so far abhors all dwelling in cold blood, that not only the principal who actually kills the other, but also his seconds are guilty of murder, whether they join or not; and perhaps the contrary opinion is

so far from being a converfiton to make a man by such resoning the murderer of his friend, to whom he was so far from intending any mischief, that he was ready to hazard his own life in his quarrel. 1 Hawk. 82. H. P. C. 51. Dalton. cap. 93.

As to the mere cause of this kind of a murder as happens in killing another without any provoc-

ation, or but upon a flight one; it is to be observed, that whenever it appears that a man killed another, it shall be intimated prima facie that he did it maliciously, unless he can make out the contrary, by shewing that he did it on a fudden provocation, &c. 1 Hawk. 82. Kenyng 27.

Also it feems to be agreed, that no breach of a man’s word or promise, no trepafs either to lands or goods, no affront by bare words or geftures, however faile or malicious it may be, and agraved with the most provoking circumstances, will excuse him from being guilty of murder, no fuch triftere, as to attack the perfon who offends him, in fuch a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pur-

fance of fuch affault, whether the perfon flain did at all fight in his defence or not; for fuch and cruel a re-


But if a perfon so provoked had beaten the other in the face, and that he might plainly appear that he meant not to kill, but only chaffe him; or if he had restrained himself till the other had put himself on his guard, and then in fighting with him had killed him; he had been guilty of manslaughter only. 1 Hawk. 82. Kenyng 55 61. 131.

In the event of the offence flall be ad judged guilty, who facing two persons fighting together on a private quarrel, whether fudden or malicious, takes fome part with one of them, and kills the other. 1 Hawk. 82. Kenyng 61. 136. Cr. Tit. 206. 12 Co. 87.

Neither can he be thought guilty of a greater crime, who bears him to de fend the quarrel, being actually attack by him, or pulled by the nofe, or flipp’d upon the forehead, immediately kills him; or who hap-

pens to kill another in a contention for the wall; or in the defence of his perfon from an unlawful arreft; or in the defence of his house from those who claim a title to it, attempt forcibly to enter it, and to that purpofe flhoor at it, &c. or in the defence of his poliflion of a room in a publick house, from thole who attempt to turn him out of it, and thereupon draw their swords upon him; in which cafe the killing the affaffant hath been holden by fome to be juftifiable. But it is certain, that it can amount to no more than manslaughter. 2 Hawk. 82. 83. H. P. C. 57. 3 Inf. 55. Kenyng 137. H. P. C. 57. Cr. Tit. 27. a. Kenyng 51.

Nor was he judged criminal in a higher degree, who feeing his fons nofe bloody, and being told by him, that he had been beaten by fuch a boy, ran three quarters of a mile, and then returning, faw the boy, and laid to him, that he had been cudgel, whereof he afterwards died. 1 Hawk. 83. H. P. C. 48. Cr. Tit. 266. 12 Co. 87.

As to the third infinence of the kind, viz. fuch mur-

der as happens in killing one whom the perfon killing in-

 tended to be a lefs degree; as to which it is to be ob-

served, that whenever the same is of a fudden, fudden revenge, unlawfully and deliberately beats another in fuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone to far. 1 Hawk. 83. Kelyng 110.

Also it feems, that he who upon a fudden provocation executes his revenge in fuch a cruel manner, as fnares a man cow, and deals with his blood, is guilty of murder, if death ceafes, as when the tenderer or of a boy, finding a boy feeling wood, tied him to a horse’s tail, and beat him, whereupon the horse ran away and killed him. 1 Hawk. 83. Cr. Cap. 131. 1 fain. 199. Palm. 54. 1 Rel. F. C. 49.

As to the other time where fuch killing shall be ad judged murder, which happen in the execution of an unlawful action, principally intended for some other purpose, and not to do a personal injury to him in particular who happens to be fain, they are as follow. And first, Such fudden killing as happens in the execution of an unlawful action, whereas the principal intention was to commit another felony; it feems agreed, that wherever a man happens to kill another in the execution of a deliberate purpofe to commit any felony, he is guilty of murder; as where a perfon fhotting at tame fowl, with an intent to feed them, accidentally kills a man; or where one fets upon a man to rob him, and kills him on the fudden, not with malice aforemed; or where a perfon fhotting at, or fighting with one or two with a defign to murder him, miffes him, and kills another. 1 Hawk. 83. Kenyng 117. H. P. C. 46. 50. Dalton. cap. 93. More 87.

And in killing a man in fuch cafes, where the very act of a perfon having fuch a fudden violent inclination, in the immediate cause of a third perfon’s death, but alfo where it is an act occasioned by fuch a fudden misfortune, it makes him guilty of murder; and fuch was the cafe of the husband, who gave a poifomed apple to his wife, who eat not enough of it to kill her, but innocently, and against the husband’s will and perufuations, gave part of it to a child who died thereof; fuch alfo was the cafe of the wife who mixed rathone in a potne fent by an apothecary to her husband, which did not kill him, but afterwards killed the apothecary, who to vindicate his reputation tafted it himself, and afterwards died thereof. Neither is it mate-

rial in this cafe, that the ftricking of the potne might make thole of the operation of the poison more forcible than otherwise it would have been; for in no manfuch as fuch a murderous intention, which of itself perhaps in fuch a cafe might juftifiely be made punishable with death, proves now in any cafe to be fubfcribed to the King’s fiding a fudden fit of ficknefis, it fhall be as feverely punished as if it were a fudden blow. And if the effeét, the miffing whereof is not owing to any want of malice, but of power. 1 Hawk. 84. Plow. Crum. 474. 9 Co. 91.

But if one happened to be poifoned by rathone laid in water, and the perfon by whom he is fuddenly killed, is guilty of homicide pcr intentam only, because his intentions were wholly innocent. 1 Hawk. 83. 2 Plow. Crum. 474. 9 Co. 91. b.

Alfo if a third perfon accidentally be killed by one engaged in a combat with another upon a fudden quarrel, it feems that he who kills him is guilty of man-

ughter only; but it hath been adjudged, that if he carries his refentment fo high as not only to exe-

cute his revenge against thole who have affronted him, but even againft fuch as have no otherwife offended him but by doing their duty, and endeavouring to reftain the affaffant from doing the affaffant in fuch a manner as to make his defence or that he has no otherwife offended him, than if he had acted in cool blood. 1 Hawk. 84. H. P. C. 45. 50. 3 Inf. 52. Dalton. cap. 93. Sowil 67. Kenyng 60. 22 Att. 71. 2 Co. 40. 9 Co. 68. Crum. 25. a. b.

If it hath been resolved, that if the third perfon then in fuch a fudden affray, do not give notice for what purpose he come, by commanding the parties in the
the King's name to keep the peace, or other wise manifi-
ently fleeing his intention to be not to take part in the
quarrel, but to appease it, he who kills him is guilty of
manslaughter only, for he might suspect that he came
to kill him, and therefore he made no resistance or
force, as required by law.
As to the second infinace of this kind, viz. such kil-
ing as happens in the execution of an unlawful action,
where the principal design is to commit a bare breach
of the peace, not intended against the person of him who
happens to be slain; it seems clear, that where divers
persons resolving generally to reft all opposers in the
commission of any such breach of the peace, and to
execute it in such a manner as naturally tends to raise tumults
and affrays, as by committing a violent difeffein with great
numbers of people, hunting in a park, &c. and in fo doing
happen to kill a man, they are all guilty of murder; for
they had a common design, and by the event of their actions,
who wilfully engage in such bold disturbances of the pub-
lick peace, in open opposition to and defiance of the ju-
fice of the nation. 1 Hawk. 84. Savil 67. More 86.
Palm. 35. Cram. 24. b. 31. a. H. P. C. 47.
Yet where divers rioters, having forcible poifeffion of a
house, afterwards killed the perfon whom they had ejected,
as he was endeavouring in the night forcibly to reftain the
poifeffion, and to fixe the house, they were adjudged
guilty of manslaughter only, notwithstanding they did
the fact in maintenance of a deliberate injury, perhaps
for killing the person who had the poifeffion, it was much in
fault himself. 1 Hawk. 85. Cram. 28. k. H. P. C.
56.
But if in fuch, or any other quarrel, whether it were
fudden or prefumed, a judifice of peace, confufible or
watchman, or even a private perfon, be flain in endeav-
ouring to keep the peace, and supposes the affray, he
who kills him is guilty of murder; for notwithstanding
it was not his primary intention to commit a felony, yet
insomuch as he perifts in a left offence with fo much ob-
fercialty as to go on in it to the hazard of the lives of those
who no other wise offend him, but by doing their duty in
maintenance of the law, which therefore afford them its
more immediate protection, he seems to be in this refpeft
equally criminal, as if his intention had been to commit
a felony. 1 Hawk. 85; H. P. C. 45. Dal. cap. 93.
3 Jiff. 52. Kyn. 66. 22 Aff. 71. 4 C. 40. b. 9 C.
68. Cram. 23.
56. Viz. to the third infinace of this kind, viz. fuch killing,
as happens in the execution of an unlawful action,
the principal motive whereof was to affift a third perfon; it
feems clear, that if a matter maliciously intending to kill
another take his fervants with him, without acquainting
them with his purpofe, and make his adversary and fight
with him, and the fervants seeing their master engaged
take part with him, and kill the other, they are guilty
of manslaughter only, but the manner of murder. Pl.
51. 52.
And therefore it follows à fortiori, that if a man's
fervant or friend, or even a stranger, coming suddenly,
fee him fighting with another and fide with him, and kill
the other; or feeing his fword broken fend him another,
wherewith he kills the other, he is guilty of manslaughter
only, 1 Hawk. 85. Cram. 26. b. H. P. C. 57.
Dal. cap. 94. 1 Roll. Rep. 407, 408. 3 Jiff. 205.
H. P. C. 52.
Yet in this very cafe, if the perfon killed were a falliff,
or other officer of judifice, reftified by the master, &c. in
de execution of his duty, fuch friend or fervant, &c.
are guilty of murder, whether they knew the perfon flain
were an officer or not. 1 Hawk. 85. Kyd. 67, 86.
5.
But perhaps it may be objected, that in this left cafe
there seems to be no more malice than in the former;
and fuch third perfon being wholly ignorant that the
party killed was an officer, seems to be no more in falt
than if he had been a private perfon. 1 Hawk. 85.
52. But this is objected, that fighting is highly unlawful,
and that he who on a sudden fceuing perfon
engaged in it, is so far from endeavouring to part them,
as every good judifice ought, that he takes part with one
side, and fights in the quarrel, without knowing the
cause of it, flues a high contempt of the law, and a
fome ignominy to the peafance of the country; and
must at his peril take heed what he does; and confe-
quently might perhaps in this judifice be adjudged in the
foregoing cafes to act with malice, which doth not always
fignify a particular ill will against the perfon killed,
as appears by many of the above-menfioned cafes; and that
such perfon be favoured in refpect of the fuddenness of the
occasion where both the quarrel and the perfons are pri-
vate, yet he muft not expect such indulgence, where the
fight, in which he fo rashly engaged, was begun in oppo-
sition to the judgement of the nation, and a perfon happens
to be killed thereby who engaged in maintenance thereof,
and the cause is not under its more particular care,
and may juftly challenge, that his oppofer be made ex-
amples to deter others from joining in fuch unwarrantable
quarrels. 1 Hawk. 85, 86. 1 Sid. 160. Noy 50.
Plaw. Com. 100.
But if a man facing another arrefted and refrained
from his liberty, under colour of a profecution or civil
proces, &c. by fuch who in truth have no fuch authority,
happen to kill fuch trefpiffers in refraining the perfon
arrefted, he shall be adjudged guilty of manslaughter only,
notwithstanding the injured perfon submitted to them,
and endeavoured not to refcue himfelf, and the perfon
who committed the murder, did not know that he was illegit-
arily arrefted; for fince in this event it appears, that the perfons
fain were trefpiffers, covering their violence with a fheal
of juftice, he who kills them is indigued by the law,
which in thefe cafes judges by the event, which event he
who engage in fuch unlawful actions muft abide at their peril.
1 Hawk. 86. Kyd. 66. 137. Cram. 27. a. Don's
cafe lately adjudged.
As to the fourth infinace of this kind, viz. fuch killing
as happens in the execution of an unlawful action,
wereof the direct design was to escape from an arreft,
it seems to be agreed, that whoever kills a thiftiff, or any
of his officers, in the lawful execution of a civil proces,
as on arrefting a perfon upon a capias, &c. is guilty of
murder. 1 Hawk. 86. Dal. cap. 93. H. P. C. 45.
24. a.
Neither is it any exue to fuch a perfon, that the
procexs was erroneous, (for it is not void by being so),
whereof the party was not aware the night, or that the officer
did not tell him for what cause he arrefted him, or the
what court, (which is not neceffary when prevented by the
party's reftiffence); or that the officer did not fhow his
warrant, which he is not bound to do at all, if he be
a bailiff commonly known, nor without a demand, if he
be a bailiff of an unknown office. 1 Hawk. 86. 9 C.
66. 6 C. 68. 69. a. C. 46. 486. 49. a. C. 46. 69.
Yet the killing of an officer in fome cafes will be
manslaughter only; 35. where the warrant by which he
acts gives him no authority to arreft the party; as where
a bailiff arrefts J. S. a barnman, who never was known,
by force of a warrant to arreft J. S. knight. 1 Hawk.
86. C. 46. Cor. 372. 176. 12 C. 40.
Where a good warrant is executed in an unlawful
manner; as if a bailiff be killed in breaking open a door
or window to arreft a man; or perhaps if he arreft one
on a Sunday, fore 29 Cor. 2. cap. 7. by which all fuch
arrefts are made unlawful. H. P. C. 46.
As to the fifth infinace of this kind, viz. fuch killing
as happens in the execution of an unlawful action, whereof
the principal purpofe was to fuper an illegal authority; it
feems clear, that if perfons take upon them to put death,
either by virtue of a new compofition wholly
made, or by virtue of an unknown juridifcution,
which clearly extends not only to all of this natur
as if the court of Common Pleas caufe a man to be exe-
cuted for treafon or fcene; or the Court Martial, in
time of peace, put a man to death by the martial law,
both the judges and officers are guilty of murder. 1 Hawk.
86. H. P. C. 46.
unlest the fame happen to be Sunday, and in that cafe on the Monday following.

Sec. 7. The execution of no murder, whether felonious or of a murder shall, if such conviction and execution be in Middlesex, or the city of London, or the liberties thereof, be immediately conveyed by the sheriff or sheriffs, or their deputy and their officers, to the hall of the Surgeons' company, or such place as the said company shall appoint, and be delivered to such prisoner as they shall appoint, who shall give to the sheriff or his deputy a receipt for the fame; and the body so delivered shall be dissected and anatomized by the said surgeons, or such persons as they shall appoint: And in case such conviction and execution be in any other country or place in Great Britain, the judges of assize, or other proper person of the place, shall be put in execution the next day but one after such conviction, (except as before excepted) and the body of such murderer shall in like manner be delivered by the sheriff, or his deputy and his officers, to such surgeon as such judge shall direct.

Sec. 3. Sentence shall be pronounced in open court immediately after the conviction of such murderer, and before the court proceed to any other business, unlessthe court fee cause for postponing the fame; in which sentence shall be expressed not only the usual judgment of death, but also the time for the execution thereof, and the marks of the manner hereby directed, in order to impress a just horror in the mind of the offender, and on the minds of such as be present, of the hemous crime of murder.

Sec. 4. After sentence pronounced, in case there appear reasonable cause, it shall be lawful for such judge, before whom such criminal shall have been tried, to try the execution at his discretion, regard being had to the intent of this act.

Sec. 5. It shall be in the power of any such judge to appoint the body of such criminal to be hung in chains, but in no case the body of any murderer shall be buried, after execution, unless after such conviction he shall have given the sentence of death, and a such judge shall direct the same either to be disposed of as aforesaid, to be anatomized, or to be hung in chains.

Sec. 6. After conviction and judgment, the gaoler to whom such criminal shall be delivered shall confine such prisoner to some cell, or safe place within the prison, separate from the other prisoners; and no prisoner, except the gaoler or his servants, shall have access to such prisoner, without licence under the hand of such judge before whom such offender was tried, or under the hand of the Sheriff or under-sheriff.

Sec. 7. In case such judge for cause to refute the execution, he may refuse any or all the requisites or regulations herein directed to be observed by the gaoler, by licence in writing signed.

Sec. 8. After sentence, and even execution, such offender shall be fed with bread and water only, (except in caves of receiving the Sacrament of the Lord's Supper, and except in case of any violent sickness or wound, in which case some known physician, surgeon or apothecary, may be admitted to administer necessaries; the Chriftian and Surname of such physician, &c. and his place of abode, being first entered in the books of such prison; and in case such gaoler offended against, or neglected to put in execution any of the preceding requisites, be he forfeit his office, and be fined 20s. and suffer imprisonment until the fame be paid.

Sec. 9. If any person shall by force let at liberty, or refuse or attempt to refuse, or set at liberty, any person out of prison, committed for or found guilty of murder, or shall cause any person to escape from the prison, by which murder, going to execution, or during execution, he shall be deemed guilty of felony, and shall suffer death without benefit of clergy.

Sec. 10. If any person after execution, by force refuse, or attempt to refuse the body of such offender out of the custody of the flaw, or his officers, during the conveyance of such body to any of the places hereby directed, or from the company of surgeons, or their servants, or from the house of any surgeon where the fame
HOM is deposed; every perfon for offending shall be deemed guilty of felony, and be liable to be transported to some other place of the colonies in America for seven years, and be subject to the like punishment and conviction, in case of returning into Great Britain within the said seven years, as other felons.

Sec. 11. Nothing herein shall extend to repeal or alter so much of 11 Geo. 1. cap. 26. as relates to the suppon- tion of the execution of pernons convicted of capital of fences in Scotland, for the respective times in the said act mentioned.

The body of such criminal to be hung in chains. See sect. 5.

As meeting the consent of the judges to consider of this act, there was some doubt whether hanging in chains might ever be made part of the sentence; but on debate it was agreed by nine judges, that in all cases within the act, the judgment for defetting and anatomizing only should be part of the sentence: And if it should be thought advisable, the judge might afterwards direct the hanging in chains special order to the sheriff, pursuant to the power given by this clause.

Fisher's Crown Law 107. See Webster, Trial, Tresason.

Homanniso. Denuisogio, tit. Northampton Socammni de Risdon. — Idcirco ejusopus clamor Hominationem omnem. It signifies the multiplying of men; also the doing of hom- ination in this country.

Homine capitum in Wilhelminam. Is a writ to take him that hath taken any bondman or woman, and led him out of the country, so that he or she cannot be re- pcived according to Law. Reg. Orig. fol. 79. See Wilhelmin.

Homine eligendo ad culpabidem peram surgilli 390 mercatojus eedit. Is a writ directed to a corporation, for the choice of a new man, to keep one part of the seal, appointed for statutes merchant, when the other is dead, according to the statute of Acton-Barnum. Reg. of Writs, fol. 178 a.

Homine surgilli. Is a writ to bail a man out of prison: In what cases it lies, see F. N. B. fol. 6. Reg. Orig. fol. 77.

When one conveys away secretly or keeps in his custody another man against his will; then upon such made thereof, and a petition to the Lord Chancellor, he will grant a writ of replagiantibus faciatis, with an alias and pluries, upon which the sheriff returns an indigeneration, and thereupon issues out a capias in writheimam, made by the sizer, and when he is thereupon taken, the sheriff cannot take bail for him: But the court, where the writ is returnable may, if they think fit, grant an habeas corpus to the sheriff to bring him into court, and bail him, or else recommit him.

2 L. P. 23.

A homine replagiantibus cannot be brought either by the wife herself, or by her procurator amicorum against her husband; and the nature and proceedings in the writ shew it to be so.


Habeas corpus was returned, that W. was in custody by capias in writheimam. The cause was, That upon a homine replagiantibus, the sheriff returned an inquisition, finding that the party was eloid'g; whereupon a writheimam duled, returnable October Martin, which was not yet come; but the defendant was taken upon it. It was objected, that he could not be bailed upon the writheimam; for that it was an execution, and he had no day in court, and the plaintiff could have a new writheimam. Which that seemed to be the fene of the Chief Juffice, to which the right agreed was, (among other things) that after eloid'g returned, and writheimam also awarded, the defendant could not be pled non capi in the action, because he could not fatisfy the return, and that upon pledging non capi he shall be bailed. And they disliked the cause in Raym. 474, and the Lord Grey's cafe, Skin. 61. but affirmed the cause in the Rejifier 79 a. and cited Lctto. 7 t. a. F. N. B. 74. adding this farther reason, that because in the fable of the writ is denied, and balled, and the matter stands indifferent, the bill laid down by Lord Gere, upon Wifon. 1. cap. 15. The court held, that there might be a new writheimam; for the bail must be in a fum certain with condition, that he appear de die in diem, and if judgment be agatn him, that he render his body in writheimam, ibidem reman- nendo, to the common return of the humble writheimam, at large; and if so he be rendered, he is in custody as before; and the court held, that before the writheimam returned, the defendant cannot be bailed. 2 Sub. 38. Mich. 12 W. 5. B. R. Mar v. Hatts. The defendant pleaded in abatement, want of addition in the plaintiff, not the return of capital in writheimam. The plaintiff demurred; Holt Ch. J. at first, inclined strongly, that the plea was good, and would diftinguish this from other writs of retrievem; for here, he said, the proceed of out- lawy lies immediately upon the pluries homine replagiantiis, which he affirmed to be a writheimam in stili, and in common law, that the proceed of outlawy is not used upon the pluries replagiantiis, but upon the capias in writheimam, which issues upon the sheriff's return of averia elongata upon the pluries; and upon the sheriff's special return of the capias in writheimam, that is, upon his return of multa bona on the writheimam, a capias shall go against the perfon, and fo to outlawry. But by Powell J. There is no dif- ference; for in both cases, the proceed of outlawy is upon the writheimam, and not upon the original writ; for in a homine replagiantibus, there shall fall no writheimam till return of the homine replagiantibus; and as the first writheimam in common return must be de averia, so foi the first in a homine replagiantibus, and he one of the per- sons; and then at the end of the day the whole court awarded a representant sufferor; for pro- cess of outlawy lies in a homine replagiantibus, yet thereon ought not to be any addition. For the pluries, on which we hold plea here, is not the original in retrievem; but the original writ of retrievem is it, which writ is vicinientis; so if the retrieval be removed by recorders, that to a writheimam thereon there will be proceed of outlawy, yet there is no addition according to the statute; fo that it is not the original, and therefore out of the statute. 3. There being no addition to the first retrievem, the pluries, (which indeed is the original to us) much have none; and so the judgment was reversed, from the first. The Court said, that there never is any addition to a writ which is vicinientis. 6 Mich. 84. Mich. 2 Ann. B. R. Lord Barnaby v. Wool. See 14 Vin. Abr. tit. Homine replagiantibus.

Homines, A fort of feudal tenants. They claimed a privilege of having their cauls and persons tried only in the court of their lord. When Gerard de Corvall in 5 R. 1. was charged with treason and other high misde- meanors, he pleaded, that he was Homo comitis Johannis, and would stand to the law or justice of his court. Pa- raclius. Antonius. P. 152.

Homplagium. It is used in the laws of Hen. 1. cap. 83. for the making a grant. Si quis in domino vel curia Regis faceret hompleagium vel homplagium.

Homufale. A home-flall, or manson-hue. As in a charter granted about the 5 Edw. 1. Cowell, edit. 1727.

Honeb-habend. (from the Sax. bond, band, and haben, having,) Signifies a circumstance of manlieft time, when one is apprehended by the mayor or outherman, i.e. the thing stolen in his hand. Bracton, lib. 3. tract. 2. cap. 8. 32 & 35. who also uses bond-habend in the same fene, &c. Latre manufcript. See Honeb-habend. So in Fleta, lib. 1. c. 39. Faramum manufcript le ubi aliquis legat deo eunecus ejusdem de alieno terrarum hand-habind, &c. backe- hordum, &c. jaac. 3. 2. urler for alienum ejus red illa fuerit, quae dictur secargrh, &c. tune licet inventori rem pane petere criminaliter in curia fumitarat. It also signifies the right which the lord hath of determining this offence in his court.

Honeg. The penalty of correcting it, or failing it in venalogia. See 2 Edw. 3. Lib. 3. cap. 23 Ed. 3. 8. 4.

Honor, it. Besides the general significiuation, used especially for the more noble fort of figniurations, on which other inferior lothhips or members depend, by performance of some customary or services to thee who are lords of them, (though anciently honour and boron signifies the same,) is now by usage, a fignificate of the vulgus, or a fignificate of the vulgus, sed plurispecie, teomentis, confentiaulis, fervitutis, &c. Iao honor Draio complethoria multitudinis, borrow; fede militiais, gloriosam regiam, &c. ditus obiam alio of beneficium.
benefit is freed from regale, testane & fompa a rate in capite, and by paying these honours by act of parliament, may in part be collected out of the flature of 32 Hen. 8. c. 37, 38, where Ampthill, Grafton and Hampton Court, are made honours. And by 37 Hen. 8. cap. 18. the King is impowered by letters patent to erect four several honours, viz. Wolmoffe, Kingdon Conisir, Conisir, and Dennington, and as many other honours as he will. In reading several approved authors and records, the following are observed to have been likewise honours, viz. The honours of Wmague, Lancaster, Aquila, &c. (formerly Preston.) Clarke,Tickhill, Wallingford, Nottingham, Bolingbroke, Withiel, Ely and East Greenwich, Bridford, Northampland, Ipswich, Houghton, Woodford, Beccles, Peveril, Skipton, Wymning, Glen, Raleigh, Montgomery, Huntenden in Hertfordshire, Ely, Barnardo's Place, Gloucester, Arundel, Tamworth, Tremadon, Richmond's Castle, Christ-Church, Hereford, Buckingham, Buckland, Syston, Bayfield, Worewarden in Yorkshire, Gt. Teynham, Wark, Rot. Pipa 31 Hen. 2. Carnalby, Clouldill, Thoyn, Oathampton (had 92 knights-fees belonging to it), Greatmals, Egremont, Oxford, Lincoln, Aberavon, Dudley, Tamworth, Miskryg, Welby, Bononia, Middleham, Hunsdon-Castelli, Dover-Castelli, (Trin. 33 Hen. 1. l. 46.)走去. (Ed.) Jt. 24. By 9 Eliz. 3. Sir Arthur Egnot, Egnot, Hillsly, Witzchurch, Hartford, Newelev, Chofter, Lovett, Pickering, Maydon, Tutte- warrior, Warwoc, Breckboc, Brember, Halton, Geober; for John de M农产品 in Edu. 3. wrote himself Deminus Influs de Howland & de honoribus de Graber & Geober. And in a charter of 15 Hen. 3. I find mention of the honours of Carnall, Cardigan and Cullmarn. Cowell, edit. 1727.

When the King grants an honour with appurtenances, it is more high than if a man was granted with the appurtenances; for to an honour, by common judgement, appertaining, appellation, dignity, greatness, and honours of these liberties, are appurtenances; it is called an honour. In time of the in the time of Ed. 3. Roll. 151. Scrape. For a man or honour are not of one condition. 

An honour ought to consist of lands, liberties and franchises. 1 Bolf. 157. Pech. 10 Jas. The King v. Law. 1816.

The King cannot create an honour, but by act of parliament; for tut. cur*. 1 Bolf. 196. Pech. 10 Jas. The King v. Levet.

The King granted to a subject a great man, called An Honour, and paied him by the name of An Honour; and as much as he could.

King Richard the Second created Ralph Nevill Earl of Wolmangford, to him and his heirs males of his body, which honour deserved to Charles Nevill, Earl of Wolmangford, who was attainted of treason; adjudged, that a name of dignity or honour may be inallied upon one and the heirs males of his body, and that such an intail is within the statute De davis, because it concerns land; for every Earl, &c. is created of some place; that such a dignity may be forfeited at Common law, (for 'tis an ancient office) that is, it may be forfeited upon an owner to the dignity, for he is in possession of these intails trespass and descendents intails trespass, therefore he forfeits it when he takes counsel or arms against the King; and if such a dignity had not been forfeitable at Common law, 'tis now forfeited by the statute 26 Hen. 8. cap. 13. by the word hereditament, for a dignity is an hereditament. 7 Reg. 23. Nevill's case.

It is illegal to purchase honour, (as a Dukedom) for money. Fem. 5. Pechb. 1651. E. of Kingdon v. Lady Ellen, Pierpont.

At this day the Earl of Arundel only hath his Earldom by prescription, the beginning of which is time out of mind. And as his title, the Earl of Arundel is the most antient in the realm. 1 Bolf. 195. The King v. Levet.

Honorables, are courts held within the Honours storefield, mentioned 33 Hen. 8. 37, and 37 Hen. 8. 18.

In the court of a honour of the Earl Marthall of England, &c. which determines disputes concerning precedency and points of honour. See Conflable. The Court of Glastonbury.

Honorary services, Are such as are incident to Grand juryman, and annexed commonly to some honour. See 12 Car. 2. cap. 29. Honofongentetis. Cam annulns aliis libertationibus, tanetnamque esponentem nolite retinere. Charters Wh. &c. Comisir, Mai. Agel. 1 par. f. 724. This should have been written heredofantetis, and signifies a theft, taken with bundland, i.e. having the thing stolen in his hand. Cowell, edit. 1727.

Hops, Signifies a valley in Donemaday-book; so too do hops, bang and bang. Cowell, edit. 1727.

Hops and hop-hounds, penalty for importing or using corrupt hops, 1 Jas. 1. c. 18. 4.

Hops imported, what duties to pay, 2 W. & M. feft. 2. c. 4. feft. 10. 9 Ann. cap. 12.

Made perpetual, and part of the aggregate fund, by 1 Geo. 1. c. 12.


Duties of those of British growth to be under the management of commissioners of excise, 9 Ann. c. 12. 5.

No bitter to be used in brewing but hops, 9 Ann. c. 12. feft. 2.

Foreign hops not to be imported in Ireland, 9 Ann. c. 12. 1 Geo. 1. c. 12. 6.

Money lent on hops duties how repaid, 1 Geo. 1. f. 2. c. 12. 7 Geo. 1. fl. 2. c. 20. feft. 37.

The drawback on hops exported to Ireland taken off, 6 Geo. 1. c. 11. 40.

Planters to give notice of the time of bagging, 6 Geo. 2. c. 21. feft. 25.

No hops to be imported into Ireland from other parts but Great Britain, 5 Geo. 2. c. 9.

Landing foreign hops before duty paid, hops to be burnt, and ship forfeited, 7 Geo. 2. c. 19.

Penalty of 1s. 4d. imported hops, 7 Geo. 2. c. 19. f. 2. and 2.

Damages to be made good, as by 9 Geo. 1. c. 22.

Cutting hop-hinds, 10 Geo. 2. c. 32. feft. 4.

By fl. 6. Geo. 2. c. 37. feft. 6. unlawfully and maliciously cutting hop-hinds is made felony without benefit of clergy.

Boys Aescare. The day-bell, or morning-bell, or what we now call the four o'clock-bell, was called Iora aurose, as our eight o'clock-bell, or the bell in the evening, was their equatorium, or coverfue. Cowell, edit. 1727.


Podtritum. A board, a treasurer, or repository. As in the laws of King Canute, c. 104. Sed fiam horditerium, quod diceris poftumus difpenfandis, & eftiam funam, & bragus, id est feminam, doeb idiopa cladere. Cowell, edit. 1727.

Podtrum palmarum. Hor induttrum claiurum, quod Ræ. Braufiam, dedum—unum virgam terre in Gillingshall, redd. indicet quidem annos ad fumum S. Michi, quattuor Boffifulo ordi palmaris firmam juxta mediam pretium per duas decennias. De Mascott, Pl. 43 Ed. 4. pons Kington Pauent arm. Doubtless this is meant of hop-barley, which in Norfolk is called forat-barley, and battledore-barley; and in the marches of Wales, wyrdest, it being broader in the ear, and more like a hand than the common barley, which in old deeds is called Hardum quadrifazinum.

Business palmeres. Are trees so called, that have been usually lopped, and are about twenty years growth, and therefore not tithable. Blewden, fol. 407. Soby's cafe.

Podnel. Is a compound from the Saxon word born, cornu, and seed, felde, signifying a tree within a forrest, to be paid for horned beasts. Com. f. jurid. 179. And to be free thereof is a privilege granted by the King unto such as he thinketh good. Ith. ibid. & Raffall in his Exposit. of Words, Quiem sse de emi collectione in foro de bifini tarnatiis, 4 inf. fol. 369. Et
HOR

size of horses to be pultered in the fent, 8. Ed. 1. 8. 
2. Horfe shall be fold in fairs, 31 Ed. c. 12.

2. The owner of a bolen horfe bold in a fair, may have
him again, paying the price within fix months, 31 Ed. 
c. 12. fett 4.

3. Exportation of horses permitted, and the duty on
them afferented, 23 Car. 2. c. 15. fett 8.

4. Hacket coaches to be 14 hand, 9 Ann. 
c. 27. fett 4.

5. Harfes at races to be entered by the owners, 13 Ge-
c. 2. c. 19.

6. Horfe-racing for plates under 50l. or with horses
carrying small weights, prohibited, 13 Ge. 2. cap. 19.

17. Harfes may run for the value of 50l. with any weight,
and at any place, 18 Ge. 2. c. 34. fett 11.

7. For other matters, fee Cattle, Hairs and Harkets,
Felones without Clergy, (under Felou) tit. Accessaries
and Horfe-fhealing.

8. Horses hired. Action on the cafes lies for abusing a
horse hired, by improper treating, &c. And a difcern
has been made in our law between hiring a horfe and bor-
rowing one to go a journey; for in the firft cafe, the
party may fet his fervant, &c. upon the horfe, but not in

9. Horse for the King's service. None shall take the
horse of any person to serve the King without the owner's
confent, or fufficient warrant; on pain of imprisonment,
Stat. 20 Ric. 2. c. 3.


11. Hostellers. See HOSTLER.

12. Hoptes generalias. A great chamberlain, DuPROS.

13. Hoptisters, (Hospitaller,) were the knights of a
religion order, fo called, because they built an hospital
at Jerusalem, wherein pilgrims were received. To the
Pope Clement the Fifth transferred the Temples, which
order, by a council held at Fience in France, he fuppressed,
for their many and great offences. The infufion of the
Pope Clement was firt allowed by Pope Gelasius the Second,
anns 1118, and confirmed here by parliament, and had
many privileges granted them, as immunities from pay-
ment of tithes, &c. You fhall find their privileges re-
ferred to them by Magna Charta, cap. 37. and you fhall
find the right of the King's subjeds vindicated from the
{ae feftion, the execution of the order of the Pope, by the
chapter of Worfam, 2. cap. 4.

14. Their chief abode is now in Malta, an island given
them by the Emperor Charles the Fifth, after they were
driven from Rhodes by Shayman the Magnificent,
Emperor of the Turki; and for that they are now called
Knights of Malta. They are mentioned 13. Ed. cap. 
Hist. Ed. 2. and Stent's Annals, 116. All the lands and
goods of these knights here in England were given to the
King, by 32 Hen. 8. c. 34. See Mon. Aug. 2. par. fol. 489.

15. Hospitals. The ordinances to reform the flate of
hospitals, 2 Hen. 5. c. 1.

16. Manager, &c of St. Leonard, York, may gather corn,
3 H. 5. c. 2.

17. Matter of hospitals may occupy the lands of the hospital,

18. A confirmation of grants made to hospitals, 14 Ed.
c. 14.

19. Penalty of taking a reward for nominating a person to
an hospital, 31 Ed. 6. fett 2 & 3.

20. Liberty to found hospitals, &c 35 Ed. c. 7. fett 27.

21. 39 Ed. c. 5. 21 Jac. 1. c. 1.

22. Incorporation of the governors of Guy's hospital, 11
Gen. 1. c. 12.

23. Establishment of the hospital at Bath, 12 Gen. 2. c. 31.

24. Granted to the Governors of the Foundling
hospital, 13 Gen. c. 20. Money given them, 29 Gen.
c. 20. fett 13.

25. Money for building hospitals and work-houses at Bristol, 18
Gen. 2. c. 38.

HOSPITALS.
HOT

HOU

Hospitium. Is the same with procuration, or visitation-money. Et minores habet legitimation cum e conversis numera hospita auncti per duquam propter monasteriorum; minorum were done, quos quidem hospitii ferus non posse, certum, eventus, hici hospitia remanunt. Neubronn, lib. 4. c. 14. Bromton, fol. 1193.

Hootington, Is the same with Hospitium. See Procuration.

Hughlachtin, A right to receive lodging and entertainment referred by many lords in the houses of their


Hodeller, (Hofflitterius, from the French hofeller, i.e. hospitier.) Signified with us those that otherwise are called inn-keepers. Stat. 41 Ed. 3. f. 2. c. 2.

Hoddlers, Inn-keepers. Ed. 9 Ed. 3. f. 2. c. 2.

Hodditti, A hoe, (Fr. hoes,) An inferior used mostly by gardeners, and well known. Et festi guieti de avra & torrateria, & fegul secedens, seu collègiantes, & hancius facundias, de orrivers, & de pannoniis & salbette, & similis alii confitutuissent. Chanta Hamonis Maffy. Conv. edit. 1727.

Hofilite, A hoteleous, corroborated waifiers in the holy eucharist or host. Stuck Councils of Alkermone confirmed to the conven of Buryter five quarters of bread corn, — ad hoteias facundias in domo parochialis. Parochial Antiq. pag. 270. Without this title, the Lord's Supper, and hoteleous to administer that sacrament; kept long in our old English, the hawfel, and to hawfel. Cowell, edit. 1727. See Kent's Church.

Hossaletn, An hospitailer.

Hospitallia, Hospitalitas, A place or room in religious houses, allotted to the use of receiving guests and strangers, for the care of which there was a peculiar officer appointed, called Hospitallarius, and Hospitatorius.


Hospitatnus, (Hospytus, from the Lat. after, a gosehawk.) The manor of Broughton Cather, in the reign of Edw. 2. was held by John Monudit in capite per securitatem materiam unam hoteleam Dominus Regis, et illam hoteleam pertinendi ad curiam Domini Regis. Paroch. Antiquities, pag. 182.

Hosspitator, In partem paftalis. (Fr. hoteleous, a confused mingle-mangle of divers things jumbled and put together.) Among the Dutch it signifies fish cut in pieces, andInden with herbs or root, not unlike that which the Remants eat under the title of the fish common, and that literally it signifies a pudding mixed of diverse ingredients, but by a metaphor, signified a compound, or putting together of lands of several tenures, for equal division of them, fol. 55. For examples; A man feified of thirty acres of land in fee, hath iffe two daughters, and given with one of his daughters, to a man that marries her, ten acres of the same land in frank-marriage, and dies feied of the other twenty acres. Now, if that is thus married will have any part of the twenty acres whereof her father died seied, the must put her lands, given in frank-marriage, in hoteleous, that is, the must refuse to take the sole profits of the lands given in frank-marriage, and suffer the land to be common, and mingled together with the other land whereof her father died seied; so that an equal division may be made of the whole between her and her sister, and thus for her ten acres the shall have fifteen acres, elle her sister will have the whole twenty acres. The father's death seied is as good as the father died seied; and, after his death, seied as his father's, in the same manner as above. The division is not lawful, because it is an act of the father's will, and must not be taken in all that formerly he had received, and then out take that of the others. Cowell. See Adminis.
If bailiff touch'd the defendant, and then he had re- 
treated into his house, this being an arrest, bailiff might 
have pursued and broke open the house, or might have 
had an attachment or a reposes against him. 1 Salk. 79. 
3 Ch. 3. B. 4 in the case of Gower v. Sparks.
If a person authorized to arrest another who is shelter'd 
in a house, is denied quietly to enter into it, in order to 
take him; it seems generally to be agreed, that he may 
justify the breaking the open doors upon a capias from the 
King's Bench or Chancery, to compel a man to find 
furnaces for the peace or good behaviour, or even upon 
a warrant from a justice of the peace for such purpose: 
2 Hawk. Pl. C. 80. cap. 14. f. 2. 3.
So where one known to have committed treason is 
pursued either with or without a warrant, by a constable 
or private person. Ibid.
So where an affray is made in a house in the view or 
hearing of a constable; or where those who have made an 
affray in his presence fly to a house, and are immediately 
pursued by him, and he is not suffered to enter in order 
to suppress the affray, in the first cafe, or to apprehend 
the affraiers in either cafe. 2 Hawk. Pl. C. 87. c. 14. f. 2.
But it hath been refolved, that where justices of peace 
are, by virtue of a salute, authorized to require persons 
to come before them, to take certain oaths prefcribed by 
such salute, the officer cannot lawfully break open the doors 
of the persons who shall be named in any warrant made 
in pursuance of the same, in order to bring before 
the justices to take such oaths; because such 
warrant is not grounded on a precedent offence; neither 
does it appear, that the party either is or will be guilty 
Duties on windows in dwelling houses, 7 & 8 W. 3. 
c. 18. 5 Ann. c. 13. 8 Ann. c. 5.
How payable by houses inhabited by two families, and 
by the inns of court, 8 & 9 W. 3. c. 10. f. 18. & 19.
Justices of the peace to appoint collectors of the duty, 
6 Geo. 1. c. 21. fett. 61.
Hundred liable to damages by the burning of houses, 
9 Geo. 1. c. 22. fett. 7.
A new duty on houses and windows granted, 20 Geo. 
c. 3. & 42.
Appartments in the universities to pay as houses, 2 
Geo. c. 3. & 32.
Provisions for enforcing the payment of the duty, 21 
Geo. c. 10. f. 13.
No frementment gained by paying these duties, 21 
Geo. c. 10. f. 13.
For enforcing the payment in Scotland, 26 Geo. 2. 
c. 17.
Additional duty on houses, 31 Geo. 2. c. 22. 
So where malpractice, see Felonies without Clergy (under 
Mauelbod and Mauelbod, seem to signify houseboat 
and hedgeboat, in Man. Aug. 2 par. feli. 633. Crowell, 
edit. 1777.
Hauskite, A compound of haus and bet. c. temper- 
fairs, signifies either a small allowance of a necessary tim- 
ber out of the third's wood, for the repairing and support 
of a house or tenement. And this belongs of common 
right to any l刹车 for years or for life: But if he take 
more than is needful, he may be punished by an action of 
waifit. Hauskite, says Cr. on Litt. fol. 41. is two- 
fold, viz. Elvumius adficienti & ordinii. Cowell, 
edit. 1777.
Haus-liuking, or Haus-keeping, is the robbing of 
a man in some part of his house, or his booth or tent, in 
any fair or market, and the owner or his wife, children 
or servants being within the fame; for this is felony by 
23 Hen. 8. cap. 1. and 3 Ed. 6. cap. 9. And since it 
is more felony, though none be within the house, booth 
or hall, by 39 El. 15. See Burglary, Robbery.
Haus-luing. See Arson, Burning.
Houses of Correction. To be built in every county, 18 
Eliz. c. 3. 7 Jac. 1. c. 4.
Justices of peace may upon pretention enlarge houses 
of correction, 14 Geo. 2. c. 23. fett. 2.

HOU

HOU

HOU

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS

HOUS
HUE

Hudigeld. Significat quasdamiam transgressione illata in forum transgressum. Fleta, lib. 2, cap. 47, 628. A thing done to those who are committed for hudigeld, which fee, & quare. When a villain or servant had committed any trespass, for which he delivered whipping or corporeal punishment, when he bought off his penalty with money, the price of exemption from such chastisement was called hudigeld, or hudigeld: some to the Fleta, and yet felony andervent, for the felons may escape before the justice can be found; all hue and cry was part of the law before the statute of 1 Ed. 3, cap. 16, which first inflicted justices of the peace.


And although, fays he, it is essentially incumbent upon felons to purrue hue and cry when called upon, and they are severely punishible if they neglect it; and it prevents many inconveniences if they be there; for it gives a greater authority to their pursuit, and enables the pursuants, in his affidavit, to plead the general issue upon the informations. See 1 Stat. 22. 2 Stat. 5. 3. treas. 2. cap. 5. Smith & Repl. Angl. lib. 2, cap. 20. and the fol. 13. Edw. 1. of Winchester, 3, & 28 Ed. 3. 11. & 27 Eliz. 13. The Normans had such pursuit with a cry after offenders, which they called clamour de hars, whereas you may read the learned Cujmynan, cap. 54. and it may probably be derived from barbar. fyligiri. Hue is used alone in fol. 4. Ed. 1. st. 2. In the ancient records this is called Huefum & clamor. See Cabot’s 2 par. Ingl. fol. 172.

But the clamor de hars was not a pursuit after offenders, but a challenge of anything to be his own after money given to face his hide. See 1 Edw. 3. cap. 16. and 172. and yet felony andervent, for the felons may escape before the justice can be found; all hue and cry was part of the law before the statute of 1 Ed. 3, cap. 16, which first inflicted justices of the peace.


And although, fays he, it is essentially incumbent upon felons to purrue hue and cry when called upon, and they are severely punishible if they neglect it; and it prevents many inconveniences if they be there; for it gives a greater authority to their pursuit, and enables the pursuants, in his affidavit, to plead the general issue upon the informations. See 1 Stat. 22. 2 Stat. 5. 3. treas. 2. cap. 5. Smith & Repl. Angl. lib. 2, cap. 20. and the fol. 13. Edw. 1. of Winchester, 3, & 28 Ed. 3. 11. & 27 Eliz. 13. The Normans had such pursuit with a cry after offenders, which they called clamour de hars, whereas you may read the learned Cujmynan, cap. 54. and it may probably be derived from barbar. fyligiri. Hue is used alone in fol. 4. Ed. 1. st. 2. In the ancient records this is called Huefum & clamor. See Cabot’s 2 par. Ingl. fol. 172.

But the clamor de hars was not a pursuit after offenders, but a challenge of anything to be his own after money given to face his hide. See 1 Edw. 3. cap. 16. and 172.
imprison him in the common gaol, or carry him to a justice of the peace. 2 Hal. H. P. C. 102.

If the person pursued by hue and cry be in a house, and the hue and cry be raised and continued upon the demand of the constable, and notice given of his being, he may break open the doors; and this he may do in any case where he may arrest, though it be only a suspicion of felony, for it is for the King and Commonwealth, and therefore a virtual non satis is in the case. By the same law it is upon a dangerous wound then given, and "a hue and cry levied upon the offender." 7 Ed. 3. 16. b. 2 Hal. H. P. C. 102.

If it seems in this case, that if he cannot be otherwise taken, he may be killed; and the necessity excute the constable. 1 Hal. H. P. C. 102.

It is a rule against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search in suspect places within his vill, for the apprehending of the felons. Dott. cap. 28. 2 Ed. 4. 8. b. 1 Cramp. de Pace 178. 2 Hal. H. P. C. 103.

But though he may search suspected places or houses, yet his entry must be per egen apertur, for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there, and then it is true he may; therefore in case of such a search, the breaking open the door is at his peril, viz. justifiable if he be there; but it must be always remembered, that in case of a constable's door, there must be first a notice given to them within of his business, and a demand of his name, to avoid refusal, doors may be broken. 2 Hal. H. P. C. 103.

If the hue and cry be not against a person certain, but by description of his features, person, clothes, horse, &c., the hue and cry doth justify the constable, or other person, following it, in apprehending the person so described, whether innocent or guilty, for that is his warrant; it is a kind of process that the law allows, (not usual in other cases) viz. to arrest a person by description. 2 Hal. H. P. C. 103.

But if the hue and cry be upon a robbery, burglary, manslaughter or other felony committed, but the person that did the fact is neither known nor described by person, clothes or the like; yet such a hue and cry is good, as hath been said, and must be pursued; tho' no person certain be named or described. 2 Hal. H. P. C. 103.

In this case, all that is necessary, is to give the name of the persons, &c., to those who pursue the hue and cry, to take such persons as they have probable cause to suspect; as for instance. Such persons as are vagrants, that cannot give an account where they live, whence they are, or such fustious persons as come late into their inn or lodgings, and give no reason why they were there before, and the like. 2 Ed. 4. 8. b. 2 Hal. H. P. C. 103.

And here the justification of the imprisonment is mixed partly upon the hue and cry, and partly upon their own suspicions; and therefore, 1. In respect that it is upon hue and cry, there needs no averment 'that the felony was done, yet it must be averred that an information was given that the felons were there; if the arrest be by, or if that constable that first received the information, and so raised the hue and cry; or if the arrest were made by that constable, or those villains to whom the hue and cry came at the second-hand, it must be averred that such a hue and cry came to them, purporting such a felony to be done; but 2. Also in respect the hue and cry names, or describes the person of the felon, but only the felony committed; and therefore the arrest of this or that particular person, and so applied, is left to the suspicion and discretion of the constable or the people of the second or third hand to the vill, and he, that arrests any person upon such general hue and cry, must aver that he searched, so well as the constable, is principally the act of the constable of the vill, and the others are but his deputies or stiffrists within the precincts of his constablewick. 2 Hal. H. P. C. 104.

In town, there can be no doubt but that both by the Common law, as also by the several statutes which injoin the levy of hue and cry, they who neglect to levy one, (whether officers of justice, or others) who neglect to pursue it when rightly levied, are justifiable by indictment, and may be fined and imprisoned for such neglect, unless the constable be levied upon a hue and cry, by the warrant of a justice of the peace, or by the concurrence of two or more justices. And now by the 3 Ed. 2. cap. 16. lett. 11. it is enacted, "That every constable of the hundred, and every constable, birthholder, headborough or tithingman of any given, parish, village, hamlet or tything within the hundred, or the branches within the precinct thereof, wherein the robbery shall be committed, shall attend, to his knowledge, either by notice from the party or parties robbed, or from any other person or persons, to whom notice shall be given thereof pursuant to this or any other statute, shall, with the utmost expedition, make and cause to be made, fresh futi and hue and cry, after the felon or felons by whom such robbery shall be committed; and if any constable, birthholder, headborough or tythingman, shall offend in the premises, by refusing or neglecting to make, or cause to be made, such fresh futi and hue and cry, every such offender shall, for every such refusal or neglect, forfeit five pounds."

It is a statute for "Statutes concerning the raising hue and cry," sec 1380.

Jurisdiction of ships to transport horses. 'Tis mentioned in Hereford by the name of auferi. 'And Bradsho, anno 1100, calls them auferi, viz. Res Tantcrerdach Rcti Anglia. 4 magnus nautu quas uocant uferi. It doth not appear by Viffius or Somer, from whence this word is derived. Some will have it from the French huitsi, i.e. a doge; because when the horses are on shipboard, the doors of hatches are fast upon them to keep out water. Cawdell, edit. 1777.

Vallis, A hulk, or small vessel.—Commit cum eut & ejus tres carri, & sumum bukum, & quatuor iugum viarum. 30 Hen. 8. 11. 3. & 1 Edw. 4. 12. 3. Vallis, A restraint of exactions taken there; 7 Hen. 8. e. 3. Their duties on salt-fish and herrings restored, 3 Edw. 8. e. 33. 5 Edw. e. 5. fett. 3. The custome of Hull to have a deputy resident at York, &c. 1 Edw. 11. fett. 8. For excettng workhouses and maintaining the poor at Hull, 21 Edw. 4. fett. 14. 10. Hulling, A hill.—Hobundum & inuentum diטות polfarum in huluis & hulmis, i.e. in hills and dale. Mon. Angil. tom. 2. p. 292.

Nunnagam, A moft place. In edictis, in decembris, in bannisius, in terris, in prais. Mon. Angil. 1. par. 2. 8. 11.

Humber (River) in Yorkshire, fifth-garts and polec, &c., to be removed, 23 Hen. 8. e. 18. 1. Hundred (Hundredum, centuria) is a part of a thirteeno called, either because of old each hundred bound 100 ships'jouls of the King's peace, or a hundred able men for his wars. But it rather think's he so-called, because it was composed of an hundred families. "There is shown Brempton tells us, that an hundred contains centum villas; and Giraldus Cambrensis writes, that the Isle of Man hath 343 villas. But in those places the word villia must be used to connote a country family; for it cannot mean a village, because there are not above 40 villages in that island. So where Mr. Lambert tells us, that an hundred is so called, a numeros centum hominum, it must be understood of an hundred men, who are heads or chiefs of so many families. These were first ordained by King Alfred; the 26th of the King of the West Saxons; Aurelian Res, (1461 Lambard, vol. Centuris,) usi cum Guthrumo Dei; &c., et initium illum dixit a Juturna, ac diem fucem consilium, Anglia primus in striphrinis, centurias, & decorias, partibus eft. Sapratam, flyne, a leyr, (neu parit, signification) nominium centuriae, hundred, & decemvirii, zootvee fium, etiam decemvirii, i.e. Decemvirato collegio appellati; etiam idem nominates et bacv canuantur, &c. This dividing counties into hundreds, for better government, King Alfred brought from Germany.
HUN

For these ends, or centems, is a jurisdiction over an hundred towns. This is the original of hundreds, which still retain the name, but their jurisdiction is devolved to the county-court, some few excepted, which have been by privilege annexed to the Crown, or granted to some great subject, and to remain still in the nature of a franchise. The Lord High Steward's Court, the Courts of Assize, Psches, and Calzons, which are supposed to have come from the office of the hundred-courts, formerly born out by the sheriff to other men, were all, or the most part, reduced to the county-court, and so remain at present. So that where you read now of any hundred-courts, you must know, that all these numerous franchises, which were once in the sheriff's hands, but are now under the immediate command of the county-court, and so remain at present. So that where you read now of any hundred-courts, you must know, that all these numerous franchises, which were once in the sheriff's hands, but are now under the immediate command of the county-court, and so remain at present.

HUR

Shall be annexed to counties, 2 Ed. 3. c. 17. Shall be let at the ancient farm, 4 Ed. 3. c. 15. 28 Ed. 1. A. 3. c. 14.

Not answerable to persons who are robbed travelling on a Sunday, 29 Car. 2. c. 7. sect. 5.

Liable to penalty on exportation of wood, 7 & 8 Will. 3. c. 28. f. 1.

Liable to damages sustained by pulling down buildings, 1 Gen. 1. c. 5. sect. 6.

By killing cattle, cutting down trees, burning houses, &c. 9 Geo. 1. c. 22. sect. 7. 29 Geo. 2. c. 36. f. 9.

For destroying turnpikes, or works on navigable rivers, 8 Geo. 2. c. 20. sect. 6.

By cutting hedges, 10 Geo. 2. c. 37. sect. 4.

By destroying corn to prevent exportation, 11 Geo. 2. c. 22. sect. 5.

By wounding officers of the customs, 19 Geo. 2. c. 34. sect. 6.

Or by destroying woods, &c. 29 Geo. 2. c. 36. f. 9.

All monies recovered against the hundred to be levied by a rate, 23 Geo. 2. c. 46. sect. 34.

For other matters, see Hur and hry. Robbery.

Hundred-east. (Hundredis.) Are men impanelled, or fit to be impanelled on a jury upon a controversy, dwelling in the hundred where the mere lectum lies. Comp. Jur. fei. 217, and 35 Hen. 8. 6. 3.

And default of hundreds was a challenge or exception to panels of sheriffs, by our law, till the 4 & 5 Ann. c. 16, enacted, that to prevent delays by reason of challenges to panels of jurors for defaults of hundreds, &c. writs of venire faciendo, or action in the courts of Westminster, shall be awarded of the body of the proper county where the issue is tried. Hundred-figurates also him that hath the jurisdiction of a hundred, and holdeth the hundred-court, 13 Ed. 1. c. 38. 9 Ed. 3. f. 2, and 2 Ed. 3. c. 4. And sometimes it is used for the bailiff of an hundred, 17 H. 8. Poet. Mirror of Justice, t. 1. c. 1. De officio del coriem.

Hundred-Lag. Signifies the hundred court, from which all the officers of the king's forest were exempted by the charter of King Canutus, c. 9. See Morewood; see also Trefcot.


Hunting. See Ceme. Felung.

Huntington-shire, near Obifer, now repaired, 37 Hen. 8. c. 8.

Hunberthrift, A domestic, or one of the family, from the Sax. byred, family, and feft, firm, Bil in anna convenient in hundredum ibam quiuecente liber-tam hundrederthum quum fagurri ad difgnifam, f dicentia plena fmt. Leg. H. i. c. 8.

Hunters, The cuppers and hat-merchants, being called teachers, were formerly the company of the haberdashers. Stow, Survey of London, p. 317.

Hyr, Hyß, Pyr, Are derived from the Sax. byr, i.e. a wood, or grove of trees. There are many places in Kenr, Suffs, and Hampshire, which begin and end with this syllable; and the reason may be, because Q. 971.
the great wood called Androscragh extended through those counties. Cowell, ed. 1727.

Butf-Castle, is so called, because situated near the woods. So horfage is a woody place; and probably from thence is derived burf, now burfey, a village in Berkshire. Cartular. Hurts, Hurts, Hurts, a ram or wether, a male sheep. Agni primo computo holocauste mutat factum agni vacuam, secundo anno holgatri, & convoluntur mulineus cum mulineus, & hurtae cum hurtae, & famelae cum suina. Regula Comporti Domus de Paredon. MS. — De mulineus 361. de curis & martis 207, de logratis 121. & de Angli. 100. Man. Angli. tom. 2. pag. 606.

hus & hunt. Words used in ancient pleadings.


husbannd & husbandman. The decoying of houes of husbandry prohibited, 4 Hen. 7. c. 19. 6 Hen. 8. c. 7. 7 Hen. 8. c. 11. 27 Hen. 8. c. 22. 2 & 3 Ph. & Ma. c. 1, 2. 39 El. c. 1.

Food not to be turned to tillage or pasture, 35 Hen. 8. c. 17. for divers reasons. Land to be re-converted to tillage, 5 & 6 Ed. 6. c. 5.

5 Ed. c. 2. Who may be compelled to serve in hufbandry, 5 Ed. c. 4. ell. 7.

How husbandmans shall take apprentices, 5 Ed. c. 4. fol. 25.

The statute of 5 Ed. c. 2. concerning the keeping a quantity of land in tillage, repeated, 35 El. c. 7. f. 25.

Arable land not to be converted to pasture, 39 El. c. 2. But not to extend to Northumberland, 43 El. c. 9. fol. 32.

For the carrying sea fad manour in Devonshire and Cornwall, 7 Jac. 1. c. 18. See Labourers.

Husbandry, (from the Sax. hant, a houfe, and brice, a breaking) was that offence which we now call burglary. Cowell, ed. 1727.

Husband. (Sax.) A domestick servant, or one of the family. Also the domestical gatherings of the Domesday tribute. The word is often found in Domesday, where we find the town of Dorchefter paid to the use of Hauforles one mark of silver. See Barles. It properly signifies a stout man, or a domestick, viz. Rex Hardeknuts fuit Hauforles miss per omnes Regni fuit provinciis ad exsediendum tristitiam & curiositatem. Da Frende. Cowell, ed. 1727.

Hycans. (French Hycans, in aco.) A kind of boot, or somewhat made of close cloth, and worn over the stockings; or a vulgar calling it a flatterdoft. It is mentioned in the flat. 4 Ed. c. cap. 7.

Hyfalsif. Is he that holdeth houfe and hond, Bract. lib. 3. cap. 10. hath these words, Et in honditatis offdehns, & in terram tenet & deman qui dicitur husfaine, & etiam ali, qui illis obseruit & dicantur solhers. Et. Some have corruptly written it hurfisses & hurdesifs, but more truly hordessef; which see in Giff. in decem Scriptur.

Hugballum, House-rent, or some tax or tribute laid upon houses. Cowell, ed. 1727.

Humbling. The parishes of Loomifher, in a petition to King Edward 6. fet forth, that in their town there were to the number of 2000 buffling people, & that is 2000 communicants; for buffling in the Saxen tongue signifies the Holy Sacrament. Cowell, ed. 1727.

Hunting. (Hypagna, from the Sax. hus, houfe, and thing, caufa, quidem domus conuarrum.) This was my Lord Coke’s opinion of the derivation of this word. But it comes from the Sax. bufinge, which signifies consilia, or curia. And so fo ‘tis called in Sax. Chron. An. 1012. vi. they took the bishop, and led him to their bussia, i.e. to the council. But Hypagis or antijtigina & ileberrina Londoninum civitatis curia suprema, the principal and highest court in London, 11 Hen. 7, cap. 21, and 9 Ed. 1. cap. unius. Of the great antiquity of this court, and the manner of their proceeding, there is a memorable mention in the laws of King Edward the Confessor, Dedit etero capo cap. 27 Regni & Legum, femper curia Domini Regis fuggens fugilis fuggitans die sine hufflingis sedere & veneri. F. quuntam erat sibi & adficta ad inifar & ad modam & in memoriam verseri magne Troje, & ugni in boleiorum dierum juris & jure & dignitatis, liberates, regisignis confuitudinae antiqua magne troje in fo cetera praemunior um fuisse una femper inviolabilitate confirmatus. See Taylor’s His. Croyland. pag. 55. This court is held before the Lord Mayor and Aldermen of London. Error or attainjy lies there of a judgment, or false verdict in the first court, as appears by F. N. b. fol. 23. other cities and towns also have had a court of this name, as Wincjefter, Lincoln, York and Shopejy, and others, where the barons or citizens have a record of such things as are determinable before them. Fleta, lib. 2. cap. 55. flat. 10 Ed. 2. cap. unius. 4 lib. fol. 247. and Giff. in decem Scriptur on this word. See London.


Hypennagium, The reason for fowing winter-corn, or wheat and rye, between Michaelmas and Christmas; As oppoed to tremumnag et aff enslagnum, the reason for fowing fummer-corn in the fasting of the year. The words were not taken for fummer-corn for the different seasons, but times for the different lands on which the different grains were sowed, as wheat and rye on fillow; Barley, oats, &c. on land of one tith; And again sometime for the different corn, as hibernagum was applied to wheat and rye, which we call winter-corn: And tremumnag to barley, oats, &c. which we likewise term summer-corn. See Fleta, lib. 2. cap. 73. fett. 18. and lib. 3. 42. fett. 1. where it is called thumagium. See Hycanum.

Hyppeathrate, A ship, (from the Lat. hyppeates, a pledg,) is to pawn the fame for necessaries; and a man is only the owner of the ship, though the master of the ship could not impawn the ship; for he has no property either general or special nor is such power given to him by the constitutioning the master; but the defendant’s counsel said, that by the Civil law the master may in cafe of necessity, and when he has no other means to provide necessaries for her. And Hobart J. held clearly, that the admiral law is, that if the master and crew are defeated, and the voyage may be defeated, the master, in such case of necessity, may impawn for money, &c. to relieve such extremities by impounding the money for; for he is trusted with the ship and voyage, and so may reasonably be thought to have the power implicitly given him, rather than be the whole lost. Hol. 13. 2. Bridgman’s case.

A, being in a ship on the sea, B. who was in it, and was reputed an agent and factor, borrows 100 l. of A. upon bottomage (that is, when the money is paid on the keel of the ship, and the ship obliged to pay money of, and if it be not paid at the time, &c. that he that lends the money (that have the ship,) and it was allowed to be a good and necessary custom by all; and it was agreed, that if the master, factor, purer, or he that is reputed owner of the ship, borrows money in such a manner for the necessaries of a ship, that binds the owner
owner of the ship, although the money be not fo employ-
ed, and the owner has his remedy against him that he so
put in truth. And if not a good allegation to have a
prohibition, to say that the property was not in him that
took such bottomage. No 95. Scarbrow v. Lyrius.

_Ifthy_, A port or little haven to land or unlade wares
at, as Queen-beth, Lamb-beth, &c. New Book of
Entries, 3. 3. De tota mediatrice hytus in &c.,
∆rum libera intritus & catui, &c. Mon. Angl. 2 par.
fol. 142.

I.

**JAC.** A kind of defensive coat worn by horsemen
in war, not made of solid iron, but many plates
fattened together, which some by tenant were bound
to find upon any invasion. See magn. Walfingham, in
the Life of Richard 2. fol. 239. tells us, Accepi ab ore
ejusdam Johannis Philippi quod modi ellaea vel trestias,
quod me approbo, regni, redempta de manibus suis.
And in pag. 249. Aceptum quodam vifittimatum presti-
Eum ducis Lancastriae, quale jact coccum. — It was
called bryca, because at first it was made with leather.
Cowell, edit. 1727.

**saliuis. (Lat.)** Signifies him that loathed by default;
quite, pallium fum neglexerit, &c. Cudius cude reman-
fit. Formul. Solen. 159.

**Jamaica.** See Plantations. Jamaica-wood, (mentioned 15 Car. 2. cap. 5.) Is a
kind of speakled wood, of which are made cabinets,
Cedatlum, cedula medialis, of which he was
the name found. The tree (as they say) is low and
small, seldom bigger than a man's leg.

**Jambeau,** Armour for the legs; from jambe, leg.
Cowell, edit. 1727.

**Jampumum, Furz or gore; also a gore ground, Co-
sort. fol. 179. A word much used in finee; and the
name seems to derive itself from the French jaume, i. e.
yellow, because the blossoms of it are of that colour.
Co. en Lit. p. 5. says jaumpe, signifies a waterfide place.
Manwood, in his Forl'-Lawn, cap. 25. num. 2. says, No
man may cut down furze or whins within the forest
without good licence.

**Jannum, Heat, whins or fur.-** Erbios fur-
vitur quod homines falcabenianquam in quadam bruna

Jaques, A sort of small money formerly used here, and
mentioned by Stamford, in his Pies of the Crown, cap.
8. 

Jar, (Span. Jarre, i. e. an earthen pot) With us it is
taken for an earthen pot or vell of oil, containing
twenty gallons.

**Jarrock,** (mentioned in stat. 1 K. 3. c. 8.) Is a kind of
cork, or other ingredient, which this statute prohib-
its dyers to use in dying cloth.

Jaun. (Fr. Jaune, i. e. yellow colour.) Prætero
credesd abaudi & conv. & hominum eorum de Stabelon de
Je de desbaire juii collere jaune et feuere & breus
& genetan per terram jaune fire impedimenta, &c. Charta
Will. de Bay, fine dat. Doubtful here jaune is used for
furze or gore, which we now in law Latin call jampanum,
and anciently jaume; &c. Decretum illius jauni in Don-

**Jeannum, Nigbrogum, Yergnagum, Sexon for
fowing winter-corn.—** Et arbitat unam acram, friñi-
nabilis cum femine dominis, ambul hirabili, videlicet,
dimidiam acram ad Jeannum & dimidium ad treagem,
fol. 91. a.

Jenl, Suffolk, Norfolk, Cambridge and Huntingdon.

**Jež djen,** Is the motto of the arms of the Prince of
Wurts; from the Germ. Ich djen, i. e. I serve. It was
formerly the motto of John King of Babemus, who was
slain in the battle of Gruffy by Edward the Black Prince,
and was taken up by him to shew his subjection to his father
King Edward III.

**Jornu, (Ionia.)** A figure, image or representation of
a thing. 'Tis mentioned in Matt. Parish, pag. 145, 491.
in Hesiod, pag. 670. and in Bremgton, pag. 1718.

**Jus synus, Jus ccrcus,** A brace, a swelling,
any hurt or maim without breaking the skin, which they
call properly wounds, and open, and plagues, an open
wound.—Si inuentariam plagar aperita, videtur posse
fore iutos orbos. Bratton, lib. 2. tract. 2. c. 5. f. 77. So
this was used for a black and blue spot, or livid mark of
beating.—Ligna sificant Juritus, orbis, & cius, qui
faclarici nos non popi ad plagam, ib. cap. 24. sect. 2. So
actus coccus against a tooth eruptions and letus appear.
As in the laws of H. 1. c. 94.—Si alius alium verque
recte exitus & non eruitus, ferreos ac vitis, cet. vel
non convidus, naves ubuntam delet deminis, cujo ha-
mina vocarunt. Cowell, edit. 1727.

**Jenurita naminis,** is a writ that lies for him,
who upon a capitация or writ, and taken and committed to
prison for another man of the same name; in such cafe he
may have this writ directed to the sheriff, which is in
nature of a compleon to inquire, whether the person against whom the action was brought; and if not, then to discharge him. Reg. Orig. 194. F. N. B. 267.

Stat. 37 Ed. 3. cap. 2. For the mischiefs which hap-
pen of that the echcators, sheriffs and other minifiers,
feize the lands and goods of many, furnishing that they
be outlawed, because they bear such names as those
which be outlawed, and is explained, that if any complain
of him in such cafe, he shall have a writ of identitn naminis, as hath been used; and if any man's lands or
goods be feized in such cafe, he shall find surety before
the minifter which hath the warrant to feize, to anwser
to the King of the value of such lands or goods, in cafe
that he cannot prove the contrary himself, without taking
any thing of the party; and if such minifter do not the same,
and thereof be attained, the party shail recover his
double damages, and he shall be grievously amerced to
wards the King.

Stat. 9 Hen. 6. cap. 3. A writ of identitn naminis
may be maintained for executors of every teftator as
well as for any person himself.

Execution illud for damages recovered against the bailiff
of A. by the name of J. S. of D, and there was J. S. the
father and J. S. the son, and the father being dead the
son fuited this writ, and prayed to have a superfedeas; and
Warburton J. demanded of Brownoe if he had any
precedent to award a aferdecas in favour of the son of
No; wherefore he and Hustin J. being only present, said
they would advise. Whinb. Pafch. 19. jac. Earl of
Northumberland & Earl of Devon. Cre. fac. 623. C. S.
by the name of Stubbs v. Cox; and upon furnishing that
the suit was against J. S. the elder, and execution being
fued, the sheriff had endeavoured to levy the damages,
&c. upon the goods of J. S. they ounger, who sued this
writ to be discharged; and the writ was allowed, th'o
after verdict, judgment, and execution awarded. Hutt 45.
S. C. by the name of Wittens v. Stubbs, and that upon the
directing the writ for an identitn naminis a superfedeas
lies thereupon. But afterwards in process in case upon the
identitn naminis, the question was, if the superfedeas lies
thereupon, it being only a furmiye and matter in fact,
and lies more properly, and more frequently, for pre-
venting an arrest upon outlawry, and after the party is
taken upon the arrest, is a thing not frequent in ufe, and is
in nature of an act and suit, where it will find surety to
pay the debt if found that he be not another
person; and the court inclined strongly, that it is
no superfedeas, but much in the discretion of the court,
cites Lib. Infrum. & Ed. 4. 36, 51 & 53. Hutt. 530.
S. C. and that the superfedeas (as abed) were produced,
but the court was of opinion that the writ in the prin-
cipal cafe, and the superfedeas thereupon, was not war-
anted, but that the defendant, being named J. S. the
younger, might have action of false imprisonment, be-
caue the defendant, being named J. S. without addition, 
thereupon be accounted the younger, but always the 
elder of the two of that name; but to avoid duplicity of 
fuits, it was ordered that the defendant in the former 
action should appear to the suit. fo. in the identitite
minis, and plead, and go to trial, and if the defendant 
in the former action was bound to an oath, to sign the 
proceedings with the sheriff to be delivered to the 
now defendant, or if otherwife, then to the now 
plaintiff. See 14 V. Abr. cit. Identitite ministis.

Ideots and lunatics. Ideot is a Greek word pro-
perly signifying a private man, who has no publick office.
Among the Latins it is taken for illacitorius, impotentis, 
in our law for non compos mentis, or a natural fool. The 
words of the statute 17 Ed. 2. c. 9. are Rex baketed in 
flendid terrarum futurorum naturallio, whereby it appears 
he must be a natural fool, that is, a fool a nativitate: 
for if he was once wife, or become, a fool by chance or 
misfortune, the King shall not have the custody of him.

Stannif. Praec. co. 9. P. N. D. fl. 123. If one 
ought to be made a yard of cloth, number 
twenty, right name the days of the week, or to beg 
a child, he shall not be counted an idiot or natural fool, 
Cowell. edit. 1777.

The manner of the description of a person, who, 
from the want of reason and understanding, comes within 
the protection of the law, is that of non compos mentis. 
Ci. Litt. 240. 4 Co. S. 124. Skin. 177.

There are, says my Lord Coke, four kinds of men 
who may be made to be non compos: 1. An idiot, who is 
non compos from his nativitate. 2. One made such by fit 
incidents. 3. Lunatick, qui aliquandos gaudet luciditi intervallis, 
who is non compos only for the time that he wants un-
derstanding. 4. One that is drunk; which last is so far 
from coming within the protection of the law, that his 
drunkenness is an aggravation of whatever he does amifs. 

1. An idiot is a fool or madman from his nativitate, 
and one who never has any lucid intervals; therefore the 
King has the protection of him and his estate, during 
his life, without rendering any account; because it cannot 
be presumed that he will be ever capable of taking care 
of himself or his affairs. And such a one is described a per-
son that cannot number twenty, tell the days of the 
week, does not know his father or mother, his own 
age, &c. But these are mentioned as instances only; 
for idiot, or not, being a question of fact, must be tried 
Idiot. 1 H. P. N. D. 29. Skin. 177.

But tho' an idiot must be fo a nativitate, yet if by 
inquisition it be found, that A. is an idiot not having 
any lucid intervals per f I a t i u m a l t o n a m n a u r m a n , this is a suf-
ficient finding; for the inquisition having found the part 
an idiot, the adding f l a t i u m a l t o n a m n a u r m a n is surplusage, 
and shall be rejected. 3 Med. 42. 44. B. 2. Black. 171.
Skin. 5. 173. S. Proctor and Lady Franger.

2. One made such by sicknes, which my Lord Hale 
calls Dementia accidentalis vel adventitis, and which he 
again differenciat into a total and a partial insanity, 
from its being more or less violent, is such a madness 
as excluding criminal cases; and tho' the party also in 
every thing else be intituled to the same protection with 
an idiot; and tho' his disorder seems permanant and fixed, 
yet as he had once reason and understanding, and as the 
law fees no impossibility but what he may be refurred to 
them again, it makes the King only a trustee for the 
be nef, and not having, or giving, any profit or interef 
in his estate. 1 Hale H 7. P. C. 30.

3. A lunatick; this is also Dementia accidentalis vel 
adventitis, and takes its name from the great influence 
which the moon has in all disorders of the brain; and 
that he has such a number intervals of reason, yet during 
his plague he is capable of law to the same indulgence 
as to his oafs, and stands in the same degree with one whose disorder 
is fixed and permanent. 4 Co. S. 125. 4 Lim. 247.

4. One made mad by drunkenness, which is called 
Dementia effecluata, and tho', as has been said, such a 
pefon be not intituled to the protection of the law, yet 
if a person by the unskillfulness of his physician, or by 
the contrivance of his enemies, eat or drink such a thing 
as cauerth phrenzy, this puts him in the same condition 
with any other plenly, and he is thus a lunatick; if by 
the acts of one or more such prides ces an habitual or fixed phrenzy 
be cauerth, tho' this madness was contracred by the vice 
and will of the party, yet this habitual and fixed phrenzy 
thereby cauerth puts the man in the same condition, as 
if the same was co-occcurcd invaridly at firft. Pern.


But tho' this subject of madmens may be fpun out 
to a greater length, and branched into several kinds and 
degrees, yet it appears that the prevailing dilcription herein 
is in between ideocy and lunacy; the firft a faticity 
vel dementia naturalis, which excercibes the party 
as to his aelfe, and intitles the King to the receipt 
of the rents and profits of his estate during his life, 
without being obliged to render any account for the same; 
the other accidental or adventitious madmens, which, 
what ever permanent and fixed, or with lucid intervals, 
goes to the general ruin of the life, and is equally exacathed 
with ideocy, and is done during the phrenzy but because 
they differ, that in the latter case the King, as has been 
faid, is only a trustee for the lunatick, and accountable 
to him, if he happens to be refurred to his underftanding, 
or to his representatives, if it happen otherwife. 3 Soc.
Abr. 30. 4 Co. S. 125. a.

1. How idiots and lunatics are to be found duc.
2. Who hath an interefl in, and jurisdiction over them; 
and of appointing them proper curators and committees, 
and the power and duties of such committees.

3. How far the want of understanding shall be paid 
prejudice them in civil and criminal cafes.

4. How their duts are good, void, or voidable; 
and how they are to sue or defend.

1. How idiots and lunatics are to be found duc.

Every person of the age of discretion is in law pre-
sumed to be of found mind and memory, unless the 
contrary appear; and this rule holds as well in civil as 
criminal cases. 1 Hale H 7. P. C. 32.

It is not madmen or lunacy in civil cases, 
and in order to the commitment or custody of the 
perfon and his estate, which belongs to the King, either 
to his own use and benefit, as in case of ideocy, or to the 
use of the party, in case of accidental madmens or lun-
acy, is by writ or commission to the sheriff or flockman, 
or particular commissioners both by their own inquisition 
and by inquisition to inquire, and return their inquisition 
to the Chancery; and thereupon a grant or commitment 
ment of the party and his estate ensues: And in case the 
party or his friends find themselves injured by the finding 
him a lunatick or idiot, a special writ may issue to 
bring the party to the Chanceller, or before the court 
competent; and if, on examination, it ap- 
pear the party is no idiot, the whole commission and 
office shall be dischargd without any traverse or mon-
trum de droit. 9 Co. S. 31. 4 Co. S. 126. 
And for this writ of multa inquiringa, see Fea. N. B. 324. 3.

All the party found an idiot or lunatick may traverse 
the inquisition, as may any other perfon having a title 
the land, and therefore it is said, that by the statute 18
Hen. 6. there ought to be a month's time between the 
return of the inquisition and the grant of the custody 
and lands, in order for the parties to come in and tender 
such traverse. Skin. 176.

If by the party or a person he found a lunatick, and 
the custodies granted to J. S. and the party thus found 
be a faire facies to set aside the inquisition, 
the committee of the lunatick cannot plead nor join issue 
in such faire facies; for he can have no interest in the
Ideally, lunacy or madness, which excels in capital cases, it is not necessity that it was found by inquisition that the party was a madman, idiot, lunatic and incapable of being tried. This distinction, established by this statute, between the King's interest in the lands or tenements of that such lands and tenements shall in no wise be alienated, and the King shall take nothing to his own use; and if the party die in such estate, then the residue shall be distributed for his soul, by the advice of the ordinary.

And as to idocy, lunacy or madness, which excels in capital cases, or been delivered unto them when they come to age like a house, and to such farm and tenements shall in no wise be alienated, and the King shall take nothing to his own use; and if the party die in such estate, then the residue shall be distributed for his soul, by the advice of the ordinary.

2. But though a lunatick be by commission to be under the care of the publick, and such committee is to be appointed for him by the Lord Chancellour, whose acts are subject to the control and correction of the court of Chancery; yet such a one, whether so appointed, or whether he of his own head take upon him the care and management of the estate of a lunatick, is but in nature an extraordinary trust or truftee for him, and accountable to him, his executors or administrators. 4 Co. 127. 2 Chalm. Co. 239.

And as the committees of a lunatick have no interest, but an estate during pleasance, it has been, that they cannot make leases, nor any ways incumber the lunatick's estates without a special order from the court of Chancery, where the profits are not sufficient to maintain the lunatick. 1 Vern. 262. Fryer v. Marchant.

Also where a lunatick, before he became such, made a mortgage of good part of his estate for 50 l. and the committee transferred this mortgage, and took upon 3 400 l. more upon it, and it was held by my Lord Keeper, that the mortgage was void but a security for the 50 l. only. 1 Vern. 262, 263.

And though the King, as it has been said, has the sole direction and management of idiots, &c. yet a private person may confine a friend who is mad, and bind and beat him, &c. in such a manner as is proper in such circumstances. 2 Rat. 546.

And also by the 12 Ann. cap. 23, recting, that whereas there are sometimes in parishes, towns and places, persons of little or no estate, who by lunacy, or otherwise, are furiously mad, and dangerous to be permitted to go abroad, and by the laws in being the justices of the peace and officers have not authority to confine and confine them, it is enacted, "That it shall be lawful for any two justices of the peace, where such lunatick or mad person shall be found, by warrant under their hands and seals, directed to the constables, churchwardens and overseers of the poor of such parish, town or place, or some of them, to cause such person to be apprehended and kept safely locked up in such place within the county where such parish or town shall lie, as such justices shall, under their hands and seals, direct and appoint; and (if such justices find it necessary) to be there chained, if the legal settlement of such person shall be in any parish, town or place; or, if such settlement be in such county; and if such settlement shall not be there, then such person shall be sent to the place of his or her last legal settlement, as vagrants by this act are directed to be sent, (whipping excepted) and shall be kept safely locked up or chained, as aforesaid; and the charges of keeping and maintaining such person, or of removing a refrainer, (which shall be for and during such time only, as such lunacy or madness shall continue,) shall be satisfied and paid by order of two or more justices of the peace for the county, town or place where such settlement shall lie, out of the estate of such person, if such person hath an estate to pay and satisfy the same, or of the two or more of such justices, if he hath not such an estate, then the charges of the keeping and maintaining such person, during such refrainer, shall be satisfied, and paid by such
IDE

ways and means as the poor of such parish, town or place, are by the laws in being to be provided for."

Provided, that this act, or any thing contained therein, shall not extend, or be construed to extend, to refrain or abridge the prerogative of the Queen, or the power or authority of the Lord Chancellor, Lord Keeper, or Commissioners of the Great seal, but the time being, or of his; it or of the,. Professor of Divinity, or of the Palatine of Lancaster for the time being, or of the Chamberlain or Vice-Chamberlain of the County Palatine of Chester for the time being, touching or concerning the premises."

3. How far their want of understanding shall be said to prejudice them in civil and criminal cases.

Civil cases. An idiot, or perfon non campus, may inherit, because the law, in complaint of their natural infirmities, presupposes them capable of property. Co. Lit. 2, 92, b. 365.

Also an idiot, or person of non-sane memory, may purchase, because it is intended for their benefit; and if after recovery of their memory they agree there to, they cannot avoid it; but if they die during their lunacy, their heirs may avoid it, for they shall not be subject to the consequences of their want of capacity; so if it after their memory recovered, the lunatick, or person non campus, die without agreement to the purchase, their heirs may avoid it. Co. Lit. 2, 2 Port. 203.

If an idiot or lunatick marry, and die, his wife shall be endowed; for this works no forfeiture at all, and the King has only the custody of the inheritance in one case, and the power of providing for him and his family in the other; but in both cases the freehold and inheritance is in the idiot or lunatick; and therefore if lands descend to an idiot or lunatick after marriage, and the King, on official found, takes those lands into his custody, or grants them over to another, as committee, in the usual manner; yet, the King, in the way the heir will not be tenant by the curtesy, or the wife endowed, since their title does not begin to any purpose till the death of the husband or wife, when the King's title is at an end. Co. Lit. 31 a, 4 Co. 124, 125. Yet see Plow. 263 b. 1 Febn. 10.

A lunatick shall be tenant by the curtesy, and shall have dower; so that a woman, being a lunatick, kill her husband, and any other, yet the shall be endowed, because this cannot be felony in her, who was deprived of her understanding by the act of God. Perk. 365.

If a person non campus be difabled, and a deficient evil, this, it is said, takes away his entry, and prevents the entry of the heir; for regularly the non campus in this case cannot allege the disability in himself, because he cannot be supposed conscious of it, nor is he allowed ever, at any time, to allege it, for when he is once non campus, there is no certain time when he can be adjudged to recover that disability, unless where he is legally committed, and then the acts during his lunacy will be set aside and discharged, and afterwards the commission superseeded; for in no other way can the non campus be legally referred to his right, and to his capacity of acting. Lit. 362. 405. Co. Lit. 247.

Color on non campus, being lord of a copyhold manor, may make grants of copyhold estates, for such estates do not take their perfection from any power or intert in the lord, but from the custom of the manor, by which they have been demised and demitable time out of mind, 4 Co. 23 b. Co. Copib. 79, 107.

The estates are held by the Civil law, and likewise by the Common law, incapable of being executors or administrators; for these disabilitics render them not only incapable of executing the trust reposed in them, but also by their infinity, and want of understanding, they are incapable of determining whether they will take upon themselves the execution of the trust or not. Gould's. Orph. Leg. 36.

Therefore it hath been agreed, that if an executor become non campus, that the spiritual court may, on account of this natural disability, commit administration to an other. 1SBib. 39.

IDE

An idiot, or person non campus, being robbed, shall be bound by a sale of his goods in a market overt. 2 Hil. 713.

Criminal cases. It is laid down as a general rule, that idiots and lunaticks, being by reason of their natural disabillitics incapable of judging between good and evil, are punishable by no criminal prosecution whatsoever. 1 Hale, P.C. 341.

And therefore a perfon, who loxes his memory by sickish, infirmity, or accident, and kills himself, is not de fe de. 3 Hil. 54.

So if a man give himself a mortal stroke while he is non campus, and recovers his understanding, and then dies, he: Such a de fe de for the three under the homicide, the act must be that which makes the offence. 1 Hale, P.C. 341.

But it is not every melancholy or hypochondriacal dis- temper that denotes a man non campus, for there are few who commit this offence, but are under such infirmities; but it must be such an alienation of mind that renders them to be madmen, or frantic, or distillute of the use of reason. 1 Hale, P.C. 342.

And as a perfon non campus cannot be a se de de by killing himself; so neither can he be guilty of homicide in killing another, nor of petit treason; also if one who is committed for a capital offence, but becomes non campus before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. 1 Hale, P.C. 30. 1 Haw. P. C. 2.

It seems to have been anciently holden, in respect of that high regard which the law has for the safety of the King's person, that a madman might be punished as a traitor for killing, or offering to kill the King; but this is now contradicted by better and later opinions. Fen. C. 351. Regis, 309. 4 Co. 124 b. 1 Roll. Rep. 324.

The great difficulty in these cases is, to determine where a person shall be said to be so far deprived of his sense as not to have any of his actions incumbent on him, or where, notwithstanding some defects of this kind, he still appears to have so much reason and understanding as will make him accountable for his actions, which my Lord Hale distinguishes between, and calls by the name of Total and partial infirmity; and that it is difficult to define the indivisible line that divides perfect and partial infirmity, yet, I say, it must rest upon circumstances, duly to be weighed and considered both by the judge and jury, left on the one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes; and the best measure he can think of is this: such a person, as labouring under melancholy distempers, hath yet ordinarily as great understanding as ordinarily a child of fourteen years hath, is such a person as may be guilty of treason or felony. 1 Hale, P.C. 30.

It hath been already observed, that he who is guilty of any crime whatsoever from his voluntary drunkenness, shall be punished for it as much as if he had been sober. Vide infra.

Also he who incites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. Reslo. 53. Dall. cap. 4. 177. P. C. 2.

And here we must observe a difference the law makes between civil suits that are terminated in compeientium damnati ilati, and criminal suits, or prosecutions, that are ad paenam & in vinditum criminis commissi; and therefore it is clearly agreed, that if one who wants discretion commits a crime, and the perdon or persons he has employed to do it, shall be compelled in a civil action to give satisfaction for the damage. 2 Roll. 454. Hib. 134. Co. Lis. 247. 1 Haw. P. C. 2. 1 Hale, P. C. 15, 15, 38.

4. How far their acts are good, void, or voidable; and how they are to sue and defend.

We must first distinguish between acts done by idiots and lunaticks in pari, and in a court of record; that as to those solemnly acknowledged in a court of record, as times
for
for
for
for
as
fo
Fern.
only
cutors,
which
202.
rituries
posing
the
excuse
124-5.
regularly
the
record,
A
aid;
ideots
ideot

4
jreverfed,
ounht
are
fines
fits
F.
lit.

155.

26

478.

So in case of a fine levied by an idiot, it shall stand against him and his heirs; for no averment of idiocy can vacate the fine; nor will an office, binding him an idiot a naturitate, be sufficient to reverse the fine, for that to lessen the credit of judgments in courts of record, by trying them by other rules than themselves.

2 And. 193. 4 Co. 124.

As to acts done by them in pari, they are distinguished into void or voidable, the void to themselves and all who take by actual delivery, because no man is allowed to presum-
ably himself, for the insecurity that may arise in contracts from counterfeited makes and folly; besides, if the excuse were real, it would be repugnant that the party should know or remember what he did; but their heirs and assigns may avoid such acts in pari, but not by reason of the idiocy; because if they can prove it, it must be presumed real, since no body can be thought to counterfei

If an idiot or lunatic enter into recognizance, or acknowledge a натурitate, neither they themselves, nor their heirs nor executors can avoid it; for these are securi-
ties of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being mat-
ters of record, and equivalent to judgment of the supe-
rrior courts, neither they themselves, their heirs nor executors, can avoid them. 4 Co. 124-5. 10 Co. 42. 6.


If parencres of non-fane memory make partition, un-
lefs it be equal, it shall only bind the parties themselves, but not their issue: And the reason it binds the parties themselves is the same that all other contracts bind them, viz. because no man is allowed to presum-
be himself, because he can prove it, he must be pre-
sumed real, since no body can be thought to counterfei

If an idiot or lunatic enter into recognizance, or acknowledge a натурitate, neither they themselves, nor their heirs nor executors can avoid it; for these are securi-
ties of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being mat-
ters of record, and equivalent to judgment of the supe-
rrior courts, neither they themselves, their heirs nor executors, can avoid them. 4 Co. 124-5. 10 Co. 42. 6.


If parencres of non-fane memory make partition, un-
lefs it be equal, it shall only bind the parties themselves, but not their issue: And the reason it binds the parties themselves is the same that all other contracts bind them, viz. because no man is allowed to presum-
be himself, because he can prove it, he must be pre-
sumed real, since no body can be thought to counterfei

If an idiot or lunatic enter into recognizance, or acknowledge a натурitate, neither they themselves, nor their heirs nor executors can avoid it; for these are securi-
ties of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being mat-
ters of record, and equivalent to judgment of the supe-
rrior courts, neither they themselves, their heirs nor executors, can avoid them. 4 Co. 124-5. 10 Co. 42. 6.


If parencres of non-fane memory make partition, un-
lefs it be equal, it shall only bind the parties themselves, but not their issue: And the reason it binds the parties themselves is the same that all other contracts bind them, viz. because no man is allowed to presum-
be himself, because he can prove it, he must be pre-
sumed real, since no body can be thought to counterfei

If an idiot or lunatic enter into recognizance, or acknowledge a натурitate, neither they themselves, nor their heirs nor executors can avoid it; for these are securi-
ties of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being mat-
ters of record, and equivalent to judgment of the supe-
rrior courts, neither they themselves, their heirs nor executors, can avoid them. 4 Co. 124-5. 10 Co. 42. 6.


If parencres of non-fane memory make partition, un-
lefs it be equal, it shall only bind the parties themselves, but not their issue: And the reason it binds the parties themselves is the same that all other contracts bind them, viz. because no man is allowed to presum-
be himself, because he can prove it, he must be pre-
sumed real, since no body can be thought to counterfei

If an idiot or lunatic enter into recognizance, or acknowledge a натурitate, neither they themselves, nor their heirs nor executors can avoid it; for these are securi-
ties of a higher nature than specialties and obligations, which yet they themselves cannot avoid, and being mat-
ters of record, and equivalent to judgment of the supe-
rrior courts, neither they themselves, their heirs nor executors, can avoid them. 4 Co. 124-5. 10 Co. 42. 6.


If parencres of non-fane memory make partition, un-
lefs it be equal, it shall only bind the parties themselves, but not their issue: And the reason it binds the parties themselves is the same that all other contracts bind them, viz. because no man is allowed to presum-
be himself, because he can prove it, he must be pre-
sumed real, since no body can be thought to counterfei
understanding, and not about, lunatick or non compos mentis, or had by him, her or themselves executed the same any law, &c.

And it is further enacted, That all and every such person or persons, being idiot, &c. and only trustee or truf-tees, mortgagee or mortgages as aforesaid, or the commit-tee or committees of all and every such person or persons, being idiot, &c. and only trustee or trustees, and only such trustee or mortgagee as aforesaid, shall and may be impowered and compelled, by such order so as aforesaid to be obtained, to make such conveyances or conveyances, affurance or assurances as aforesaid, in manner like trussises or mortgagees of face memory to convey, transfer or affign their trust-ee or mortgagees.

When an idiot doth sue or defend he shall not appear by a guardian, prochein army or attorney, but he must be ever in proper person. Co. Lit. 135. b. F. N. B. 27. The statute of H6man. 2. cap. 15, extends not to an idiot, 2 infra 390.

But otherwise of him who becomes non compos mentis; for he shall appear by guardian if within age, or by attorney if of full age. 4 Co. 124. b. Palm3. 520. &c. 2 Sand. 335.

It a trefpafs be committed in the lands of a lunatick who is legally committed, the committee cannot bring an action in their name. But his must be brought in the name of the lunatick. 2 Sid. 212. If a lunatick be sued, he must have a committee as-signed to him to defend the suit. 1 Vern. 106.

For more learning on this subject, see 3 Bac. Abt. tit. Idets and Lunaticks. See Lunaticks.

Terror menti, vel erataminda, is a writ to the escelhor or sherifl of any county, where the King hath notice that there is an idiot naturally born, so weak of understanding, that he cannot govern or manage his inheritance, to call before him the party suspected of idocy, and examine him: Also the said sheriff is to give notice of the same, or apartment whether he be sufficiently witted to dispose of his own lands with direction or not, and to certify accordingly into the Chancery; for the King hath the procision of his subjeds, and by his prerogative the government of their lands and subdurance that are naturally deficient in their own direction. Stat. de Praem. Regis edit. 17 Ed. 3. c. 8. whereas read Sandys. Prey. cap. 9. and of this writ read F. N. B. 232, and Reg. Orig. fol. 267.

Terror, (Idet) Are eight days in every month so called. In March, May, July and October, they begin at the eighth day of the month, and continue to the fifteenth; in the rest of the months, the first, and at the thirteenth. But there be other, that only the last day is called the Idet, the first being termed the eighth Idet, the second, the seventh, that is, the eighth or seventh before the Idet, and so of the rest; and therefore when we speak of the Idet of such a month, we must understand it of the 15th or 17th day of the month.

Terrorium habetur, idetare fer, To purge himself by oath of a crime of which he is accused. Leg. H. 1. cap. 15, where the word idetare is taken for innocent. But he is laid in our law to be idetens land, who hath these three things, honestly, knowledge, and ability; and if an officer, he is not idetens he may be discharged. 8 & 11 .41. See Præfrentation.

Iouanum fæatus, iouaretur fer, To purge himself by oath of a crime of which he is accused. Leg. H. 1. cap. 15, where the word idetare is taken for innocent. But he is laid in our law to be idetus land, who hath these three things, honestly, knowledge, and ability; and if an officer, he is not idetens he may be discharged. 8 & 11. 41. See Præfrentation.

10. Forfall, is a compound of three French words: je, or, faill, Æga lefla fum, and in a legal sense denotes an overtight in pleading, or other law proceedings; touching which there are often 83. 30. whereby it is enacted. That if the jury have once past upon the issue, though afterward there be found a joestu in the pleading, yet judgment shall likewise be given according to the verdict of the jury. See Br. tit. Repleader. The author of the 3

New Terms of Law feith, That a jefult is when the parties to any suit have in pleading proceeded so far, that they have joined issue, which shall be tried, or is tried by a jury, and this pleading or issue is fairly pleaded or joined, that it will be error if they proceed: then some of the said parties may, by their counsel, shew it to the court as just and equitable, and before the said jury that the issue be charged: the swearing of which defects, before the jury charged, was often, when the jury came into court to try the issue; then the counsel which will shew it, shall lay, This is unjust you ought not to take it; and if it be after verdict, then he may say, To judgment you ought not to go, for the want of this man was dead, that they, for the redress of which divers statutes were made, vide 32 Hen. 8. 30. before-mentioned, and others in Queen Elizabeth and King James his days, viz. 18 Eff. 14. 12 Jas. 13. Canell. See Amendment.

Lefq. See Gouneley.

Velle, A branch or large candlestick of brass branched into several Konfes, and hanging down in the middle of a church or choir, to spread the light to all parts. This invention was first called Arvob jaffes and Starps jaffes, from the familiar to the branch or genealogical tree of Jefes. This useful ornament of churches was first brought over into England by Hans Prynne, abbot of St. Auffin's in Canterbury in the year 1180, as thus recorded by the historian of that abbey: Polypium etiam in ecclesia ficta, candebalum etiam magnum in choro eamdem, quod jeffe vecator, in partibus emf tranfmarinum. Chon. Will. Thomas p. 1796.

Legum Iterum, and Jeofon; (from the French jeter, eject,) is any thing thrown out of a flip, being in the danger of wreck, and by the waves driven to the shore. See Pletum, and Co. Lib. 5. fol. 16.

Jews, (Ydorici, Here in England, in former times, the Jews and all the rest belonged to the chief lord where they lived; and he had such an abstinence property there, that the church could not have use of it, and it was better to remove to another lord without leave. This appears in Matt. Paral. p. 521. 606. where we read that Hen. 3. fold the Jews to Earl Richard his brother for a certain term of years, that was Rex exteriorus, comes eusfcraver. They were distinguished from the Christians both living and dying; for they had proper judges and courts, where their causes were decided; and they wore a badge on their outward garments upon the breast in the shape of a table, and were fined if they were abroad without such badge. They were never buried in the country, but brought up to London, and there buried. This the Jews of our times do not, that they might be buried without the walls of any other city. And anciend y we had a court of the justices allotted for the government of the Jews. See 4 Iff. fol. 234. Rex

wor. Wiger. Jafhmum. Præfentiam tibi quod clamare

Eosque fatis per raeum buifum iniam, quod eum Tadei defiderant in fupertori indumenta nullum ambaculums ambaeum verum ei equivaluntur infra viuam vel extra, qui duo tabulas albas in pectore facies de lineo parvo vel de pergamino, id quod per buifumodigium manifestus poflubi Tadei a Christianis disjiceri. T. comte a puro Ocon, 30 Martii. Clanc. 2 H. 3. p. 1. in Dody.

10. et 1. cap. 1. can the Statue of the Pillory, directed, among other things, That the jury therein mentioned shall inquire if any buy afl of Jewes and then fell it to Christian. In 9 Ed. 1. A Jew had his trial per meditacionem linguae, viz. Judaeorum, and they were sworn on the five books of Mifhe, held in their arm (brachia) and by the name of the God of frater who was called. D. 144. pl. 59. marg. cit. 9 Ed. 1. flat. 13 Ed. 1. Stat. 3. cap. 1. called the Statue of Merchants, is directed to extend to all except Jews.

A Jew born in England purchased land, and married a Jewess; he is converted to christianity, but she is not converted, and the walls of London leave that she is still a Jew at the time of Ed. 1, and Parl. Rot. 1. 17.

The marrying a Jew, either by a Christian man, or Christian woman was anciently reckoned felony, and the party offending to be burnt alive. 3 Iff. 89. and others.


ILL
Imir igni tegit ignis, apud Sanctum Martinum. MS. Statute

Ignoramus. It is word properly used by the Grand
Inquisitor, impannel'd in the inquisition of
causes criminal
and publick, and written upon the bill, by
which they signify
their opinion as defective, or too weak, to
make good the pretentiment; the effect of which words so written
is, that a farther inquiry upon that party for that fault is
thereby stopped, and he delivered without further an-
swer. It hath a resemblance of that ancient censure of
the Romans, where the judges, when they absolved a
person accused, did write A. upon a little table provided
for that purpose, i. abhivemus: if they judged him guilty,
they wrote B. cap. C. ab omnibus: if they found the
charge defective and doubtful, they wrote N. L. that is non
lignes. Agnitos Reduimus in ostentis pro (in more)
Model. Alexander

Ignoranza. (Ignoramus) Which is want of know-
ledge of the law, shall not excuse any man from
the penalty of it: And every person is bound at his peril to
take notice of that law of the realm; and ignorance of
it, though it be involuntary, where a man affirms that
he hath done all that in him lieth, shall not excuse him.
But though ignorance of the law excuseth not, igno-
rance of the fact doth; as if a person buy a horse or
other thing in open market, of one that had no property
therein, and not knowing but he had right; in that
case he hath done a thing, and the ignorance shall excuse
him. But if the party bought the horse by mark only
in the market, or knew the seller had no right, the buying in
open market would not have excused. Deed, and Status. 5
Rep. 83.

Horridum-Street, is one of the four famous ways that
the Romans made in England, called Stratton Lectorum
because it took beginning ab Wandon, which were
the people that inhabited Norfolk, Suffolk and Cambridgeshire. Camb.
Watling-Street.

Hobbs-Com. See Harbours.

Hec, A little Island. Cowell, edit. 1727.

Illibàltible. That may or cannot be levied, and there-
fore nihil is a word set upon a debt unlibatable.
Id. ib.

Illicitate. If I am a man illiterate or not lettered,
and I deliver a writing, which is to be read to me me-
to that which is acknowledged in the deed; it is a
But if I can read, such false reading will not be
replied for, it is for my own folly. Sin. 139.

If agreement be to make 20 l. and the other makes a
general release, and he being not lettered, delivers it by
agreement as a release for 20 l. only, this deed is void.
4 Ed. 3. 3. 17.

If agreement be to release all trespasses, and in the deed
is put a release of land, and this is delivered by a man not
lettered, as a release only of trespass, this deed is void.
44 Ed. 3. 24. 44 Ass. 39.

So where there is not any agreement to make any
release, but a man comes to another not lettered, and
prays him to a deed, saying, that it shall be no pre-
judice to him, and he seals it without hearing it; the
deed is a good deed, because he did not pray to hear it.
44 Ass. 30. 44 Ed. 3. 23. Dubheb.

If a man for great age cannot see to read, and seals an
obligation upon false reading, he shall avoid it.
3 H. 6. 52. b. Mich. 9 Tre. in the Star-chamber, Storer's cafe,
cited 1 Rep. 28. Refolved, though he was lettered; for
now he had no natural perception.

If a deed be read to a man illiterate, to be upon
condition, where it is without condition, it is not his
deed.
9 H. 6. 59.

If a deed be read to a man illiterate, as a gift in
full, with a letter of attorney, where it is a feu-daim
in fee simple, it is gesed to be free as in the let-
ter of attorney; for all is but one deed; and by the li-
very feu-daim formam chartae, nothing passeth, the deed
being void.
3 Ed. 3. 31. b. Curia.
If an obligation be read to a man illiterate, that he binds himself by it in S. where it is a 1200. it is void in all. 3 Ed. 3.

If a man letter'd will make a feoffment, and upon one parchment, &c. two feoffments are contained, and only one is read to him, yet the deed, for this feoffment which is read to him, is good. 3 Ed. 3. 32.

If three distinct obligations are written upon one piece of parchment, and one of them only is read to the oblige, and he being a man not letter'd, feals and delivers the deed, this is good for that which was read, and void for the others. 11 Rep. 27. b. Piggot's cafe.

illuminare. To illuminate, to draw in gold and colour the initial letters, and the usual portions or in many books gold or silver letters, illuminare, are called illuminantes, whence our illuminators.

Images. How to be defined. 3 & 4 Ed. 6. 1. 10.

Ambargo. A stop or stay, most commonly upon ships by publick authority. 18 Car. 2. cap. 5. See Merchants, Paeraogist.

imbed, or Imbulf. To waft, scatter and confuse; as if a person intrusted with goods, waft and diminish them, we say he hath imbeld the goods. 14 Car. 2. 31. See Felows, Stores, Wool.


imbyndery. See Chymebury.


impactus. See Impaple, Imparanse. To impale a jury, is to put them into a parchment schedule by the sherif, the names of the jury foundman to appear, for the performance of such publick service as juries are employed in. A privilege was sometime granted, that a person should not be impaled, or returned upon a jury, unless he be a tenant or tenant-nor in alquith affinis, juratis, recogniscinum, &c. Parch. Antiquit. pag. 657. See Kneeler's Ghisty.

Imparltance. (Interlocutio or Interlauque.) Is a motion or execution made in court by the tenant or defendant, upon the count of the demandant, or declaration of the plaintiff; whereby he craves relief, or a farther day to put in his answer. See Broth. tit. Continuance. Imparltance is general or special. Special is with this clause, Saluus omnibus advantageis, san ad juridisthunm curiam, quam ad brevem & narratom. Kitchin, f. 200. General is that which is made at large, without inferring that, or the like clause. Cowell.

The declaration, and before the defendant can be compelled to plead, many times there is an imparltance; which is a longer and further day given by the court, and usually till the first day of the next term, upon a petition made by the tenant or defendant, whereby he craves relief. And this termeth to be special or general; special, as where this or the like clause is inserted, saving all advantages, as to the jurisdiction of the court, as to the writ and declaration; general, is consequtely where that or the like clause is not contained. Reg. Plaict. 55.

Formerly the defendant in all cases had an imparltance to the term next after the return of the process, except the special plea's were by original, or for any or against attorney's or other privileged persons, or against prisoners in the custody of the marshal; in which cases the defendant was bound to plead, without any imparltance, and the same term the declaration was delivered, if delivered four days before the end of the term and except the proceeding by pluries, or the court ordered the return of the first return of Egbert or Michaelmas term, and the action laid in London or Middlesex; and in which last cases, if the declaration was delivered before the eftin day of May, or craftum animantium, the defendant was to plead the deed before the eftin day of the following term. See Broth. tit. Continuance; and in which last cases, if the declaration was delivered before the eftin day of May, or craftum animantium, the defendant was to plead the deed before the eftin day of the following term. See Broth. tit. Continuance; and in which last cases, if the declaration was delivered before the eftin day of May, or craftum animantium, the defendant was to plead the deed before the eftin day of the following term. Mich. 5 Ann. But now, by a rule made in Trinity term 5 & 6 Geo. 2. upon all processes to be filed out of this court, returnable the first or second return of any term, if the plaintiff declares in London or Middlesex, and the defendant lives within twenty miles of London, the declaration shall be delivered with notice to plead within four days after the delivery, and the defendant shall plead within the said four days without imparltance; and in case the plaintiff declares in any other county, or the defendant lives about twenty miles from London, the declaration shall be deliver'd with notice to plead within four days after the delivery, and the defendant shall plead within the said eight days without any imparltance; and in default of pleading in either of these cases, judgment may be entered. In both these cases the declaration must be delivered at least four days before the end of the term, exclusive of the day of the delivery, otherwise the defendant shall be held to an imparltance. 1 Att. Pract. in K. B. 148, 149.

The defendant may imparlt if the plaintiff amend his declaration; otherwise if he accepts of costs, for by such amendment it shall be accounted as a new declaration; but if the defendant accepts of costs for such amendment, he is not compelled for what he was pleased by the amendment, and therefore it is reason he should plead to the declaration so amended, and not impart. 2 L. P. R. 34. 55. cites Mich. 22 Car. 2. B. R.

If the plaintiff declares, but proceeds no farther for three terms, defendant may impart. 2 L. P. R. 35. cites Hill. 23 Car. 2. R.

In the case we have proceeded to file, and the defendant amends his plea, he shall pay the plaintiff's costs; but the court will not grant an imparltance; per Roll Ch. J. 1655. For after file joined, and warning given for a trial upon that file, it is too late to impart. 2 L. P. R. 35.

The court would not grant the defendant an imparltance, tho' he was fixt upon a bond of 28 years old, and could not file the bond; but bid him pray over it, and plead; for the antiquity of the bond is no caufe of imparltance. 2 L. P. R. 33. 36. P alph. 1656. "Johnson's cafe."

Where the plaintiff fues out a special original, the defendant cannot impart, but must plead as soon as the rules are out; because, where the writ is general, the caufe of action appears in the declaration, which the law allows the defendant convenient time to confer with, and advise upon; but when the defendant is taken upon a special capity, there the declaration is mentioned in the writ itself; and the defendant fees what the caufe of action is, and may take a copy of it, and prepare his answer ready against the term by the times that the rules are out. 2 L. P. R. 36.

Imparltance is not to enable the party the better to inform himself of the caufe of action, in order to his defence. 2 Shaw. 310. Trin. 35 Car. 2. B. R. Ann'.

A second imparltance was moved for in a gow warrant, and said to have been granted, in the cafe of the city of London, but the court denied it; for Abyr fad, that by the course of the court, they were to have but the common procedure. And the court faid, that being ex gratia, they may grant or deny it as they please. Comb. 12. Hill. 12 f. 2 fam. 2. Ann'.

One pleaded a foreign plea after imparltance, which could not be; but it was objected, not to be after imparltance, because there was no entry of defendaut sim & ripping, but that it is not an entry of imparltance. 13 Mod. 307. Mich. 11 W. 3. Levenor v. Bredington.

Imparltances are allowed in general actions of trespass, but not in a special cianum frigis. 3 Salt. 186. W. 2. Ellis v. Thomas.

The defendant being alleged in an honile replegianda, or in aile, unless upon good cause shewn; because it is eximum remediam. 3 Salt. 186. Ann'. See Pleading, and 14 Vin. Abr. tit. Imparltance.

Imparltances, As farron imparltances, perfona imparltances, is he that is included, and in possiffion of a benefit which is not essential to the other parties, and chapter and chapter are perfona imparltances of a benefice appropriate unto them. Cowell. ed. 1757.

Imparltment, (from the Lat. impertere), Is the acculation and precipitation of a perfon for treason, or other crimes and misdemeanors. Any member of the house of
IMP

commons may not only impeach any one of their own body, but also any lord of parliament, &c. and thenupon articles are exhibited on the behalf of the commons, and managers appointed to make good their charge and accusation; which being done in the proper judicature, fundamentally proved, &c. And it is observed, that the fame evidence is required in an impeachment in parliament, as in the ordinary courts of justice; but not in bills of attainder. State Trials, vol. 4. p. 311. vol. 1. p. 670. No pardon under the Great seal can be pleaded to an impeachment by the commons in parliament. 12 W. 3. c. 3.

Impalement of Waite, (Impetitio waifi, from the French impeachment, i. impeachment) Signifies a refusal from committing of waife upon lands and tenements; and therefore he that hath a lease without impeachment of waife, hath by that a property or interest given him in the houses and trees, and may make waife in them without being impeached for it, that is, without being questioned, or demanded any recompence for the waife done. See Ca. lib. 11. Boulse's cafe, fol. 82. See Waife.

Impartial, (French enpereur, Latin impartial.) To impeach, to accuse and prosecute for felony or treason, — An impeach for life cannot be enlarged by impeachment, but by express words it may; per Wright K. and 2 Ch. J. and 1 J. Mich. 1703. 2 Vern. 449. Barnfield v. Pepham. See Tall. Tall.

Impollibility, A thing impossible in law, is all one with a thing impossible in nature: And if any thing in a bond or deed be impossible to be done, such deed, &c. is void. 21 Car. 1. B. R. Yet where the condition of a bond becomes impossible by the act of God, in such case it is held the obligor ought to do all in his power towards a performance; as when a man is bound to enfoff the obligee and his heirs, and the obligee dies, the obligor must enfoff it. 2 Co. v. Civil. 74.

Impoition, (from the Lat. impoio) Signifies the tax received by the Prince, for such merchandise as are brought into any haven within his dominions from foreign nations. 31 Eliz. 5. It may in some fort be disfiguished from custom, because custom is rather that profit which the Prince maketh of wares shipped out; yet they are frequently confounded. Cowell, edit. 1727.

Imprest-money, Money paid at lifting of soldiers: from the preadition in, and Fr. prpre, paratus. Id. ib. Imprestabilitus, Is a word often mentioned in Matt. Par. and it signifies invaluable.

Impunity, A print, imprisonment; also the art of printing, and likewise a printing-house. Stat. 4 Car. 2. c. 23.

Imputi, Those who side with, or take part with another, either in his defence or otherwise. 'Tis mentioned in Matt. Wsfn. viz. Juramentum ex parte Regis Angliae fum datum fummi imperii fui in grandissima redemtionem sunt redempti, pag. 282. So in another place, Omnis bonines & imprei Dominii Ludwici, &c. So in Matt. Par. pag. 127. Quod omnium imperii ejusdem Regni, &c.

Impment, (Impriomentum,) Is the refrain of a man's liberty; whether he be in the open field, or in the flocks, or cage in the streets, or in a man's own house, as well as in the common gaol. And in all these places, the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go at all times, to all places whither he will, without bail or mainprize. Cowell, edit. 1727.

None shall be imprisoned but by the lawful judgment of his peers, or by the law of the land. M. C. 9 H. 3. c. 2. 25 Ed. 3. f. 5. c. 4. Ballifs accountant not having lands to be attached by their bodies, to render account. St. Markb. 53 H. 5. c. 29. Execution against the body on a statute merchant, St. de Merc. 11 Ed. 1. The creditor on a statute merchant to find his debtor in prizon with bread and water, St. de Merc. 11 Ed. 1. and to recover his profits. Ibid. See False Imprisonment, Hakcas Cupus.

Impriopation, Is properly so called, when a benefice ecclesiastical is in the hands of a layman; and appropriation when in the hands of a bishop, college or religious house, though sometimes they are confounded. It is said there are 38 in England. Id. ib. Imprisonment, See Approntment.

Imprilahr, To improve land. Impropiamentum, the imprisonment so made of it. Id. ib. In
In another spirit, In another's right; as where executors or administrators fec for a debt or duty, &c. of the settlor or intestate.

Inblutus, Profit or product of ground. Crew., edit. 1727.

In cbd., and notbith. Saxon. See Camden's Brit., in Ortadinius, where he says, speaking of Eding- bow, the barony of Patrick Earl of Dunbar, which also was Incbd. and Notbith between England and Scotland, as we read in the book of Inquisition, that is, (as he believes) he was to allow, and to observe in this part the ingre and eject of those that travelled to and fro between both realms; for Englishmen in ancient time called in their language an entry and fine-court or gate-house, inbrow. Crew., edit. 1727.

Incestuallate, To reduce a thing to serve instead of a culture; the word is often applied to churches, as in Gresov. Dor. pug. quarta pars. ut dict. mortem patriæ ecclesiæ incalendarat retinebat. So in Malmbury. Eccles. Brit. Maris gentericii Dei Lincoln. incalendaratur.

In tu caldfmfi. See Calu ronmi. In tu proutos. Calu proutos.

Incaution. See Cumaction.

Inheritance. See Incumbrance.

Infcription. The fame person is patron and incumbent, and he devises the next avoidance; it was objected, that by his death the church is void, and then the presentation is a choice in action, and not grantable, and the devise takes not effect till after the death of devizor, and therefore he is a good devisee, because it has an incurrence in his life. Rol. Rep. 214. 12 Jac. B. R. in case of Harris v. Aglen. 3 Suffolk. 3 P. S.

The condition of a lease was, that if he alien to any person during his life, the leflee might enter. Leelce de- vises it to B. this does not take effect in his life, but has incession in his life. Rol. R. 214, cites D. 45. 2 Suffolk. C. cited.

Leafe to A. for life, remainder to the right heir of A. this is a good remainder to vest upon the death of A. for the incurrence in his life. Rol. R. 215. cites 7 H. 4.

Inflation gives incurrence to a lease fay, so that if a covenant be entered before to prevent indulgence, a proba- tion hall he granted. 2 Rol. 294. Prohibition (M) pl. 14.

Inure. See Luvbnnrs.

Inchantor, (Incanator,) Is he that by charms or verules conjures the devil. Quis carminibus vel enervationibus daceam adjurat. The ancients called them carminia, because they made charms for charms were in verue. 4 Par. Lit. 44. See Wittrchraft.

Inchantrelis, (Incanteris,) Is a woman that uses charms and incantations. See Inchantor.


Inquid, Incident, Signifies a thing necessarily de- pending upon another as more principal. For example, a court-baron is so incident to a manor, and a course of pyes-powers to a fain, that they cannot be severed by grant, for if a former is or real or be granted, these courts cannot be severed. Kitchin, fol. 56. See Ca. et Litt. fol. 151.

The law gives to every tenant for life, as incident to his estate without provision of the party, three kinds of eflowers, viz. housebote, which is two-fold, viz. for building and burning. Ploughbote, that is eflower for ploughing; and haybote, that is eflower for fencine and inclosing; and these must be reasonable, and leflee may take them upon the land demised without any appen- nement, unless restrained by special covenant. And the fame of tenant for years. Ca. Lit. 41. 6.

A man felded of land in fees, telleth for life or years, excepting all timber trees) and after the leflee has an intention to fell the trees excepted; the law gives to him and such as will buy them power, as incident to the occasion, to come upon the land of the leflee to fell the trees, and the buyers to view them; for without this they cannot view them. Ref. ed. 14 Rep. 52. Lyfia's cafe.

Licence to lay pipes of lead in another's land to con- vey water to my cistern; I may enter and dig the ground to amend the said pipes, though it be not expressly grant- ed, which is incident to such grant. Br. Incident, pl. 8. cites 9 Ed. 6. 55.

If licence be given to a duke to hunt in a park, the law for conveyance gives such attendance as are requisite to the dignity of his estate. 9 Rep. 49. b. Trin. 8 Yar. in the Earl of Salis's cafe.

Licence to erect a llay flack, gives licence to include. Admitted. 36. 3 Rol. R. Hill. 17 Jac. B. R. in case of Webb v. Paternjager.

At wife prius, coram Hult, the queation upon evidence was whether every house in the market round, had so many fees of ground toward the market belonging to it. Per Har Ch. J. If the act for building of London orders a man to build his house contiguous to his neighbour's foil, in of neceressy consequence, gives you all easements over your neighbour's foil, as lights, passage, &c. without which you cannot use your house: but thereby gives you no intrefet in the foil. And in this cafe, a housekeeper who pretended the like interret before his door, though he leflee more than another person, was denied to be a winette. 12 Med. 372. Paff. 170. Th. 4. Connect. Pare's Newgate Market v. Don and Chaupcr of St. Paul's.

If a man, either by grant or prescription, has a right to a wreck thrown on another's land, of neceressy con- sequence he has a right to a way over the same land to take it; and the appoinement of the wreck is in him before seizure. 6 Med. 159. Paff. 3 Ann. B. R. Annot. See 14 Vin. Abf. tit. Incidents.

Jurenullare, Is mentioned in the Mangloni, 2 tom. p. 598. and signifies to letter a horfe, viz. Et fi iunctum pafchalis Rexi et pafchalis meguari. &c. Frof. 20. &c. freight, or home-chole, or inoche near the house.—Ex Gratia Testamentum sum, quod capitale missio quantum valuerit per annum cum iis includat 11 foul. Paroch. Antiquit. p. 31.


Jurifclotures, Destroying them in the night, to be made good by the neighbouring towns, 15 Ed. 1. A. c. 46. 3 & 4 Ed. 6. c. 5. 6 Gen. c. 1. c. 16. Throwing down inofces in the night, to be punished with treble damages, 3 & 4 Ed. 6. c. 3. sect. 4. 22 & 23 Cor. c. 2. c. 7.

Persons obtaining inofces or wafies diblded, 9 & 10 W. c. 25. 24 & 25 W. & M. c. 10. f. 9. 5 Gen. c. 1. c. 15. sect. 6. 6 Gen. c. 1. c. 16.

See Appovement, Wattes. See Inoche. See Luvbnnrs.

Incoipolitum, A prkipor or vicar; Prohib. ne summores manueculis, &c. ut eat ad hundreda, nec ad foras, sed incopilosis fust, val unum ex bonisibus suis mittat. Leg. H. I. m. 11. tom. 1. pag. 1032.

Incrementum.—Dedi J. B. quadamm incrementum terre, et suis tenementibus, quod item is meant a parcel of land inclosed out of common or walle ground. This evicipant was more was often used for advance in rent or other payment.

Rediendo antiquam formam & de incremento xii. Paroch. Antiquit. p. 164. Tenacis spirituallitatis una cum incremento per salahationem. Ibid. pag. 316. To which was opposed decrementation, abatement, wiuence decremen- ts in the battery-books, on Accounts of Earing in Oxford. Crew., edit. 1727.


Instrument, (from the Latin verb incumbere, to mind diligently,) Is a clerk refident on his benefice with cure, Ca. Lit. 11. 119. and called to incumb of that church, be- cause he doth or ought to bend his whole study to discharge his

Annuarium, is used in Rot. Fisc. 17 Ed. 1. M. 13. For incurring a penalty, or becoming subject to a fine or amercement. So incurri aliquo, is to be liable to another's legal censure or punishment. As in the 27 W. 3. c. 37. Statutum quod omni annuo tenitet capitabili bus dimitus aut regi incurrans.

Indebtitus aliquam, is used in declarations and law proceedings, where one is indebted unto another in any certain term; and the law creates it: It is also an action thereupon. Pract. Attor. And it has been held, that the action upon an indebitatus affirmavit is no case, but where debt will lie for the same thing. 5 Sa. 23. See Action, Indebtitus.

Indeterminable, (Indecributis) That is not tichable, or ought not pay any tith. 2 par. Inf. 490.

Indeferible, That cannot be defeated, undone, or made void: As a good and indeferible estate, &c.

Indemnity. One that is impeaded, and refuse to answer. Et prodictus judex nihil fijisset diisse contra fectum dicti Ricardo, ne solvit ponente se in quinquaginta ait. Consulraturam solit, quod tamundum indefinitus fit in meijoritis, &c. Communa de Mich. 50 H. 3. Rot. 4.

Indemnity, When a church is appropriated to an abbey or college, then the archdeacon for ever losteth his indictment money, in recompense whereof he shall have yearly out of the church to appropriate xii d. or ii s. more or less, for a yearly pension, as it is agreed at the time of the appropriating: And his payments are called pensions or indemnities. MS. in Bibl. Cott. sub effigie Cleopatra. F. 1. fol. 84. a.

General indemnities in time of insurrection, 1 Ed. 3. fl. 1. c. 1. fl. 2. c. 2. 14 Ed. 3. fl. 2. & 3. 5 R. 2. fl. 2. c. 6. 11 R. 2. c. 1. 21 R. 2. c. 14. 1 H. 7. c. 1. 15 H. 7. c. 1. 15 Car. 2. c. 11. 1 W. M. & M. c. 2. 8. 2 W. M. & M. c. 2. 7. 13. 5 W. & M. c. 1. 19 G. 1. b. c. 39. 19 Geor. 2. c. 20. & 39. fet. 18.

Indentures, (Indenturae) A writing comprising some contract, conveyance or covenant between two or more, and being made in the top and answerable to another part, which hath the same contentes, it thence takes its name; and differs from a deed poll, which is a single deed undis- tinct. Ceci on Litt. 229.

If a deed or writing begins, This indenture, &c. and is not indented, it is no indenture; but it may work as an indenture, and the deed is actually indented, and there are no words importing an indenture, it is never- theless an indenture in law. Wood's Litt. 223. Cott. Eliz. 472. A deed of bargain and sale of freehold lands, &c. must be by indenture indented, &c. Stat. 17 H. 8. cap. 16. Words in indentures, though of one party only, are binding to both parties. Cr. Eliz. 262, 657.

India Company. See Call-India Company.

India goods. A duty upon India linens and silks export ed, 1 & 2 c. c. 5. All India goods to be sold by inch of candle, 9 & 10 W. 3. c. 44. f. 59. 10 W. 3. & 4. c. 5. 3. 4. 44. fett. 76. Additional duties on wrotht silks, &c. 9 & 10 W. 3. c. 44. fett. 83. & 12 W. 3. c. 3. Made perpetual, 7 Ann. 2. c. 7. and part of the aggre- gation, fund. 3 Geor. 6. c. 8. Drawers of that exportation, 11 & 12 W. 3. c. 3. f. 5.

Several India goods prohibited to be worn, or to be imported in any other port than London, 11 & 12 W. 3. c. 10. 10 Geor. 1. c. 11.


The terms muslins and painted callicieses explained, 12 & 13 W. 3. c. 11. fet. 14.

Vol. II. p. 92.

Duties on jappanned and lacquered goods to be paid ad

colorem, 12 & 13 W. 3. c. 11. fet. 15.

Unrated India goods to pay customs as sold at the sale, 2 & 3 Ann. c. 5. fet. 6.

Security to be given for importing the goods to Great Britain, and paying the duties, 6 Ann. c. 3.

Bonds for exporting India goods to be delivered up, if no prosecution within three years, 8 Ann. c. 13. f. 24.

India goods to be carried to Ireland only from Eng-

land, 5 Geo. 1. c. 17. fet. 12.

Printed bills, &c. not marked fortieth, 5 Geo. 1. c. 11. fet. 15.

India goods carried to Ireland, Jursey, Guernsey, Aber-

nay, Sark or Man, or the plantations, not shipped in Great Britain, forfeiture of ship and goods, 7 Geo. 1. c. 21. fet. 9.

The time of sale for unrated India goods, enlarged to three years, 7 Geo. 1. c. 21. fet. 11.

The 11 & 12 W. 3. c. 10. shall not extend to any goods made up in furniture before the 25th of December 1724, 10 Geo. 1. c. 11.

Foreign goods may be taken out of warehouses and

refresherd, 15 Geo. 2. c. 31. fet. 8.

Unrated East India goods to pay buffity of 5 per cent. 21 Geo. 2. c. 2. fet. 2.

Indisputable, is a writ or prohibition that lieth for a pa-

tron of a church whose clerk is defendant in court,

Christian, in action of tithes commencing by another,

clerk, and being tried to the jurisdiction of the church,

or of the tithes belonging to it: for in this case the fault

be prejudged to the King's court by the writ. Wesfam. 2. c. 5.

Wherefore the patron of the defendant, being like to be

presjudged in his church and advowson, if the plaintiff

in the court christian, hath this means to remove it to


Remedy for the patron disburbed by its, 13 Ed. 1. b.

1. c. 5. fet. 4.

The ecclesiastical court may hold plea of tithes not amounting to the fourth of the church, St. Circump. Agast. 13. c. 1. fet. 18.

It shall not be granted till the matter is contented in the spiritual court, 34 Ed. 1. b. 1.

Indure and Indigo. Restraints on exporting it from the plantations before it hath been in England, 12 Car. 2. cap. 18. fet. 18. 15 Car. 2. c. 7. fet. 9.

To what goods liable, 6 W. 3. & 4. c. 5. fet. 2.

Indigo may be imported, 7 Geo. 2. c. 18.

Indulsed, (Indulsiitae) When any one is accused by bill or declaration, preferred to jurors at the King's suit, for some offence, either criminal or penal, he is said to be indulsed thereof. Cowell, edit. 1727.

Indulgence. The fame with indulgence. Namque quam venia deo actuacionis de forsi, & indulgence vulgariter se appelletur. De Frede. 1727.

Induction. (Indutio, ab Indicendo) The space of fifteen years, by which account charterers and publick writings were dated at Rome, and anciently in England too, every year still increasing one, till it came to fifteen, and re-

turning to one again; which account of time began at the dissimulation of the Niene council, Ann. 317. Pitha fuit hinc anni insertionis. Indulgiq. 9. Regni verò Eudorii Anglorum Regis juxta. Charta Eudo-

gari Regis Osbaldo episcope Wergeregero. And a charter of King Hen. III. dated apud Chippenham, 18 the April indicendo una, Ann Domini 1266. Cowell, edit. 1727.

Indulment, (Indumentum, from the French indus-

tries, nunc sunt acuactionis de forsi, & indulgence vulgariter se appelletur. De Frede. 1727.

Indulgence, (Inditio, ab Indicendo) The space of fifteen years, by which account charterers and publick writings were dated at Rome, and anciently in England too, every year still increasing one, till it came to fifteen, and re-

turning to one again; which account of time began at the dissimulation of the Niene council, Ann. 317. Pitha fuit hinc anni insertionis. Indulgiq. 9. Regni verò Eudorii Anglorum Regis juxta. Charta Eudo-

gari Regis Osbaldo episcope Wergeregero. And a charter of King Hen. III. dated apud Chippenham, 18 the April indicendo una, Ann Domini 1266. Cowell, edit. 1727.
An indictment is a brief narrative of an offence committed by any per son, which the public good requires should be punished; and therefore it is said to be a prosecution at the suit of the King merely. 2 Hal. Hift. P. C. 169. 2 Hawk. P. C. 210.

Hence also, from its being the King's suit, it is every day admitted that the party, who prosecutes it, is a good witness to prove it. 2 Hawk. P. C. 210.

And from its being the King's suit it is agreed, that no damages can be given to the party grieved upon an indictment; or any other criminal prosecution; notwithstanding the King, by the statute of 3 Ric. 2, c. 12, has empowered a court to try, for breaches committed by felons, expressly direct that the party shall recover damages by such a prosecution. 2 Roll. Abr. 83. Cro. Cas. 531, 558. 2 Hawk. P. C. 210.

Allo where by statute damages are given to the party grieved by the offence intended to be redressed, it forms that they cannot be recovered on an indictment grounded on such statute, unless such method of recovering them be expressly given by the statute; but that they ought to be had for an action on the statute, in the name of the party grieved. 1 Jones 380. Cro. Cas. 488. 1 Roll. Abr. 220. 2 Hawk. P. C. 210.

But if a statute prohibit any act to be done, and by a substantive clause gives a recovery by action of debt, bill, plaint, or information, but mentions not indictment, the party may be indicted upon the prohibitory clause, and thereupon fined, but not to recover the penalty, as upon the statute of 3 Jac. cap. 5, prohibiting recidivists to baptize their children by a popish priest, but the fine to be recovered they might not to exceed the penalty. 2 Hal. Hift. P. C. 171. and see Cro. Jac. 645-4.

But if the act be not prohibitory, but only that if any person shall do such a thing he shall forfeit 5l. to be recovered by action of debt, bill, plaint, or information, he cannot be indicted for it; but the proceeding must be by information, bill, plaint, or information. 2 Hal. Hift. P. C. 371.

And although damages cannot be recovered on an indictment, yet the court of King's Bench, having the King's privy seal for that purpose, may give to the prosecutor the third part of the fine assized on a criminal prosecution for any offence whatsoever. 1 Ed. 4, 21. 2 Hawk. P. C. 210.

Allo it is every day's practice of that court, to induce defendants to make satisfaction to the prosecutors for the costs of the prosecution, and also for the damages sustained by the injury, whereas the defendants are convicted, by intimating an inclination on that account to mitigate the fine due to the King. 2 Hawk. P. C. 210.

1. What matters are indictable, where an indictment is necessary, or the party may be tried for a civil offence without it.

2. By whom an indictment is to be found; who may and ought to be indicters; and whether the indictors, or grand jury, may find part of a bill brought before them true, and part false.

3. Within what place the offence incurred of foul crime.

4. What ought to be the form of the body of an indictment at Common law, and how it ought to set forth. 1. The substance and manner of the fact; 2dly. The persons men-

5. Where the offence indicted may be laid jointly, and where solely, and where both jointly and severally; and where the offences of several persons may be laid in one indictment.

6. What ought to be the form of the caption of an indictment; and where an indictment may be quoted.

1. What matters are indictable, where an indictment is necessary, or the party may be tried for a civil offence without it.

Only not capital offences, such as treasons and felonies, are indictable, but likewise all other crimes being of a public nature, and malum in se, the of an inferior kind, as misprisions, and all other contempt, all disturban
tces of the peace, all oppressions, and all other misdemeanours whatsoever of a public evil example against the Common law, may be indicted. 2 Hawk. P. C. 210.

But no injuries of a private nature, unless they some way concern the King, can be punished by way of indictment at Common law. 21 & 22 Phill. P. C. 20. Drs. Indictment 16. 

Allo generally where a statute either prohibits a matter of publick grievance, or commands a matter of publick convenience, as the repairing the common streets of a town, &c. every such disobedience of such statute is indictable; and banishment they when once been fined upon an action on the statute, such fine is, it seems, a good bar to the indictment, because by the fine the end of the statute is satisfied. 2 Ilf. 55, 163. Cro. Jac. 577. 1 Med. 34. 1 Std. 209.

Allo if a statute extend only to private persons, or it extend to all persons in general, but chiefly concern disputes of a private nature, as those relating to differences made by lords on their tenants, it is said, that offences against such statute will hardly bear an indictment. Sid. 209. 2 Med. 34. 1 Med. 71, 288. 1 Lev. 299. Royn. 205. 1 Vent. 104. 2 Ilf. 121, 232. 2 Hawk. P. C. 211.

Allo where a statute makes a new offence, which was no way prohibited by the Common law, and appoints a particular proceeding against the offender, as by commitment, or action of debt, or information, &c. without mentioning an indictment, it seems to be felt at this day that we will not maintain an indictment, because the mentioning the other methods of proceeding only forms impliedly to exclude that of indictment. 1 Strow. 398. 2 Ed. 34, 273. Cro. Jac. 643, 644. 1 Med. 79.

Yet it hath been adjudged, that if such a statute gives a recovery by action of debt, bill, plaint or information, or otherwise, it authorizes a proceeding by way of indictment. Trin. 3 Gao. 1. Rex v. Donan. 2 Hawk. P. C. 211.

Allo where a statute adds a new penalty to an offence prohibited also by the Common law, it is in the election of the prosecutor to proceed either at Common law, or on the statute; and if he conclude his indictment contra formam statut. it will not make it good upon an indictment on the statute, yet if the indictment be good as an indictment at Common law, it shall stand as such, and the words contra formam statut. shall be rejected. 2 Hawk. P. C. 211.

In all criminal cases the most regular and safe way, and most consonant to the Common law, and the statutes of Magna Charta, cap. 29. 5 Ed. 3. cap. 9. 25 Ed. 3. cap. 4. 28 Ed. 3. cap. 3. and 42 Ed. 3. cap. 3. is by precrastination or indictment of twelve sworn men; yet at Common law there were several means of putting the party to answer for a criminal offence without any indictment, some whereof are still in force; and others either grown obsolete or wholly taken away by statute. 2 Hal. Hift. P. C. cap. 20.

1. If a thief or robber had, on fresh pursuit, been taken with the malinour, and the goods found upon him brought into the court with him, he might have been tried
tried immediately, without any indictment: And this is said to have been the proper method of proceeding in such matters which had the franchise of insigntabule, but is obsolete at this day. 2 Hawk. P. C. 211.

2. Another kind of proceeding in cases capital without indictment is, where an appeal is brought at the suit of the party, and the plaintiff is not found upon that appeal, he may be arraigned at the King's suit upon such appeal; and so it is in the case of an absentee, or re-leaf; and in such case, altho' the party be indicted as well as appealed, yet upon the nonuit of the plaintiff, the proceeding for the King shall not be upon the indictment, but upon the appeal. 2 Hal. Hiff. P. C. 402.

3. If a person indicted of treason or felony confesses the fact, and accuses others of being guilty of the same offence with him, by which he becomes and is admitted an approver, the parties accused may, on his appeal, be tried without other indictment or prefaceumt. 2 Hal. Hiff. P. C. cap. 2. but for the learning hereof, see 2 Hawk. P. C. 204, 225, &c.

4. There were before the statute of 1 H. 4. cap. 14. appeals by particular persons, especially of treason, in parliament, which are said to have been very frequent in ancient times, and especially in the reign of Ric. 2. but now wholly taken away by the said statute; and are therefore where in the reign of Car. 2. the Earl of Bridjet preferred articles of high treason, and other misdemeanors, against the Earl of Clarendon, it was resolved by all the judges, that such articles were within the said statute 1 H. 4. 2 Hal. Hiff. P. C. cap. 60. and proper impleadments by the house of commons of high treason, or other misdemeanors, in the lords house, have been frequently in practice, notwithstanding the statute of 1 H. 4. and are neither within the words nor intent of that statute; for it is a prefaceumt by the most solemn grand inquest of the whole kingdom. 2 Hal. Hiff. P. C. 60.

5. If in a civil action in the King's Bench de muliere abducta cum bonis vitri, upon Not guilty pleaded, the defendant be convicted and found guilty of having carried away the woman and goods with force and fraciously, he may be put to answer the felony without further accusation; for such a charge, by the oath of twelve men, on their enquiry into the merits of a cause, in a court which has jurisdiction over the crime, is equivalent to an indictment; and the king being always, in judgment of law, present in court, may take advantage of any matter properly discovered for his benefit. 2 Hal. Hiff. P. C. 211, and several authorities there cited. 2 Hal. Hiff. cap. 20.

So if upon a special verdict, in a common action of trespass brought in the King's Bench, it be found that the defendant took them fraciously, this may serve for an indictment. 2 Hawk. P. C. 211. 2 Hal. Hiff. cap. 20.

So if in an action of slander, for calling a man a thief, the defendant justifies that he spoke goods, and disre thereupon taken, it be found for the defendant; if this be in the King's Bench, and for felony in the same county where the offender shall be afterwards arraigned, if any person, who have also a commission of good-delivery, he shall be forthwith arraigned upon this verdict, as an indictment; and the reason is, because here is a verdict of twelve men in such cases, and so the verdict, tho' in a civil action, serves the King's suit as an indictment, and the court shall have for merit of the matter, to be a verdict, as is necessary.

That same man shall be put to answer, &c. but by indictment or prefaceumt. 2 Hal. Hiff. cap. 20.

But such a finding, in a court which hath not juridiction, is of no force. 2 Hawk. P. C. 211.

Therefore for the word of a court, it is not an indictment against B. amount to an indictment against B. because the finding of one man guilty on the trial of another is extrajudicial, except only in the case of a co-accused inquest, should never be taken. But for the finding of a greater guilty, upon the acquittal of a defendant, on the trial of such an inquest, is not wholly extrajudicial, be-cause the jury acquitting the man, on such an inquest, must inquire what other person did the fact. 2 Hawk. P. C. 212.

Alfo if on a declaration in the King's Bench against A. for having been guilty of a misdemeanor famil cum B., the jury find B. guilty; it is said, that such a finding is equivalent to an indictment, because it is not wholly extrajudicial, and therefore is neither before nor after the time of the commission. But if an indictment be laid for the murder of B., and the accused murder be afterwards heard and determined, the finding of B. guilty is not an extrajudicial, but an extrajudicial fact, and therefore is of no force.

6. If the sheriff return a release of a prisoner taken for felony, or a breach of prifon by one arrested for felony, this is not sufficient to arraign the party, nor doth it countervail an indictment, for it is not by the oath of twelve men. 2 Hal. Hiff. P. C. cap. 20. 2 Hawk. P. C. 214.

And altho' informations are praetific solicentences in the Crown-office in cases criminal, and by many penal statutes, the prosecution upon them is by the acts themselves limited to be by bill, plain, information, or indictment, yet the method of prosecution of capital offences is still to be by indictment, except in the cases above mentioned. 2 Hal. Hiff. P. C. cap. 20. See 5 Med. 459, &c.

2. By whom an indictment is to be found; who may and ought to be indictors; and whether the indictors, or grand jury, may find part of a bill brought before them true, and part false.

Every indictment is to be found by twelve lawful free men of the county wherein the crime was committed, returned by the proper officer, without the nomination of an C. C. nor occasion of office. But for this fee head of 215. They must be twelve legal men; and therefore it is a good exception to one returned on a grand jury, that he is an alien or villain, attainted in a conspiracy, or detest tantum, or of perjury, or outlawed, or attainted of felony or poenatum. 2 Hale Hiff. P. C. 155.

It seems to be generally agreed, that a grand jury must find either bills vero, or ignoramus for the whole; and that if they take upon them to find it specially or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 Rep. Rep. 52. 3 Bully. 206. 1 Hal. Rep. 407. 2 Hawk. P. C. 210.

Hence it hath been held, that if a grand jury indorse a bill of murder billa vera se defendenda, or billa vera for manslaughter, and not for murder, the whole is void; and the reason hereof given is, that the grand jury are not to deliberate with the murderers and manslaughter, for it is only the circumstance of malice, that is to be dis-tinguished and that may be implied by the law without any fact at all; and so it lies not in the judgment of a jury, but of the judge; also the intention of their finding in- dicements is, that there may be no malicious prosecution; and therefore if the matter of the indictment be not framed of malice, but is verifirmi, tho' it be not vero, yet it answers their oaths to prefer it. 3 Bully. 206. 2 Rep. Rep. 52. 1 Sid. 23. 2 Rep. 150. Keil. 5.

But it seems to be now agreed, that the grand jury may, without subjeifying themselves to any punishment, find part of a bill true, and part false, and that against the direction of the court. See 2 Hal. 161, and see tit. Jurtris.

And it is said by Hale, that if a bill of indictment be for murder, and the grand jury return it billa vera quad manufaughter, and ignoramus quad murder, the usual course is, in the presence of the grand jury, to strike out malitis, and ex malitis fac protractum, and murder-exito, and leave in so much as makes the bill to be but bare manslaughter. 2 Hal. Hiff. P. C. 162.

But yet the false way is to deliver them a new bill for manslaughter, and they to indorse it generally billa vero, for the word of the indictment take not the different, but only evidence the affent or denial of the grand jury; it is the bill itself is the infringement, when af- fermed. 2 Hal. Hiff. P. C. 162.

But notwithstanding this diiferention power in the grand jury, yet by the same author, if A. be killed by B. so that it doth confarre de perfuna vivi & accidentis, and the bill
bill of murder be presented to them, regularly, they ought to find the bill for murder, and not for manslaughter, or for defendends; because otherwife offences may be smothered without due trial, and when the party comes upon his trial, the whole fact will be examined before the court and the petty jury; and in many cases it is a great disadvantage to the party accused; for if a man kill B. in his own defence, or for justifiable cause, in executing the process of law, upon an assault made upon him, or in his own defence upon the highway, or in defence of his house against those who come to rob him, (in which three last cases it is neither felony nor forfeiture, but upon Not guilty pleaded, he ought to be acquitted,) yet if the grand inquest find ignamaus upon the bill, or find the special matter, whereby the prisoner is accused, and discharged, he may not be adjudged a felon and indicted for murder seven years after. 2 Hal. H. 158.

If the grand jury indorse an indictment on the facts of false news billa vera, but where ifa versa praeta fuerunt multis, falsitatis, vel contra, ignominias or if it indorse an indictment of forcible entry and forcible delanter, billa vera as to the forcible entry, and ignominias as to the forcible delanter; or if it indorse, that if the free hold were in J. S. or the possesstion were in J. S. then they find billa vera, the whole is void. 2d Houk. P. C. 210.

3. Within what place the offence inquired of or tried.

The grand jury are sworn ad inquirendum pro corpore cessitatus, and therefore by the Common law cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. 2 Hal. H. P. C. 169. 3d Houk. P. C. 220. And therefore it is a good exception to an indictment, that it doth not appear that the offence arose within such county or precinct. 2 Houk. P. C. 220. and several authorities there cited.

Alfo it hath been holde, that the finding a collaterial matter, expressly alleged in the indictment, in a different county or precinct is void. 1 Houk. P. C. 220.

Alfo it hath been generally holde, that the want of an express allegation of the precinct where the offence happened, is not supplied by putting it in the margin of the indictment, unless it go farther, as by adding in eomitatis praefide, or, which seems to be sufficient, where in the indictment the mention of another county is named before. 2 Houk. P. C. 220.

Alfo if a fact be alleged in B. juus D. in eomitatu E. it is faid, that thereby it sufficiently appears that B. is in the county of E. Cris. 41. 41. and one be indicted for committing the said offence in B. and one be indicted for within the said county, he is tried in both places. 3 Houk. P. C. 220. and before. 2 Houk. P. C. 220.

Alfo if a fact be alleged in B. juus D. in eomitatu E. it is faid, that thereby it sufficiently appears that B. is in the county of E. Cris. 41. 41. and one be indicted for committing the said offence in B. and one be indicted for within the said county, he is tried in both places. 3 Houk. P. C. 220. and before. 2 Houk. P. C. 220.

It seems also, that by the Common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. 2 Houk. P. C. 221.

So if B. by reafon of tenure of lands in the county of B. be bound to repair a bridge in the county of C. if the bridge be in decay, he may be indicted in the county of C. that he is bound reiurare tenure of lands in the county of B. to repair the bridge. 2 Hal. H. P. C. 164.

Alfo by the Common law, if one guilty of larceny in one county carry the goods stolen into another, he may be indicted in either. 2 Houk. P. C. 221.

If a man marry two wives, the first in a foreign country, and the second in England, he may be indicted and tried for it England upon the statute of 1 Jas. 1. cap. 9. 11. it is felony, because the second marriage alone was criminal, and the first had nothing unlawful in it, and was merely of a transitory nature; and by Hawkins, if the second marriage had been in a foreign country, the party might have been indicted here within the parcel of the said marriage 1 Jas. 1. 1 Houk. P. C. 221. 1 Houk. P. C. 111. But for this see 1 St. 171. 11d. 79.

Also if a woman be taken by force in one county, and carried into another, and there married, the offender may be indicted, &c. in the second county on the trial of this indictment. 2 Houk. P. C. 221. because the continuance of the force amounts to a forcible taking. 2 Houk. P. C. 221.

But if an offence in stealing a record, &c. contrary to 8 H. 6. be committed, partly in one county, and partly in another, so as not to amount to a complete offence within the statute in either, it is said, that the party cannot be indicted for a felony in either, but only for a misprision. 2 Houk. P. C. 221.

But notwithstanding the above inferences, it seems agreed as a general rule, that let the nature of the offence indicted be what it will, if it appear upon Not guilty, to be such things as are defined in the indictment, if in which the indictment was found, the party shall be acquitted. 2 Houk. P. C. 220.

And therefore at the Common law, if a man had died in one county of a stroke received in another, it was held, that the homicide was indictable in neither, because the offence was not complete in either; to remedy this inconvenience, it is enacted by 2 & 3 Ed. 6. cap. 24. "That where any one shall be feloniously stricken or poisoned in one county, and die thereof in another, an indictment thereof found by the jurors of the county where the death shall happen, whether before the taking in view of the body, or after, shall be examined in the county where the death happened, and for the same, whether parties, or justices, &c. shall be as effectual, as if the stroke, &c. had been in the county where the party shall die, or where the indictment shall be found."

So if A. committed a felony in the county of D. and had been a secrerary before or after in the county of C. B. could not have been indicted as accersary in either county at Common law; but by the above statute he is indictible, and shall be tried in the county where he so became accersary. 2 Hal. H. P. C. 169. but for this see, tit. Accersary.

That this statute is not repealed by 4 & 5 Ph. 24. 25. which enacts, That all trials for treason shall be accor-

1
IN

D

ING to the Common law. 2 Hawk. P. C. 205. 1 Hal. Hyl. P. C. 162.

By the 28 Hen. 8. cap. 15, it is enacted, "That treasons, felonies and robberies, &c. upon the feast, &c. shall be inquired, &c. in such places in the realm as shall be limited by the King's commisson, in like manner as any other cause might be commonly brought there. But for this witness it, Piracy, and 11 & 12 W. 3. cap. 7.

By the 27 Henry 8. cap. 6, for the punishment and speedy trial, as well of the courtiers of any coin current within this realm, as of all felonies and accusa-

ries of the fame, and other offences feloniously done within any lords Marchers or others: the judgment of gaol-delivery and of the peace in the three counties of England, where the King's writ runneth next, adjoining to the lordship Marchers, or other place in Wales, where such counterfeiting, &c. shall be committed, shall have power at their feisions and gaol-delivery, to inquire by what verdict of the men of the place, &c. in England, there to cause such counterfeitters, &c. to be indicted, &c. in like manner as if the same petty treason, &c. had been done within any of the said feiles within the said realm; also such justices shall try all foreign pleas pleaded by such offenders; neither shall an indictment, &c. or fine-making in the lordship Marchers, be a bar to a perfon indicted in the said seile within two years after the feile.

By the 27 Eliz. cap. 2. Treasons by priets or juifets coming into England, and felonies in receiving them, are inquirable and determinable where the offender is apprehended. 2 Hal. Hyl. P. C. 161.

4. What ought to be the form of the body of an indictment at Common law, and it ought to set forth, 1. The substance and manner of the fact; 2dly, The perfect manner or manner in which the same was committed; and 3dly, The circumstances of time and place.

1. Substance and manner of the fact. An indictment, as defined by my Lord Hales, is nothing else but a plain brief and certain narrative of an offence committed by any perfon, and of those necessary circumstances that concur to ascertain the fact, and its nature, in which, in favour of life, great strictesses have at all times been required. 2 Hal. Hyl. 169.

And therefore it is laid down as a good general rule, that in indictments, as well as in appeals, the special manner of the fact ought to be set forth with such certainty, that it may judicially appear to the court that the Indictors have not gone upon insufficient premises. Cro. Eliz. 174, 201. 2 Hawk. P. C. 225.

Hence it hath been held, that no periphrasis, or circumlocution whatsoever, will supply those words of the indictment to show the fact on which the indictment was founded, and which was appropriated for the definition of the offence; as murdruavit in an indictment of murder, etipit in an indictment of larceny, mayhemavit in an indictment of mayhem, burglarizavit or burglarizavit, or elfe burglarizavit, in an indictment of burglary, felonizavit in an indictment of any felony whatsoever, produciravit in an indictment of treason, contra legislatum sine debito of treason against the King's person. 2 Hawk. P. C. 224, and several authorities there cited, 2 Hal. Hyl. P. C. 183, 184. accord.

But in an indictment, or appeal of rape, the same is sufficiently set forth by the words velini reapt, without adding carnalizavit, or set forth the special manner of the terror or violence, and then concluding that the defendant sit feloni reapt. 2 Hawk. P. C. 224.

And from this certainty required in indictments, it hath been held, that an indictment for a felonious breach of prion, without nowing the manner of the impollument, is not good. 2 Hawk. P. C. 225.

So of an indictment for refusing to serve the office of constable, being legitimi modo electi; without nowing the manner of the election. Allen 78. 1 Mod. 24. 5 Moth. 190. 128. 2 Hal. Hyl. P. C. 97.

Vol. II. No. 97.

So it hath been adjudged, that an indictment for burglary is insufficient, without saying that it was mutatis. Cro. Eliz. 299. 120.

Also it is agreed, that an indictment, charging a man with a nuance, in respect of a fact which is lawful in itself, as the erecting of an inn, &c. and only becomes unlawful from particular circumstances, is insufficient, unless it set forth some circumstances that make it unlawful. 2 Red. Ch. 345. Palm. 356. 374.

So it hath been adjudged, that an indictment for traitorously coming to Alkemy like to the King's money, without nowing what money, viz. whether gold, silver or copper, is insufficient; for if the latter of these, the offence could not amount to treason. 2 Hawk. P. C. 225.

So an indictment of perjury, not nowing in what manner, and in what court the false oath was taken, is insufficient; because, for ought appears, it might have been extrajudicial, Cro. Eliz. 137.

But an indictment of extortion charging J. S. with the taking of 50 l. as bullion of an hundred, value 20l., without nowing for what he took it, is good, at least after verdict; for perhaps he might claim it generally, as being due to him as bailiff, in which case the taking could not be otherwise express. 1 Sid. 91. 1 Hawk. P. C. 225.

An indictment charging a man disjunctively is void; as murdruavit, vel murdruarii convicti, or that A. verberavit B. vel verheravi convicti, or that A. fabricavit talen chartan, vel fabricariti convicti, for these are different offenses, and it appears not of which of them the party is accused. 2 Mod. 137. 138. Salik. 371. pl. 8. 2 Hawk. P. C. 226.

Also an indictment accusing a man in general terms, without ascertaining the particular fact laid to his charge, is insufficient; for no one can know what defence to make to a charge which is uncertain, nor can plead it in bar or abatement of a subsequent prosecution; neither can it appear, from the fact given in evidence, against a defendant on such a general accusation are the same of which the indictors have accused him; nor can it judicially appear to the court what punishment is proper for an offence so loosely express. 7 Lev. 203. 1 Kebr. 278. 1 Shaw. 389. 2 Hawk. P. C. 226.

As where the indictment charges the party with having spoken divers fals and scandalous words against J. S. being mayor of A. &c. or with being a common defamer, vexer and oppressor, &c. or with being a common disturber of the peace, and having stirred up divers quarrels amongst his neighbours, or with being a person of evil behaviour and a deceiver, or a common publisher of the King's secrets, &c. or with being a common forefeller, a common thief, a common champer, &c. 2 Hawk. P. C. 226, and several authorities there cited.

But barretry being an offence of a complicated nature, consisting in the repetition of frequent acts, all of which it would be too tedious to enumerate, experience has fêtted it to be sufficient to charge a man in general as a common barreter. 2 Hawk. P. C. 226. See Barretry.

And for the same reason an indictment against a common foold is sufficient, without nowing any particulars. 2 Hawk. P. C. 227.

Neither is it necessary, for an indictment of either of these two last mentioned offences, to conclude in sequentium omnium legisuum, &c. it appears from the nature of the thing, that it could not but be so. 2 Hawk. P. C. 227.

An indictment must lay the charge against the defendant positively, and not by way of recital, as with a, and b, and c, and d, and e, and it must expressly allege every thing material in the description of the subfiance, nature and manner of the crime; for no intendment shall be admitted to supply a defect of this kind. Salk. 371. Cro. Jac. 30. 4 Co. 42. 5 Co. 150. 2 Hawk. P. C. 227.

Therefore if an indictment of murder want the words ex multis praegravitatis, it is no answer that it has the words
words felonious murther, which imply as much. 2 Hark. P. C. 227.

So if any indictment of death want an express allega-

tion, that the party received the hurt laid as the cause of his death, and alfo that he died thereof, no implication will help it. 2 Hark. P. C. 227.

Alfo it is no fond of a feloniously breaking of pri-

vate and commanding J. S. there imprison'd, &c. to
ecape, do not expressly allege that J. S. did ecape, it is no
answer that it is fully implied in calling the offence a

Yet frailed and over nice objections in this kind are
not to be regarded; as that an indictment of death, laying the
affault to have been with malice prepone, doth not
expressly repeat it in the clause immediately following, and
joined with a copulative flowing the giving of the
wound at the fame time and place. 4 Co. 41. 2 Hark.
P. C. 227.

Or that an indictment, setting forth that J. S. was
lawfully arrested by virtue of a plaint before such a sheriff,
&c. doth not expressly shew that there was a good war-

Or that an indictment setting forth an arrest in such a
parlif and ward in London, by virtue of the liberties of London, doth not
expressly lay such parlif and ward within the liberties of
London. 9 Co. 67. 5 Co. 150. 2 Hark. P. C. 227.

Or that an indictment finding that J. S. existens of
such a trade, &c. as will bring it, does not shew in
what manner he was committed such a fact, does not expressly alleging that he was of such trade,
&c. at the time of the fact; for it fully appears from the
natural construction of the participle existens going before
the verb, to which it is the nominative case. Cro.
2 Lev. 229. 2 Lev. 378. 1 Rob. 832.

It is a good exception to an indictment of forcible
entry, finding that A. diflfeid B. of such land existens liberam tenementum of B. that it is not expressed at what
time it was his freehold; for it is fallly indifferen, accord-
ing to the common rules of construction, whether it was his freehold at the time of the difflfe, or at the
time of finding the indictment, the word existens being
applied only to the thing which was the subject of the
action, and not being the nominative case of the verb,
2 Lev. 229. 2 Mod. 129. 2 Hark. P. C. 228.

If one name or another of an indictment be repugnant to
another, or if the fact as laid be impossible or absurd, the
indictment is void; as where one is indicted for having
forged a writing, in which A. was bound to B. which is
impossible if the writing were forg'd; or for having dif-
feid J. S. of land; wherein it appears, by the
indictment itself, that he has no freehold; or for having entered
peaceably on J. S. and then and there forcibly diffeid him,
or for having diffeid him of land then being, and
for ever since continuing to be, his freehold, or for
having murdered J. S. at B. where by the indictment it
appears that J. S. was only wounded at B. and died at
C. or for felling iron with fafe weights and meafures,
whereby A. is not indicted, as fuppofing that iron could be
fold by meafure, but inconfiftent, in fuppofing that it was
fo fold, and yet at the fame time fold by weight; or for
being abfent from church fix months, between fuch and
such a time, which appears to have contained only
the space of eleven days; or for feloniously curving down
trees, &c. yet where the ftreap is clear, a small impropriety may
be dipofed with; as where one is indicted for having
moved unam armam fami, which is faid to be fufficient,
and yet that which was moved could not, at the fame
time of the mowing, in fine, be called hay, but grafs
only. 2 Hark. P. C. 228-9. and feveral authorities there cited.

Alfo a repugnancy in an indictment in fettling forth
the offence of the accufcry, is as fatal as it is in fettling
forth that of the principal; as where an indictment of
death having laid the froke on one day, and the death at

another, charges the accufcry with having abetted the
principal at the time of the felony only. 2 Hark. P. C. 229.

But where feveral are prefent and fett a fact, and
one only abftracts the murther, an indictment of the murther, the
fame as an appeal, either lay is as done by the
one, and abetted by the refl. 9 Co. 67. Plow. 57.

But if it barely charge a man with having been prefent,
it is void; because a man may be prefent innocently. 2
Hark. P. C. 229.

An indictment of J. S. as accufcry to four, by the
words, Scient ficeretur felonum praditci foretis ab
felonia receptavit, without adding esse, is naft; for it
appears not clearly how many of them he is charged to
have received. 2 Hark. P. C. 229.

Alfo an indictment of a confable for having voluntarily
and feloniously fcrved a perfon arrested by him upon
procifion of felony to ecape, without fhewing what the
felony was, and that it was actually committed, is faid to
be void by the uncertainty: But an indictment for
knowingly forfuring perfons convicted of felony to ecape,
is faid to be good, without fhewing expressly what the
felony was, or that it was committed, if the record of
convifion be fet forth with convenient certainty; for the
removes what the felony was, and that it was com-
mitted. 2 Hark. P. C. 229; and other authorities there cited.

It is holden by fome, that an indictment finding that
J. S. scienter receptavit J. D. being a felon, is not good,
without expressly fhewing that he knew him to be a felon;
but this, it is no fendicmment is good, and the plain
construction of the word scienter carries it thro' the whole
sentence. 2 Hark. P. C. 230; and other authorities there cited.

285, The indictment muft fit forth with certainly
the parties mentioned or referred to in it. The name
and addition of the party indicted ought regularly to be
inferted, and inferted truly, in every indictment; but
if the party be indicted by a wrong Christian name,
fnarnme, or addition, and he pleads to that indictment.
Not guilty, or answer to that indictment upon his
arrafement by that name, he &hall not be received after
to plead misnomer or falfity of his addition; for he is
concluded and effoped by his plea by that name,
and of that effope; the gaoler and fheriff that doth execution
fhall have advantage. 2 Hal. Hifl. P. C. 175.

But it is faid, that an indictment that the King's
highway in fuch a place is in decay, thro' the default of
the inhabitants of fuch a town, is good without naming any
perfon in certain. 2 Rol. Abr. 79. 2 Hark. P. C. 230.

Alfo it is faid, that no indictment can take any advantage
of a miftaken furname in the indictment, either by plea
in abatement, or otherwise, notwithstanding fuch furname
have no manner of affinity with his true one, and he was
never known by it. 2 Hark. P. C. 230.

And in this requift an indictment differs from an appeal,
whereof it is certain that a misnomer of a furname may
be pleaded in abatement as well as any other misnomer

Not only the misnomer of the name of baptism will
abate an indictment, but also the naming the defendant
Knight, &c. who is a baroner, and no knight, &c. or
the omission of a name of dignity; as where Garter King
at arms is not named Garter in the indictment; and for
of any other name of dignity, if precepts of outlawry lies
upon it. Hawk. P. C. 230; and several authorities there cited.

By the Common law, the party indicted could not
take advantage of a misnomer or the want of addition,
when the furname is given aoliain against the party's prefent.
and appearing to their view, there could be no injury by the
misnomer; alfo as felon generally go by no certain
name, and have no fixed habitation, it was thought hard
to find out their real names or proifions; but this was
altered by the statute 1 Hen. 5. c. 9. 5. which requires that
IND

that in all indictments, &c. the party indicted ought to have the addition of his mystery, degree, place and county.


The additions required by the statute are, that of his degree, a gentleman, esquire; of his mystery, as husbandman, tailor, sufferer, &c. therefore if the addition be only general, as servant, farmer, citizen, &c. or of crimes and misdemeanors only, as extortioner, vagabond, heretic, &c. there are no good additions. 1 Hal. Hist. P. C. 176.

But if this fact be done, the addition ought to be to the substantive name, and not to that which comes after the alias dictus, because regularly the addition refers to the last antecedent.


If several persons be indicted for one offence; minusse, or want of addition of all, quasheth the indictment only against one, and the rest shall be put to answer; for they are in law as several indictments; and so in trespas. 2 Hal. Hist. P. C. 177.

But in 2 Hal. Hist. P. C. 231, it is said that where several are indicted, and there is an omission of an addition as to one, it makes the indictment vicious as to all; for which is cited 10 Eliz. 18.

Not only the defendant, but regularly all other persons also mentioned in an indictment, must be described with convenient certainty; and therefore it seems to be generally agreed at this day, that an indictment for suffering divers persons, being agents of an affluence, or for dividing divers affluences without cause, or for taking divers sums of money of divers persons for such a toll, &c. without naming any bakers, &c. in particular, is sufficient.


But an indictment for murder evisfium igniti is good; and so for fleeling the goods evisfium igniti; so of an affluence in quominum, and if he be acquitted or convicted, and be afterwards indicted for an affluence of such a man by name, he may plead the former conviction or acquittal, and aver it to be the same person.


But an indictment quod invenit quondam hominem mortuem, as felonia furiarum of duas tunicas, without saying de bani & catalla evisfum igniti, is not good. 2 Hal. Hist. P. C. 181.

If the goods of a chapel be stolen, the indictment shall say bani & catalla evisfum in catalla profuprum; or if it be done in time of vacation, bani & catalla evisfum tempore vacatis; but if the goods of a parish church be stolen, as the bell, the books, &c. it shall run bani porcichianum de s. in catalla gaudianum ecclesiae, and shall not fuppothem bani evisfum. 2 Hal. Hist. P. C. 181.

The objection to an indictment for beftolen, the offender may be indicted quod bani tertiafus in catalla A. executoris ejusfum B. or it may be general bani ejusfus A. 2 Hal. Hist. P. C. 181.

If A. dying be buried, and B. opens the grave in the night-time, and flealeth the winding sheet, the indictment cannot fuppoth them the goods of the dead man, but of the executors, administrators, or ordinary, as the case falls out.


An indictment quod felonia, &c. evisfum quondam peciam pani evisfum f. s. without saying de bani & catalla evisfum f. s. was therefore qualified. Crw. Eliz. 490.


There is no need of an addition of the perfon robbed or murdered, &c. unless there be a plurality of perons of the same name; neither then is it effential to the indictment, tho' sometimes it may be convenient, for diftribution take, to add it; for it is sufficient if the indictment be thus laid down, as that one was killed or stolen, and there be among the many of the same name.


And it hath been adjudged, that an indictment of an affluence on Jahu, parrifh-quiet of D. in the county of C. is good without mentioning his surname; for the certainty of the perfon sufficiently appears. Keizat. 25. 2 Hal. Hist. P. C. 182.

But it seems that if such indictment had only described him by his name of baptizm without any farther addition, it had been too uncertain; yet the contrary feems to be held in Mun. ; however, it seems agreed, that a repugnancy or ambiguity in the defcription of the perfon injured will vitiate an indictment; as where one is indicted for fleeling kena, T. and no T. was mentioned before. 2 Hawk. P. C. 232-3.

Mun. 466. pl. 662.

It is not necessary to allege in an indictment of death, that the percy was killed in the peace of God. 2 Hawk. P. C. 233.

An indictment must set forth the thing wherein the offence is committed. An indictment which doth not with sufficient certainty set forth the thing wherein the offence was committed, is insufficient; as where one is indicted for having forged a leaf of certain hands, without mentioning them any certain parcel, or for having stolen bona & catta f. s. without describing them, or for having trespassed on two clofs of meadow or pasture, or for having diverted quandam partem aquae running from such a place to such a place, without any farther description, or for having ingoffed magnum quantitatum firminis & fami, or diversa cumula triuiti, without shewing how much of each, or for having carried away duas centenas cafii, without adding libras or uncias, &c. or for having erected several cottages contra fermam flatui, without shewing how many.


It is said to be most proper, in indictments of larceny and trespas on a living thing, to shew to whom the property of it belonged, by calling it the ex or horae, &c. of f. s. without using the words bani & catta; yet there are many precedents in books of good authority wherein this nicety is not observed. 2 Hawk. P. C. 234.

If the thing be movable, as a horse, cow, &c. it is said to be most proper to shew its worth by the word pretium; but if the thing be immovable, and consists of dead things, it ought to be ad valorem; yet this nicety is not necessary; neither is it clear that the worth of the thing stolen is required to be set forth in an indictment of larceny for any other purpose, than to shew that the crime amounts to grand larceny, and the better to ascertain the crime, in order for a reftitution, or in an indictment of trespas, for any other purpose, than to aggravate the crime. 2 Hawk. P. C. 235.

An indictment quod plurium evisfium 20 evisfus, matrizes & agnos, or matrizes & worveres, is not good, because it doth not appear how many of one sort, and how many of another; but 20 evisfus generally might have been good without the addition of things done or done, as in case of realevin or trespass.

But an indictment de quattuor rigidis & ciftis, Anglica cheffes and coffers, is good, because synonymous.


46th, Indictment must set forth circumstances of time and place. It is laid down as an undoubted principle in all the books that treat of this matter, that no indictment whatsoever can be good without precisely shewing a certain year and day of the material facts alleged in it.

2 Hawk. P. C. 235. and several authorities there cited.

As an indictment of death laying the affluence at a certain time, &c. do not appear in the clause of the stroke, or if it do not set forth the time of the death as well as of the stroke. 2 Hawk. P. C. 235. 2 Hal. Hist. P. C. 178.

So if any indictment lay the offence on an impossible day, or on a day that makes the indictment repugnant to itself, or if it lay done and the same day on different days, it is sufficient. 2 Hawk. P. C. 235.

As if A. be indicted quod priva die Maii & secunda die Maii appud D. he made an affluence upon B. & quandam peciam f. s. ad tare & hemin invent felonia evisfus, &c. and it is uncorrected and is f. s. It is an indictment good, because there are several days mentioned before, and it is uncertain it is clear that f. s. follow.
If it be indicted that he hya Sainth Petri anno 20
Car. killed Y. S. this is not good, because there are two
faijrs, S. Petar, and neither without addition, viz. 
St. Peter ad viva>i, and St. Peter in cathedra. 2 Hal.
Hift. P. C. 178.

The words adunh & ilkium in the subfquent part of an
indictment, are as effciucl as if the year and day men-
tioned in the former part had been expressly repeated.
2 Hal. P. C. 5-9

Also if it lay the faft on the Thursday after the faft of
Pentecost in such a year, or on the atas of Easter, &c.
(which sfall be taken for the eighth day after the faft) or
on the tenth of March last, (being afercarned by the
file of the forfams, &c.) it is as good as if it had expressly
named the day of the month, &c. 2 Hal. P. C. 236.

Also if an indictment charge a man with an omission;
&c. as not fcoining such a diet, it needs not fio-
any time. 2 Hal. P. C. 236.

So if an indictment charge a man with having done
such a miftake such a day and year, and on divers other
days, it is void only as to the facts alleged on the days
unceraitly set forth; but if it charge a man generally
with feveril offences at feveril times between such a day
and such a day, without laying any one at a certain day,
it hath been adjudged to be wholly void. 2 Hal. P. C.
236.

Yet it hath been folemly adjudged, that a convidion of
deer-flealing, fettting forth the offence between the 8th
and 12th of July, &c. is fufficient. 2 Hal. P. C.
236.

And in thefe cases it is laid to be moft regular to set
forth the year, by flying the year of the King; yet
this may be difpenfed with, for special reafons, if the very
year be otherwise sufficiently effcated for, that only in
material. 2 Hal. P. C. 236.

Every indictment at Common law muft expressly fioe
fome place wherein the offence was committed, which
muft appear to have been within the jurifduction of the
court in which the indictment was taken, and muft be
alleged without any fpecifical phrase; for if one and the
fame offence be alleged at two different places, or at B.
 aforefaid, where B. was not before mentioned, or if the froke
be alleged at A. and the death at B. and the indictment
conclude that the defendant fec felance carnivorii the de-
feated at A. the indictment is void. 2 Hal. P. C.
236.

So it is alfo, if it lay not both a place of the froke and
defh, or if any place fo alleged be not fuch from whence a
vifor may come; as to which it hath been adjudged, that
if a fact be alleged in a parish in London, with fome
other addition which sufficiently affures it, or in the
parish of St. Lawrence Jewry, it needs not fioe the ward.
2 Hal. P. C. 236. 9 Cc. 66.

Also in fome crimes no vill need be named, as upon
an indictment of barrely, because he is a barreter very
where, and it shall be tried de corpo comitatis. 2 Hal.

Subf in the margin, the indictment supposing a fact
done opus in com' pradiis, is good, for it refers to the

But if there be two counties named, one in the margin,
another in the addition of any part, or in the recital
of an act of parliament recited in the premises of the
indictment, the fact laid opus in com' pradiis vitiated the
indictment; because two counties are named before,
and it is uncertain to which it refers. C.s. Elia. 739. 2

Indictment again A. B. that he opus N. in com' pradi-
is' made an affiftit upon C. D. of F. in com' pradiis
C. D. is general, and fuch a thing to do a fuch
thing, need not fioe where the facts happened which
bring the defendant within the prohibition; as where it
is enacted, that it fiall be treason for a person born
within the realm, and in pofhif orders to remain here, &c.
in which case it is laid, that the indictment needs not
be fioed for the birth or ordination. 2 Hal. P. C.
237.

Also a mistake in evidence of the place laid in is no cafe
material, on Not guilty pleaded, if the faft be proved in
don other place in the county; but if there be no such
place in a county, as that wherein an offence is laid in
an appeal or indictment, all proceeds thereon is void, by
the fatutes of 6 Hen. 6, cap. 1. and 18 Hen. 6, cap.

5. Where the offences indicted may be laid jointly, and
where severally, and wherein both jointly and severally;
and where the offences of several persons may be laid in one
indictment.

Although the offences of severil persons cannot be but
feveral, because one man's offence cannot be another's,
but every man must answer for himself; yet if it wholly
arife from a joint act, which is in itself criminal,
as where feveral join in keeping a gaining-houfe, or in deer-
flealing, or maintenance, &c. the defendants may be
indicted jointly and severally; as, thus, Quod cytive-
runt & utere quorum cytivdum, or jointly only; for it
fufficiently appears, that if all are joined in fuch act, they
ought and therefore fome of them may each be convicted,
and fome acquitted. 2 Hal. P. C. 240.

But where the offences arise from a joint act, which
in itelf is not criminal, but may be fo by reafon of 
some personal defect peculiar to each defendant, as
where divers follow a joint trade, for which the law requires
a feveril years apprenticeship, in which cafe each trader's
particular defect, if in the joint act makes him guilty,
it fceems moft proper to indict them severally, and not
jointly, because each man's offence is grounded on a defeat
peculiar to himself. 2 Hal. P. C. 240-1. 2 Hal.

This reafon indictions have been qualified for
jointly charging severil defendants for not repairing the
fieets before their houses, or for taking inmates, or for
neglecting a day of fattiing appointed by proclamation;
and this is agreeable to the rule of law as to bringing
actions on penal ftutes, wherein severil defendants shall
not be joined, except it be in refept of fome one thing
in which they are jointly concerned; as where feveral
join in a fuit in the Admiralty on a covenant on land, or in
procuring or giving an untrnce verdict, &c. 2 Hal. P. C.
241. and several authorities there cited.

But yet where A. B. and D. were indicted for
erealing four feveril imps ad communa numentum, it was
adjudged, that two and fome offences of the fame nature severil
perfons may be indicted in the fame indictment, but then
it muft be laid feparaliter exreunt, and for want of that
word (feparaliter) the indictment was quaffed. 2 Hal.
P. C. 174.

Also it is laid in Hale to be common experience, that
20 persons may be indicted for keeping diversly houses
or bawdy-houses, and they are daily adjudged upon fuch
indictions, for the word feparaliter makes them several

Indictment, fetting forth, that the defendant made an
affiftit upon Sarah the wife of William Beatniff, and
Ethelinda Cook, and that he in fuch manner as they
beaten, wound and evil interest. After verdict pro rege, it was moved in arreft of
judgment, that there were two diftinct offences, and therefore
could not be laid in the fame indictment; and of
that opinion was the court, and the judgment was ar-

This defendant was indicted in one indictment for per-
jury, and four of them pleading were committed. It was
then moved in arreft of judgment, that crimes (especilally
perjury) were in their nature several, and two cannot
be indicted together. 2 Hal. P. C. 174.

Salk. 382. Polib. 11 Ges. 1. Rex
ona, ona 87. 1 Kd. 585, 612, 635. were
cited.
others for want of the words ad inspirand. pro Domino Regis & pro corporis comitatus; yet of late years exceptions of this kind have not been much favoured, especially if the indictment was in the inferior courts, and that which is omitted be, in common understanding, implied in what is expressed. 2. Hawk. P. C. 254.

Every such indictment must also be such as where the indictment was found, that it may appear to have been at a place within the jurisdiction of the court; and therefore if it be false, that the indictment was taken at a seifions of the peace, holden for such a county at B. without swearing in what county B. lies, otherwise than by putting in the county in the indictment; or if the whole be false, and held not to lie, the judgment was arrested.

6. What ought to be the form of a caption of an indictment, and where an indictment may be quashed.

The caption of the indictment is not part of the indictment itself, but it is the title or preamble, or return, that it is made from an inferior court to a superior, from whence a certiorari issues to remove it, or where the whole record is made up in form; whereas for the record of the indictment itself, the jurisdiction of the court wherein it is taken, is only thus: 'Juratores pro Domino Regis super inquisitione suam presentes, wherein this to be returned upon a certiorari, is more full and explicit. 2 Hal. Hist. P. C. 145.

Every caption of an indictment must flow that it was taken before a court which has a proper jurisdiction; and therefore if it flow only that it was taken before J. S. steward, without swearing to whom or in what court; or if the caption of an indictment flow, super eftamum curiam ; or if it were such for the diocese in which the indictment was taken, it is insufficient; but if it flow that he was a coroner in the county, it sufficiently flows that he was a coroner for the county; and if the caption of an indictment flow, that it was taken at the seifions of the peace of such a county, it sufficiently flows that such seifions was holden for the county; but if it only flow that it was holden in the county, it is false to be insufficient; so it is also if it omit the clause nec non ad diversa felantia, &c. or if it barely flow that the indictment was taken at a seifions of the peace, without swearing before whom, or without naming of the justices for what place their were justices; or if in describing them as justices ad pecem, &c. consenervat. omit the word officiant, and if it sufficiently flows that some of them were of the quorum, by flowing that the indictment was taken at a general seifions, and if it call them justices of peace, it needs not any farther to flow that they were justices of the King's peace. 2 Hawk. P. C. 254.

The caption of an indictment ad magnam curiam cum leva tent. is insufficient; but if it be ad magnam curiam & ad leman, or ad uif. franci pleg. cum cur. baren tent. perhaps it is sufficient; for since the court-baron has no jurisdiction over criminal matters, and the caption in these last cases is not expresses, that the indictment was taken at it, as it is in the first case, the court will in- tend that it was at the leet, which alone had power to take it. 2 Hawk. P. C. 254.

The not flowing in the caption of an indictment at a general seifions, without being holden by charter or pre- scription, is helped by the multitude of precedents. 2 Hawk. P. C. 254.

Every caption of an indictment ought to flow that the indictors were of the precinct for which the court was holden, and that they were twelve in number, and that they were of the justices, or naming for what place their indictments have been quashed for an omission of the names of the jurors; and others for want of the words pro & legitimum hominem; and others for want of the words advate & ibidem before jurat & onerat; and others for want of the words ad inspirand. pro Domino Regis & pro corporis comitatus.
bills vera. But this indentor not being figned, but being taken by the judges of the peace for a full indentor in both points, they allowed the same, but upon the condition, that in B. R. by certiorari, and the indentor returned as above, they award re-refilition. It was moved, that they ought not to regard the indentor, for the court did not fend for that, but only for the indentor; and this indentor makes it appear, that the indentor at the time of the indentor of the peace has done more than he was commanded to do. But per cur. The indentor is parcel of the indentor, and the perfection of it, and the court fent for the indentor, num disputis id tanger, and the indentor touches it principally; for it is the life of it. After this, the court is not the profes- sor ought to have preferred a new indentor for the forcible detainer only; for now, being made one entire indentor, and the jury finding only the laft, it is no indentor at all. Tho, 99. The King v. Ford & al. A lease may be determined by force of a condition indi- cated on the backside thereof, if it be before the enfealing and delivery, as well as by force of a condition within the deed. Cro. Jaz. 456. Mich. 15 Jaz. B. R. Griffin v. Stanhope. A devised lands to trustees for a term of 60 years, to pay legacies, remainder to B. his daughter in tail, &c. J. S. with consent of fons, married B. at 16. By marriage, fons of J. S. were covenanted to pay the legacies, being 1500 l. within five months after the marriage. And B.'s fons covenanted on her behalf, that B. when of age should fettle her eftate on J. S. for life, &c. And J. S. gave a statute and also a mortgage of his own eftate to secure payment of the legacies, and by inden- tor on the mortgage the fame was to be void, unless B.'s eftate was fettled on J. S. afterwards B. died an in- fant, the legacies not paid. It was held, that the in- dendor on the mortgage only was fufficient to discharge the statute and articles alfio, all being executed at one and the fame time, the fame witnesses, and part of the fame agreement, and all to be locked upon as but one conveyance. Hill, 1703. 2 Vern. 457. Laurence v. Blatchford. For indentor in notes and bills of exchange, see Bills of exchange. Indentor of a church, &c. See Endowment. Indenctor. Is what is alledged as a movin or in- cident to a thing; and in law is used specially in several cafes, vin. there is indentor to actions, to a traverse in pleadings, a fault or offence committed, &c. Indentures to actions need not have so much certainty as in other cafes: A general indentor is not fufficient, where it is the ground of the action; but where it is the object of the action, as in the common law, where a bill is brought to try a debt till a fuch a day, (for that the parties are agreed upon the debt) this being but a collateral promiffion, is good without having due how. Cro. Jaz. 548. 2 Mod. 70. In an action of false imprisonmen in London from the 10th to the 29th of September, defendant justifies that he was mayor and judge of peace in P. and that a robbery was done there, and the plaintiff suspected and brought before him, and because he seem'd fuspicious, he detain'd him in his house, during the time in the declaration men- tioned, to examine him and one J. S. who was not ap- preciated of the things committed. The defendant, upon the 29th of September, deliver'd him over to the new mayor, and traverfeth the imprisonmen in London; and adjudged upon demurrer, that the indentor to the traverse was not good; for a justice of peace cannot detain in prifon a person fufpicious, but during a convenient time of the examining of the party. He delivered him to the plain- tiff after three days, and within that time to take his examination, and fend him to prifon, and ought not to detain him as long as he pleads, as here he did 18 days; neither ought he to detain him in prifon in his own house, but to commit him to the gaol of the county; for other- wise, when the justice comes to detain him, the justice is not in the gaol, and may not be delivered, and so fould lie longer than is reafonable. See the flat of 5 Hen. 4. 10. 2 Ed. 4. 8. and here he took not an examination, but delivered him over without, which was not lawful; and therefore adjudged for the plaintiff. Cro. Ed. 829. Pafch. 43 Edin. C. B. Scouler. T. Tuxdon. In the case of a recognizance of bail on a writ of error of a judgment in debt given in C. B. conditioned, that if the plaintiff be nonsuit, the writ of error discontinued, or if judgment affirmed, then he should pay, &c, defendant prayed oyer, and pleaded that the plaintiff in the case of redemption, and in the case of the prifon, and all writs, et quod platicum per pricit? here where he is, is by error and indeterminatum, &c. the plaintiff replied, that the judge- ment was affirmed, abfque hisa quod platicum pendet in- determinatum, &c. defendant demur'd, and adjudg'd for the plaintiff in C. B. but upon error brought in B. R. and the indentor was then taken, which was a great error, because it makes that a matter of indifference, which he has here given a point in issue; and also, because the traverse puts a matter in issue to be tried by the country; and was going to revere the judgment, but an exception was flared to the writ of error, for which it was qualified. 2 Sales. 529. Pafch. 4 Ann. B. R. Forby v. Marrion. See Pleading, and 14 Fos. Abr. tit. Indenctor. Indenductor. A leading into. It is most commonly taken for the giving posifion to an incumbent of his church, by leading him into it, and delivering him the keys by the commiffary, or bishop's deputy, and by his ring of his own the bells. Croke Repl. 3 parts, fol. 25. 4 B. Blaftche. In eft, (mentioned in flat. 21 Jaz. cap. 2.) In being. The learned make this difference between things in eft, and things in poft, or potentia; but a thing apparent and visible, they fay, is in eft, that is, has a real being in fomni, whereas the other is casual, and but a fubjedion. As a child before he is born, or even conceived, is a thing in poft or which may be; if after he is born, he is faid to be in eft, or actual being. Cowell, edit. 1727. Indenwardus (Indenward,) A guard, a watchman, one fet to keep watch and ward..—In Eismarme Loft in Brifen- ne, hatbt Rex confentium feil. 1 cor. 14, & f1 fius An- gularum pro uno inewaio, & eus inics inewaio. mul- dii dominati au num inewaio & Dea dominii avestoi, & de Garra unum inewaio. Lib. Domedaiy Clenth. Quando Rex venatur infahat de unaqueq. doma per confed- timenam quin unus ad flabilitorum in finem. Alii hamin non bakenis integris mofaros inescabent inewaio, duographia reddantur in civitate.—Lib. Domedaiy. Here- fordhire. Infalilatus. This word occurs only in Ralph de Hengham, Summa parva, cap. 3. Vir commitem fOLUM quamquam fulfemum, uhbogatus, vel alia modo metri dominatus, vel demenfionem, vel sopul Deus infalilatus, vel opul San- ctificum, vel alio modo demenfionem, vel opul Dei, vel capitis, ut opul Northampen; vel in mari superlaudatum, fit in aliis partibus partum.—Mr. Sedles, in his notes on that author, says thus, "It appears that several cuftoms of places made in those days capital punishments several. But what is infalillatus? In regard of its being a cuftom used in a port town, I suppose it was made out of the French word fdlarce, which is fine fand by the wafer fide, or a bank of the sea. In this fand or bank it feem'd their execution at Dover was." The elaborate Du Frife condemns this derivation and this fene of the word, but yet gives no better. And therefore, till we have more au- thentic fources, it may be more fupposed, that the capital punishment inflicted on the sands or fea-fhores: Perhaps infalillatus was exprefing the malefactor to be laid bound upon the sands, till the next full tide carried him away; of which cuftom, if I forget not, there is fome dark tradition. However, I believe the penalty took this cuftom from the fands or fea-fhores, not only the sands, but rather the rocks and cliffs adjoining or impeding on the sea-fhore. Cowell, edit. 1727. See the like ufo of falfia in Mon. Angl. tom. 2. p. 155 b. Infamy. Which extends to forgery, perjury, grofs cheat, &c. difables a man to be a witnes or juic; but that a man can be in prifon, as he gives a good evidence. 2 Howk. P. C. 432, 433. Judgment of the pillory makes infamy by the Common laws; but by the Civil and Canon laws, if the caufe for which the prifon
Infangtheft, Dinfangtheft, or Infangtheft, is

compounded of three Saxon words; the preposition in,

fung or fong, to take, or catch, and theft, a robber: It

was originally the name given to those maga-
nors to judge any thief within their fee. Bracton,
lib. 3, tracts. 9. cap. 35, fay, Difangthefto latro
captus in terra aliena de hominis fals propriis, fejitis lateris.
Ufthangthefto uere dicunt latro externus, uenem
alieno de terra aliena & qui captus fuit in terris, qui
is libertus libertatis, &c. In the laws of Edward
the Confefler, fett out by Mr. Lombard, cap. 26, you have
it thus defcribed: Infangtheft, juftitia eruftius lateris
funt eft, de homine fuis, f captus fuerit super terram foam:
Litter uirt qui non beneficial constitutam cuem juftitia Regia
retinet fiant in b犬ed, &c. Infangthefto, i.e. quod la-
tra capto eft, cuftody in Dominio eft, fees prioris, & de lateris

It was fo necessary the thief fhould be taken in his
lordship, and with the goods floen, otherwise the lord had
not jurisdiction to try him for his court; but by the laws of
Edward the Confefler, he was reftained to his own
people or tenants, but may take any man who was
your man in his manor: the definition hereof fea in
Bracton, fol. 90, and Reg. Howden, part, after, Jur.
Annal, fol. 345. And Shenf de verb, fajuf, who write,
that the defcription of a fuch duty was the defcription
of a thief committing deflatyee theft. Fine, lib. 1, cap. 47, fays, Infangthefto (for he fowe it) defcriuer latro captus in terra aliena;
fejitis aliquo lateris de fui proprii hominibus, Stat. 1,
& 2 P. & M. cap. 15.

Infant, (Infans,) Before the age of one and twenty
years, a man or woman is called an infant in the law.
Co. an Litt. lib. 1, cap. 21. and lib. 2, cap. 29. An
infant of eight years of age or above, may commit bimicide,
and be hanged for it, viz. if it may appear by hiding the
perfon, by excufing, or by any other act, that he had
knowledge of good and evil, and of the danger of the
offence whereof he was capable. This is by the law to the
age of twelve years. Yet Co. an Litt. fett. 405, fays, That
an infant fhall not be punished till the age of fourteen, which
faies he, is the age of defcription. Canovil. edit. 1727.

1. The feral ages and periods diftinguished by the law
for feveral purpofoes.

2. Who are to be confidered as minors; and how for the
law regards and takes notice of infants in venture fa more.

3. How infancy is to be tried, of what public offices
and trufifs an infant is capable, and of what things he is ca-
apable for his own advantage.

4. Of the acts of infants as they are good, void, or void-
able, viz. contracts for necessaries, judicial acts, and acts in
pafis.

5. The feral ages and periods diftinguished by the law
for feveral purpofoes.

From the obervations made on the daily afftions of
infants, as to their arriving to defcription, the laws and
custums of every country have fixed upon particular
periods on which they are presumed capable of acting with
reason and defcription; in our law the full age of man
or woman is twenty-one years. 3 Boc. Abr. 118.

Therefore if one under the age of twenty-one years
makes his will, and thereby devises his lands, and after
attains the age of twenty-one years, and dies, without
making a new will, or confirming thereof, this devise is void.
Dyer 143. Rym. 84. 1 Sid. 162.

But tho' a perfon under the age of twenty-one cannot
deipofe of his lands, yet it is faid, that one under that
age may, pursuant to the statute of 12 Car. 2, cap. 24,
deipofe of the body of his infant child, and that fuch
deipofition draws after his land, &c. as incident to the
the cuftody. Fargh. 178.

Alo it feem, it was agreed, that an infant male at
fourteen, and female at twelve, may deipofe of their per-

fional estate at thofe ages: For herein the Common
law has appointed no time, being a matter cognizable in
the spiritual court, which herein proceeds according to
the Civil law, by which law infants at thofe ages are
premned to have fufficient defcription to make fuch di-
posifion; and as to their marriage, they are not to be
fett aside, or controlled in Chancery or the tem-
poral courts. 2 Med. 315. 2 Jones 210. Comb. 50.

The age of conflent to a marriage in an infant male
is fourteen, and in a female twelve; but they may marry
before, and if they agree therein, their marriage is not
be to be fett aside, or controlled in Chancery or the tem-
poral courts. 2 Med. 315. 2 Jones 210. Comb. 50.

But tho' the party above age may as well defcribe as
the other, yet it is faid that the party cannot do it before
the other arrives at the proper age: Alto it is faid to have
been adjudged, that if a man marries a woman that is
within the age of twelve years, and the woman at
eleven years of age defcribes to the marriage, and after
the husband takes another wife, and hath issue by her,
that this is a bastard; for the firft marriage continues not
withstanding the defcription of the woman; for tho'
the defcription at falling within the age of twelve years, and so
her defcription is void. Co. Lit. 79, 1 Roll. Abr. 341.

If a man marries a woman that is within the age of
twelve years, and after the feme covert within the age of
conflent defcribes to the marriage, and after the age of
twelve years marries another, now the firft marriage is
absolutely dillolved, fo that he may take an another wife; for
tho' the defcription within the age of confent was
not fufficient, yet her taking another husband after the
age of confent affirms the defcription, and fo the mar-
riage avoided ob iniur. 1 Rol. Abr. 341.

But for the better explanation hereof it may not be
proper to infer a cafe determined before the delegates,
which was thus:

Mrs. K. Fertrcrrar was married to my Lord Decius,
the being of the age of twelve years and a half, and he
of the age of eight; afterwards, the being thirteen years old,
did free from the marriage, and married Mr. Fillers;
and upon fuit in the Spiritual court the second marriage
was afirmed: The Lord Decius appealed to the delegates,
and it was argued by Civilians and Common lawyers
before the bishop of Llandan and Racheft, North Ch. J. 
Littleton Baron, Jones and Atkins Jullices, and several
Doctors of the Civil Law: The Chancery of the Civil
Laws could not contraft matrimony, but only supofitia futuris,
and therefore tho' they bind themselves per verba de pra-
fenti tempore, yet the law, by reason of the incapacity of
the parties, would make fuch a conftitution that it fiall
only be a contraft de futuro. In this cafe indeed, one of
the parties is of age of confent, but that makes no dif-
verity; for a contraft of matrimony is utroque obligatorius,
and reciprocal in its nature. On the other fide it was
faid, that fuch a contraft as this betwixt perfonli of
unequal ages might as well caducate as other contracts,
which are also utroque obligatorius; they faid, that a con-
traft of marriage carries a relation in itself, and is reci-
procal, but that in some cufes this may fail, by reason of
an accident or commonifcence in the perfon, notwithstanding
which the nature of the thing will remain to be utro
obligatorius, as we fee in other contracts; but ar-
gments from the definition of civil affairs are not cogent;
for no law can give birth to a new commonifcence and circiim-
cstances, but ought to be differently applied ac-
conaring the particular circumstances the require. The
law does not make contrats per verba de praefenti tempore
to be contras de futuro, but in cufes of minors, and they
cannot thrive in the law that contracts per verba de praef-
enti by majors, fhall be by conftruction made contracts
de futuro. The laws of God and nature require per-
formance of promifles and agreements; and the woman,
INF

in the present cafe, cannot differ from the husband come to the age of content, because till then he cannot differ no more than he can affent. Servanteys Magnæa. In our law, marriage between minors has the effect of a marriage till it be annulled; if the wife, at the time of marriage, be the husband of what age forever, and dower can never be, but where there was a precedent marriage, poffit cæta puniri causa; such a wife shall have an appeal of the death of her husband, and the husband in such a case shall have a right de morti abulae cum boni viri. If kept by him his heir under the age of content, and married, the lord cannot tender him to marriage, upon a difagreement, he being within age. Lit. and Afton, 5 Jac. 1. Where two within age had contracted matrimony, and the parent of one was bound to give so much at their age of content, if they would agree to this marriage: A fact cited in a recent work brought for that marriage, and it was found that within age they disfagreed, but at their full age agreed; and judgment was for the plaintiff, because the disagreement was not material. 1 Inst, 79. Banifhers versus Offey. Our law calls it matrimonium, although the term of fojuslita is not unknown to us; we find it in Plow. L. 6. Littlefield, 81. The doctrine is thus: to those who regard our law to have such a marriage, he cited 1 Inst, 33. 1 Rol. Abr. 340. Dyer 369. To prove that before age of content no agreement or disfagreement can be, Mar 575. 1 Rol. Abr. 341. 1 Inst, 79, and in the pleadings in 7 Co. Rep's cafe, and 6 Co. Abr. 102, and in the same to show how the law gives such credit to this inchoate marriage, that if the parties die but before it be avoided, the law will not say that it was null and void; and upon this ground the actes of dower and appeal which have been cited. The cafe in Dyer 369. is for the decree; for there, by the opinion of many doctors, quamvis sita fojuslita de fatis, tamen in causa adiat extenuand a al verum matrimonium rotione privileg. He cited 7 H. 6, 11. 6 Co. 22. And the sentence given in the spiritual court was affirmed. 3 Bro. Abr. 119, 120.

And as the age of fourteen is the age of content to a marriage in an infant male; so by law hath he several other ages affigled him to several purposes, viz. at the age of twelve, to take the oath of allegiance in the town or leet; at fourteen to be out of ward of guardian in focage, to chufe a guardian, and this is also accounted his age of dition; fifteen to have had aid per fair Finz Chevalier. Co. Lit, 98 b. Hob. 225. The principal guardian in every eyry did not determine till the heir, if a male, came to the age of twenty-one years; because it was presumed that till that age he was not capable of doing knight's service, and attending the lord in his wars. The guardianship of an heir female determined at fourteen at Common law, but by Stat, Woffinch the fifh, the lord had the wardship till the heir attained the age of sixteen, to tender her convenable marriage; but the authority of a guardian in focage, as has been faid, ceases at the age of fourteen, at which age the infant may call his guardian to an account, and may chufe a new guardian. Lit. fet. 103. Co. Lit, 75. 2 Inst, 358.

One within the age of twenty-one years may do bamage, but cannot do fealty; because in doing of fealty he ought to be sworn, which an infant cannot be. Co. Lit, 65 b. 2 Inst, 11.

An infant at the age of seventeen may be a procurator or executor; and in this both the Civil and Common laws agree. 5 Co. 29 b. Giff. Ex. 307. 1 Hal. Hift. P. C. 17.

Infancy is a good cause of refual of a clerk; also by the statutes 13 Eliz. cap. 12, and '13 & 14 Car. 2, none is to be admitted a deacon unless he be twenty-three at least, and a priest he be twenty-four. Comp. Inst, 142, 241, 254, Giff. Cod, 168, 3 Med, 67.

By the custom of Gavel-kind an infant at the age of fifteen is reckoned at full age to sell his lands; and this seems to have been taken from the Civil law, which reckons fourteen the ætus puberty; for they reckoned that though the infant had ended his two years of guardian-ship at fourteen, yet he might not have completed his account with his guardian till the age of fifteen, and that was esteemed to be the age when he was completely out of guardianship; and therefore at this age he was allowed to sell the lands dedicated to him. But in the civil law, when an infant was nineteen years of age, the Civil law does not allow of his ditions till the age of twenty-five; therefore this must have been allowed by the old Saxan law, because they thought that a great deal of time was lost, if the infant could only use his own without being able to dispose of it in a way of traf- ffs, and may be by law with a infant, twenty-five, and therefore they allowed the infant to sell, but under great limitations and restrictions, that he might not be defrauded; and by this means they thought there was sufficient prov- ision made for the necessity of commerce, in which the small divided flares was absolutely necessary. Lamb. 524.

Also by custom in some places, an infant freed of lands in focage may at the age of fifteen years make a lease for years, which shall bind him after he comes of age; for the custom makes fifteen his full age to that purpose. Co. Lit, 45 b.

Of the common law of London, an infant unmarried, and above the age of fourteen, though under twenty-one, may bind himself apprentice to a freewoman of London by indenture, with proper covenants; which covenants, by the custom of London, shall be as binding as if he were of full age. Mar 134. 2 Busl, 132. 2 Rep. 307.

As to capital offences, in which the law is the same with regard to the male and female sex, the age of fourteen is the common standard, at which both males and females are, by our law, obnoxious to capital punishments; for this being the ætus puberty, or of age of discretion, the law presumes them at those years to be dis- crete, and capable of disarming between good and evil; and therefore subjects them to capital punishments as much as if they were of full age. F. N. B. 202. Co. Lit, 247 b. Dali, cap. 95, and 104. 1 Hal. Hilt. P. C. 25. 1 Hook. P. C. 2.

But though the age of fourteen be the ætus puberty, before which our laws do not presume the party to be dolis capita, and therefore that a party indicted for a capital offence commited before those years is to be found Not guilty, yet hath this general rule the following tem- peraments. 1 Hal. Hilt. P. C. 26.

1. That if the party be above twelve, tho' under 14, and charged to be dolis capita, and could discern between good and evil at the time of the offence committed, he may be convicted, and undergo judgment and execution of death, tho' he hath not attained the age of fourteen; but herein, according to the nature of the offence and circumstances of the cafe, the judge may or may not in discretion relieve him, before or after judgment, in or- der to the obtaining the King's pardon. 1 Hal. Hilt. P. C. 26.

2. If an infant be above seven, and under twelve years, and commit a capital offence, prima facie he is to be judged Not guilty, and to be found so; but because he is sup- posed as of discretion to judge between good and evil: But yet if it appear, by strong and pregnat evidence and circumstances, that he had discretion to judge between good and evil, judgment of death may be given against him; for malitia fojuslita atata; but herein the circum- stances must be inquired of by the jury, and the infant is not to be convicted upon his confession: Also herein, my Lord Hale fays, that it is prudent after conviction to repite judgment, or at least execution; but he fays that if he be convicted the judge cannot discharge, but only reprimse him from judgment, and leave him it custody till the King's pleasure be known. 1 Hal. Hilt. P. C. 26.

3. If an infant within age be infra annas infaetra, viz 7 years old, he cannot be guilty of felony, whatever cir- cumstances proving discretion may appear; for ex empt fomentum juris he cannot have discretion, and no aver- ment shall be received against that preemption. 1 Hal. Hilt. P. C. 27, 28. Plut, 15, a.
INF

At Bury summer assizes 1748, William Lord, a boy of ten years of age, was convicted before the coroner of murder of a girl of about five years of age; and received sentence of death. But the Chief Justice, out of regard to the tender years of the prisoner, reprieved execution, till he should have an opportunity of taking the opinion of the rest of the judges; whether it was proper that he should be punished in the severest manner. There being great vacuity in the presence of the court, he was able to procure the attendance of the judges, and from the bench he was told that the question of his sentence would be considered as a matter of great delicacy. He spoke of the delicacy with which he was to be treated, and of the considerate conduct of his father, who was highly commended for his moderation and kindness. He was not, however, to be reprieved, but received sentence of death, and was ordered to appear before the court on the following day. The case was tried at Bury summer assizes 1748.

INF

2. Who are to be considered as minors, and law for the rights and regards and takes notice of infants in ventures a mere.

The privilege of infancy does not extend to the King; for the political rules of government have thought it necessary, that he who is to govern and manage the whole kingdom, should never be considered as a minor, incapable of governing himself and his own affairs. Ca. Lit. 43. Dyer 209. b.

Therefore if the King within age make any leaf or grant, he is bound presently, and cannot avoid them, either during his minority, or when he comes of full age. Plow. 213. a. 5 Co. 27. 7 Co. 12.

Of the King consent to an act of parliament during his minority, yet he cannot act without the advice and consent of the King, as King, cannot be a minor; for as King he is a body politic. Ca. Lit. 43. 1 Roll. Abr. 728.

Alfo the acts of a mayor and commonly shall not be avoided, by reason of the nonage of the mayor. Cr. Car. 557. 10 H. 2.

Although a Duke, Earl, or the like, be but a minor, or not above ten years of age, in the custody and in the family of another nobleman, who may and doth retain chaplains, yet he may qualify chaplains to be dispensed withal to hold two benefices with cure, in like form as if he was of full age. 4 Co. 119. Comp. Incumb. 22.

An infant in general shall have no copyright, and all other privileges of the infant at Common law; because though he hath the privilege of alienation at fifteen, yet that doth not take from him any privilege he had before at Common law. 1 Roll. Abr. 144.

A bastard being implied he have his age; for the dilatory plea must be determined before the plea in chief can come on; so that the plea of infancy will play the fury, before it can be inquired whether he is or is not a bastard. Ca. Lit. 244. b.

A child in ventre a mere may be appointed executor, though it may take a legacy; also if there are two or more at a birth, they shall be joint executors on the interest of the thing bequeathed; for the Civil law, for the benefit of the infant, repuets a child in his mother's womb in the same condition as if it were born. Gedolph. Obsc. Leg. 102. Y y y

If with impunity. There are many crimes of the most heinous nature, such as in the present cafe the murder of young children, and the like; which, children are very capable of committing, and which they may in some circumstances be under strong temptations to commit; and therefore, tho' the taking away the life of a boy of ten years old may appear on the face of it, yet as the example of this boy's punishment may be a means of deterreing others from the like offences, and as the sparing this boy merely on account of his age will probably have a quite contrary tendency, in justice to the publick, the law ought to take its course, unless there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderness and caution, advised the Ch. Juft. to send another reprov for the prisoner; suggesting, that it might possibly appear on further inquiry, that the boy had taken this matter upon himself, at the instigation of some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly, the Chief Justice did grant one or two more reprievs; and defined the judge who took the boy's examination, and also some other persons in whom prudence he could, to make the first inquiry they might into the affair, and make report to him. And he again underwrote, that if anything like, determined to fend no more reprievs, and to leave the prisoner to the justice of the law at the expiration of the lat. But before the expiration of that reprov, execution was refipted till further order, by warrant from one of the Secretaries of State. And at the summer assizes 1757, he was benefited of his Majesty's pardon, upon condition of his entering immediately into the sea-service. Potter's Crown Law 70.
If there be bastard issue by either party, and the bastard enters, and dies before, the issue shall inherit the land, and exclude the mother for ever; but in such case if the bastard had died leaving issue in ventre sa mère, and the mother had entered, and then is born, yet cannot be entered upon the mother: And hereunto a father's issue by a freehold estate requires an immediate defect, which cannot be before the person is in esse; also by our law the freehold cannot be in abeyance. *Co. Litt. 244.

It appears to have been a matter of much controversy, whether a devise of lands to an infant in ventre sa mère be good, for it is not in being to take at the time of the death of the devise; and since, as some say, by the devise the person is to take immediately after the death of the devise, the freehold cannot be put in abeyance by the gift of the parties; but others hold, that such devise is good, that the infant be not in esse at the death of the devise, and that the freehold shall not be in abeyance, but shall descend to the heir at law in the mean time. *Hun. 6. 13. Bro. Deuey 32. Mar. 177, 637. *2 Bull. 273. *Cra. E. 423. *1 Lew. 135. *1 Sid. 153. Raym. 163. *1 Ker. 85. *1 Sid. 231. *2 Mod. 9.

But however all the books agree in this, that a devise to an infant when he shall be born, or when God shall give him birth, is good as an executory devise, and that the freehold shall descend to the heir at law in the mean time. *1 Sid. 153. *1 Lew. 135. Raym. 163. S. C. Snow and Cutler.

So it is clear, that if land be devised for life, the remainder is to be taken by a meddlesome child, that this is a good contingent remainder; because there is a person in being to take the particular estate; and if the contingent remainder vests during the continuance of the particular estate, or of infant that it determines, it is sufficient. *Mar. 657. Church and Wat. *3 Lew. 458. *4 Mod. 359. *1 Sid. 233. 27. 9, 10, 11. Rule 5 W. C. 3. 16. and Reimbursements.

Also it seems agreed, that a man may surrender copyhold lands immediately to the use of an infant in ventre sa mère; for a surrender is a thing executory, and nothing vests before admittance; and therefore if there be a person to take at the time of the admittance, it is sufficient, and not like a grant at Common law, which putting the estate out of the grantor must be void, if there be no-body to take. *1 Roll. Rep. 100, 138. *2 Bull. 273. *Cra. Cyth. 9, and see *F. Car. 637.

If an usufruition be had on one in ventre sa mère; at the next term after his birth, he shall be relieved on the statute of *W. Hil. 2. c. 5. *Hib. 240.

3. How infancy is to be tried, of what public offices and rights an infant is capable; and of what things he is capable for his own advantage.

Infancy is to be tried by inspection of the court, or by jury: And herein it is laid down as a rule in some books, that wherefoever it is alleged upon the pleading, that the party was and yet is under age, there it shall be tried by inspection; but where the infant is of full age at the time of the plea, there it shall be tried per *patiam. 1 Lew. 142. *1 Sid. 321. *1 Ker. 709. *Cra. Jac. 59, 581.

But here we must observe, that as to judicial acts, he either is an infant by the court of record, and which he is allowed to avoid, the trial thereof must be by inspection; and therefore if an infant leaves a fine, he must reverse it by writ of error; and this must be brought during his minority, that the court may by inspection determine the age of the infant; but the judges, as by *advocata, may in such cases inform themselves by wit- nesses, church books, &c. *Cra. Lit. 386. *Mar. 76, b. 12. *Abir. 15, *2 Abir. 483, *Bull. 320. *2 Co. 122. 1441.

If an infant brings a writ of error to reverse a fine for his non-age, and, after inspection and proof of infancy by witnesses, dies before the fine is reversed, his heir may reverse it; because the court having recorded the non-age of the coowner, ought to vacate his contract when he appeared to be under a disability at the time he entered into it. *Cra. Lit. 385. *Mar. 884. *Kekuit's cafe.

An infant acknowledged a fine, and the conuizes omitting to have the fine ingrossed till he came of age, and the infant from bringing a writ of error; yet the court upon view produced by the infant, and upon his prayer to be inspected, and his age examined, recorded his non-age, to give him the benefit of his writ of error, which he must otherwise lose, his non-age determining before the next term. *Abir. 12. *Cra. Lit. 230, 231.

So if an infant suffer a common recovery by appearing in person, this must be reversed during his minority by inspection of judges.

But it is said, that if an infant suffers a recovery, in which he appears by attorney, he may reverse it after his full age, as it may be discovered whether he was of age when the recovery was suffered; because it may be tried per *patiam whether the warrant of attorney was made by him when he was an infant. *1 Sid. 321. *1 Lew. 142.

It is said, that in all causes where the party pleads that he was within age at his, and alleges a place, that there the trial may be well enough where it is alleged; where no place is alleged, there in personal actions where the writ is brought, and in real actions where the right of the land depends upon infancy, there the trial is to be where the land lies, and if not, where the action is brought. *Sed. 10, 11. *Cra. E. 88 & 89. *8 P. *D.

For an infant enters into a recognizance of 100l. as bail to *J. S. which became forfeited, and he taken in execution, his age, and that he was bound, and thereupon he brought an auditia querela, fortifying his infancy, and the writ being brought into court, he appeared in persona per persona; and it was moved, that he might be inspected, and his witnesses examined, and therefore his mother presumptuously depose, that at that very time he was twenty years old, and no more, and a maid servant gave circumstantial evidence to the same purpose; and it was moved, that he might be bailed: But per *curiam, it is a matter of discretion either to admit him to bail, or to refuse it, he being in execution; but if he had brought his auditia querela before it had been taken in execution, he must have had a superfluous course, and the court would not bail him, tho' the long vacation was near, but required the evidence to be strengthened by a copy of the register where he was born, which being in *Torbright, he appeared again in *Adolphus temeris in custodia, and a copy of register was produced, and sworn to be a true copy, and the mother and the maid being again sworn, and all agreeing in the same thing, he was discharged by the court. *C. 279. *Trin. 5 W. 3. *Lloyd v. *Eagle.

As to what offices and trusts an infant is capable: he frequently acts in offices as do not concern the admin- istration of justice, but only require skill and diligence; and there it seems he may either exercise himself wholly of the age of discretion, or they may be exercised by deputy; such as the offices of park-keeper, forester, gosler, *Geland. 379, 381. *9 Co. 48, 97. See *Co. Litt. 231.


If an infant, being master of a ship at *St. Christopher's island, under another contract with another, undertakes to carry certain goods from *St. Christopher's to *England, and there to deliver them; but does not afterwards deliver them according to agreement, but waives and con- fuses them, he may be sued for the goods in the court of Admiralty, though he be an infant; for this suit is but in nature of a detinue, or trover and conversion of the
the Common law. 1 Rol. Atr. 530. Forester and Smith, and a prohibition denied to the court of Admiralty.

If an keeper keeps an common, an action on the cause upon the custom of inn will not lie against him. 1 Rol. Atr. 2. Carth. 161. cited.

So if an infant draws a bill of exchange, yet he shall not enter, and not make bond, what he has or does, but he may plead infancy in the same manner that he may plead any other contract of his. Carth. 160, Williams v. Harrifin. adjudged on demurrer.

An infant cannot be a juror; and it is said by Hibbard, that this the will of the common law a person under age could not be on a trial for false pretences, because he then tried a matter which might have happened before he was twenty-one. Hcb. 325.

An infant, or one under the age of twenty-one years, cannot be elected a member of the house of commons; nor any of lord of parliament sit there until he be of the full age of twenty-one years. 2 Ind. 47.

An infant is capable of inheriting, for the law presumes him capable of property; also an infant may purchase, because it is intended for his benefit, and the freehold is in him till he discharge thereof, because an agreement is presumpted, it being for his benefit, and because the freehold cannot be in the grantee, contrary to his own act, nor can be in abeyance, then for a stranger would not know against whom to demand his right; and if at his full age the infant agrees to the purchase, he cannot afterwards avoid it; but if he dies during his minority, his heirs may avoid it; for they shall not be bound by the contract of a person who wanted capacity to contract. 2 Cr. Lit. 2. 8. 2 Inst. 203.

If an infant take a lease for years rendering rent, if he enter upon the land he shall be charged with an action during his minority, because the purchase is intended for his benefit; but he may wave the term, and if more rent be referred upon the lease than the land is worth, he may avoid it. 2 Busb. 69.

If an infant be a lord of copyhold manor, he may grant copyholds notwithstanding his non-age; for these effects do not take their perfection from the interest or ability of the lord to grant, but from the custom of the manor, by which they have been demised, and are demesne time out of mind. 4 Cr. 23. b. Co. Copyholder 79, 107. Noy 41. 8 Co. Ds.

An infant may preent to a church; and here it is said, that this must be done by himself, of whatsoever age he is, he cannot be done by another, for the guardian can make no advantage thereof, and consequently has nothing therein whereby he can give an account, and therefore the infant himself shall present. Co. Lit. 17. b. 89. a. 29 Ed. 3. 5. 3 Inst. 156.

Of the act of infants as they are good, void or voidable, viz. contracts for necessaries, judicial acts, and acts in pais.

Contrasts for necessaries. Here we must observe, that, strictly speaking, all contracts made by infants are either void or voidable, because a contract is the act of the understanding, which during their state of infancy they are presumed to want; yet civil societies have so far supplied that defect, and taken care of them, as to allow them to contract for their benefit and advantage, with power, in most cases, to rescind and vacate it when it may prove prejudicial to them; but in this contract for necessaries they are absolutely bound, and this likewise is in bellignity to infants, for if they were not allowed to bind themselves for necessaries, nobody would trust them, in which case they would be in worse circumstances than persons of full age. 10 H. 6. 14. 18 Ed. 4. 2. 1 Rol. Atr. 729.

Therefore it is clearly agreed by all the books that speak of this matter, that an infant may bind himself to pay for his necessary meat, drink, apparel, necessaries, and such other necessaries, and likewise for his good teaching and instruction, whereby he may profit himself afterwards. Co. Lit. 172. a. 57.
 INF

If an infant leaves a fine, and the conveyance renders to him either for life or in tail, it is said that he shall have no writ of error to affect this fine; because the reversal of this fine being only to restore him to the land upon which it was made, with the fine, it would be fruitless to give him a writ of error, since he could not thereby be restored to the land which the fine itself, which he would endeavour to revere, had before given him. *Mol. 74.*—But quae.

As to remonstrant is by infant, when there were imposed into a common way of conveyance, it is thought reasonable that thole, whom the law had judged incapable to act for their own interest, should not be bound by the judgment given in recoveries, tho' it was the solemn act of the court, for where the defendant gave a promise he judged that it was as much as himself act and conveyance, as if he had transferred the land given or any other act in pais; and therefore if an infant suffers a recovery, he may reverse it as he may a fine, by writ of error, during his minority: And this was formerly taken to be law, as well where the infant appeared by guardian as by his attorney, or in peril: But now the infant, having been made capable by the court, and appearing in a cause, shall have the advantage, as if he had appeared by guardian, and to suffer a recovery, or come in as a vouchse; but this too is seldom allowed by the court, unless it be upon emergencies, when it tends to the improvement of the infant's affairs, or when lands of equal value have been settled on him, and when he has had the King's Peace Seal for issuing to him the land, the conveyances have been allowed and supported by the judges, and the infant could not set them aside or vacate them; besides, if such recoveries be to the prejudice of the infant, he has his remedy for it against his guardian, and may reimburse himself out of his pocket to whom the law had committed the care of him. *Rell. Ab. 735.*

A partition by deed De partitions faciendo binds infant, because the infant is a judge in a court of law, to which no nullity can be imputed. *C. Lit. 171.*

If an infant acknowledge a recognizance or statute, it is only voidable; and the infant at his peril must avoid them by *audita querela,* as he must a fine or recovery by writ of error during his minority; for such conveyances or other acts of record become obligatory and unavoidable, if they be not set aside before the infant comes of age; the reason is, because these contracts being entered into under the inspection of the judge, who is supposed to do right, the infant cannot against them aver his disability; but must reverse them by a judgment of a superior court, and the inspection has the same means to declare whether the inferior jurisdiction did not in such contracts that first received the contract. *Reg. pl. 206.*

If an infant bargain and sell his land by deed indented and sealed, yet he may plead non-age; for notwithstanding the 27 Hen. 8, c. 46, makes the indulgence in a court of record necessary to complete the conveyance; yet the bargainee claims by the deed as at Common law, which was, and therefore is still defeasible by non-age. *2 H. 7.*

After *mutatis mutandis,* the infant is regularly allowed to refund and break through all contracts in pais made during minority, except only for schooling and necessaries, be they ever so much to their advantage; and the reason hereof is, the indulgence the law has thought fit to give infants, who are supposed to want judgment and discretion.
all face benefit or semblance of benefit to the infant; but as to those from which the infant may receive benefit, and which were entered into with more solemnity, they are only voidable; that is, the law allows them when they come of age, and are capable of considering over again what they have entered into, to consent to continue, or to break through and avoid them. Co. Cas. 502.

Afo the feoffment of an infant is not void, but only voidable, not only because he is allowed to contract for his benefit, but because that ought to be some act of notoriety to restore the possession to him, equal to that which he contracted from him. Co. Litt. 330.

Therefore if an infant make a feoffment and livery in person, he shall have no assise, &c. but must avoid it by entry; for it is to be preferred in favour of such solemnity, that the assembly of the part then present would have proceeded it, if they had perceived his non-age, and therefore the feoffment shall continue till defeased by entry, which is an act of equal notoriety. 8 Co. 42. Brul. tit. Diffinit. 63.

But if the infant had made a letter of attorney to deliver feoffin, he might have an assise, &c. because the letter of attorney, like all other acts or agreements made by an infant, he must be void; and therefore whoever claims under it, or by virtue of its authority, must be a wrong-doer. 2 Rot. Abr. 2. No 130.

Palm. 237.

Also as to the acts of infants being void or voidable, there is a diversity between an actual delivery of the thing contracted for, and a bare agreement to deliver it only; that the first is voidable, but the last absolutely void; as if an infant deliver a horse or a sum of money with his own hands, this is only voidable, and to be recovered back in an action of account. Perk. &c. 12. 19. 1 Rot. Abr. 173. 2 Rot. Abr. 408.

Late it is said, that if an infant agrees to give a horse, and does not deliver the horse with his hand, and the donee take the horse by force of the gift, the infant shall have an action of trepass; for the grant was merely void. Perk. &c. 12. 19. 1 Med. 137.

In trepassos quos vic et amas in infinitum facis, & tenuam crimin amovitis, the defendant duos ulterius dictus Annam defendere & defendendi; and upon the demurrer to this plea the court directed judgment for the infant, and in consequence the tenant unlawful, and gave judgment accordingly for the plaintiff. Mich. 26 Car. 2. Anna Sr. 

And as an infant is not bound by his contract to deliver a thing; so if one deliver goods to an infant upon a contract, &c. knowing him to be an infant, he shall not be chargeable in trover and conversion, or any other action for them; for the infant is not capable of any contract, but for necessaries; therefore such delivery is a gift to the infant: but if an infant without any contract willfully take the goods of another, trover lies against him; also it is said, that if the infant be under pretence that he is of full age, trover lies; because it is a willful and fraudulent trover. 1 Ed. 129. 1 Lev. 169. 1 Keb. 905. 913.

Also it seems that if an infant, being above the age of discretion, be guilty of any fraud in affirming himself to be of full age, or if by combination with his guardian, &c. be made any contract or agreement with an intent afterwards to elude it, by reason of his privilege of infancy, that a court of equity will decree is good against him according to the circumstances of the fraud; but in what cases in particular a court of equity will thus exert itself is not easy to determine. Vide 1 Vern. 132. 2 Vern. 4235.

Alfo notwithstanding the disability of an infant to contract, by the 7 Ann. cap. 19, it is enacted, 'That it shall and may be lawful for any person under the age of twenty years, by the direction of the High court of Chancery, or the court of Exchequers, signified by an order made upon behalf of the parties concerned, on the petition of the person or persons for whom such infant or infants shall be seised or possessed in trust, or of the mortgagor or mortgagees, or guardian or guardians of such infant or infants, or person or persons intituled to the monies secured by or upon any lands, tenements or hereditaments, whereby any infant or infants are or shall be seised or possessed by way of mortgage, or of the person or persons intituled to the redemption thereof, to convey and assure any such lands, tenements or hereditaments in such manner as the said court of Chancery, or the court of Exchequer, shall by such order so to be obtained direct, to make such conveyance or conveyances, assurance or assurances as afoforefaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust estates or mortgages.'

How an infant is to bind himself by a contract to live in the plantations, 4 Ges. 1. e. 11. fett. 5. See Coppelhol.

How an infant is to be admitted to a copyhold, and how compellable to pay his fine, 9 Ges. 1. e. 29. See Coppelhol.

For more learning on this subject, see 3 Bac. Abr. tit. Infancy and Age, and 9 Vin. Abr. tit. Infant.

Infants, when of age. An infant has been adjudged of age the day after he shall have attained the age of twenty-one years, unless, that it is proved to the satisfaction of the court, that he does not understand the nature and use of money, and is not capable of distinguishing between good and bad, nor able to keep account of his affairs, or to keep counsel with men of integrity and experience; and the court shall, in such case, make such order as they shall think fit, for his welfare. Ed. Rom. 480.

And it is further enacted by the said statute, 'That all and every such infant and infants, being only trustee or trustees, mortgagee or mortgagees, as afoforefaid, shall and may be compellable, by such order so as afoforefaid obtained, to make such conveyance or conveyances, assurance or assurances as afoforefaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust estates or mortgages.'

How an infant is to bind himself by a contract to live in the plantations, 4 Ges. 1. e. 11. fett. 5. See Coppelhol.

How an infant is to be admitted to a copyhold, and how compellable to pay his fine, 9 Ges. 1. e. 29. See Coppelhol.

For more learning on this subject, see 3 Bac. Abr. tit. Infancy and Age, and 9 Vin. Abr. tit. Infant.

Infants, when of age. An infant has been adjudged of age the day after he shall have attained the age of twenty-one years, unless, that it is proved to the satisfaction of the court, that he does not understand the nature and use of money, and is not capable of distinguishing between good and bad, nor able to keep account of his affairs, or to keep counsel with men of integrity and experience; and the court shall, in such case, make such order as they shall think fit, for his welfare. Ed. Rom. 480.

And it is further enacted by the said statute, 'That all and every such infant and infants, being only trustee or trustees, mortgagee or mortgagees, as afoforefaid, shall and may be compellable, by such order so as afoforefaid obtained, to make such conveyance or conveyances, assurance or assurances as afoforefaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust estates or mortgages.'

How an infant is to bind himself by a contract to live in the plantations, 4 Ges. 1. e. 11. fett. 5. See Coppelhol.
In courts of piepowder the plaintiff shall swear that the cause of action accrued within the time and jurisdiction of the fair, 
17 Ed. 4. c. 2. 1 Ric. 3. c. 6.
The consideration of amoffmt must be laid within the jurisdiction of an inferior court, but the promise need not. 
Ld. Raym. 211. 
In fe jure judicis, a judgment of an inferior court, removed by certiorari, the plaintiff must pray execution within the limits, otherwise on a writ of error. 
Ld. Raym. 216.
Justification by procès of an inferior court, is not avoided by the fact that the cause of action arose out of the jurisdiction. 
Ld. Raym. 230.
No prohibition to an inferior court for proceeding in a cause arising out of their jurisdiction, till that matter has been pleaded, 
Ld. Raym. 346.
An inferior court refuses to give costs of a nonuit; the King is by writ De execution judicii, and not by 
mansueta, Ld. Raym. 248.
Misdemeanors in inferior courts are punishable in 
B. R. Ld. Raym. 556.
Attachment against a bail for setting judge in his own cause, or for misdemeanors himself between parties. 
Ld. Raym. 766.
To cause in negligence keeping a horse within the jurisdiccion, by which he was abused, the abuse need not be known to have been within the jurisdiction. 
Ld. Raym. 756. 1040.
Ought to give judgment express upon the point in issue, that he be acquitted, 
Ld. Raym. 892.
The several forts of inferior jurisdiction, conscience of plea, and exempt jurisdiction. 
Ld. Raym. 896. 837.
The judgment of an inferior court must be entered, per eandem curiam. 
Ld. Raym. 895.
A habeas corpus does not remove the cause, as a remo- duria or certiorari do, and the plaintiff may vary in his declaration, but then he discharges the bail. 
Ld. Raym. 1102.
Judgment of an inferior court reversed for want of the averment, that the cause was within the jurisdiction. 
Ld. Raym. 1310.
A court held before the under-survey secundum con- factualitatem, &c. without setting forth the context, and well. 
Ld. Raym. 1543.
The value received in a promissory note need not be averred within the jurisdiction, nor the monies due in a stated account. 
Ld. Raym. 1555.
Inferior courts cannot grant a new trial. 
Stran. 113. 306.
Have been allowed jurisdiction in cases similar to those where they have jurisdiction. 
Stran. 256.
May set aside proceedings for irregularity or forspire. 
Stran. 391.
May set aside a verdict for irregularity. 
Stran. 499.
The King's Bench cannot reverse a fine set by an inferior court. 
Stran. 786.
The King's Bench cannot set a fine on a conviction by jus tices of the peace. 
Stran. 794.
The items in a stated account need not be laid under jurisdiction. 
Stran. 827.
It is not a good counsel, for an inferior court to award a fals de circumstantiis. 
Stran. 841.
The King's Bench will not punish by attachment a contempt of an inferior court. 
Stran. 567.
Judgment reversed, because the mayor appeared to be interested. 
Stran. 639.
Infinita (Infinitas). 
Heathens; who may not be witnesses by the laws of this kingdom, because they believe neither the Old or New Testament to be the word of God, on one of which, oaths must be taken. 
1 Isl. 6. 2 How. P. C. 434. See Tulliae.
Infinity of actions. The lord of the fole may have a special jurisdiction against him who Shall dig coal in the King's highway. But one subject cannot have his action against another for common nuisances; for if he might, then every man would have it, and so the actions would be infinite. 
2 Co. Isl. 56. 9 Rep. 113.
Infirmary (Infirmary). In monasteries, there was an apartment allotted for infirm or sick persons; and he who had the care or custody of this infirmary, was called 
In fumna pacis. When any man that has a just cause of suit either in the Chancery, or any other the courts of common law, will come either in the Lord Keeper, Master of the Rolls, either of the Chief Justices, or Chief Baron, and make oath, that he is not worth five pounds, his debts paid; either of the said judges will, in his own proper court, admit him to sue in fumna pa- curis, and he shall have counsel, clerk or attorney aligned him in his suit, without paying any fees. 
Cawell, edit. 1777. See fumner.
Information for the King, (Informatio per Regem). Is the name that for a common person we call a declaration, and is not always done directly by the King or his attor- ney, but sometimes by another, qui feipsum tam pro De- cuo quam pro privato pretio suscipient, which is upon this by the court of king's bench, or by the action of 
West. 1285. 465. 6. 1 South. 1285. 465. 6. 1 South.
brought for offences against statute, whether they be
mentioned by such statutes or not, unless other methods
of proceeding be particularly appointed, by which all
others are impliedly excluded. But for this see Actions
Quis Quant, or Actions on penal statutes.
4thly, informations in the nature of informations may
be instituted by any person, by leave of the court,
for suppressing priv ligies, franchises, &c. which in some
respects is a civil suit, as it is used as a proper means to
try a right, tho' it punishes the misdemeanor, such as the
ufepration, &c.
1. In what cases an information will lie.
2. Of filing an information; how it is to be laid; the
proceedings thereon, and the preremum made relative thereto
by statute.
3. In what cases an information will lie.
Here we shall lay down what has been collected by
seargent Haukins, and is, as he says, every day's practice,
agreeable to numberless precedents, viz. either in the
name of the King's Attorney general, or of the Master
of the Crown-office, to exhibit informations for bater-
ties, cheats, seducing a young man or woman in order to
marry them against their consent, or for any other wicked
purpose, stirring up a child to the plants, recepting perfons from legal ar-
refts, perjuries, and subornations thereof, forgeries, con-
spiracies, (whether to accufe an innocent person, or to
improve a certain fact of lawful traders, &c. on or to
secure a verdict to be unlawful given, by causing perfons bribed for that purpose to be sworn on a talius,
and other such like crimes, done principally to a private
person, as well as for offences done principally to the King,
as for libels, fraudulent words, riots, false news, or
disturbing or suborning any officers in the King's service,
as in not repairing highways, or obstructing same, or
fopping a common wort, &c.) contempt, as in departing from the parliament without the
King's licence, disobeying his writs, uttering money
without his authority, escaping from legal imprisonment
on a prosecution for a contempt, neglecting to keep
watch and ward, abusing the King's commimion to the
opposition of the subject, making a return to a mandamus
of matters known to be false, and in general any other
offences against the public good, or against the first and
obvious principles of justice and common honesty.
3 Bac. Abr. 166. 2 Hawk. P. C. 260. and several au-
thorities were cited.
An information was exhibited against D. an attorney
of C. for speaking scandalous and reproachful words of Sir John Kay, knight of the shire for the county of York,
and a justice of peace, &e. concerning his said office of
justice of the peace, and the excercising thereof; and upon
demurrer to this information it was argued, that it would
not lie for scandalous words spoken only of a particular
perfon, because he might have an action on the cafe
recompense him in damages; tho' it was admitted, that
such a proceeding might be warranted for libels, or for
dispering defamatory letters, because by such means the
public peace might be disturbed, and disorders fostered
among neighbours, which might at last be a public
injury, but that there was no such mischief in the present
case. On the other side it was insisted, that this in-
formation was founded on sufficient matter, because this pro-
secution is not only as it respects the person of Sir John
Kay, but it as such a public right, and one who is subordinate to the government, and there-
fore such defamatory words are a reproach to the supreme
government, by whom magistrates are intrusted, and from
whom they derive their authority, and it will not be de-
ned but that words reflecting on the public govern-
ment or this house is a proper libel by informa-
tion; and for this reason the court held that an infor-
mation would lie, and thereupon gave judgment against
the defendant, and fined him an hundred marks. Carth. 14, 15. The King v. Darby.
An information was exhibited by the Attorney general
for conspiring to destroy the King's revenue of the excise;
An information was filed against a poacher for suffring one taken upon an exom. and tried to go at large. 12 Med. 634; Med. 12 Ed. 3, 2 Ann.

An information was filed against certain perons for that, as enemies, &c. to the government; hired a boat during a war with France, in order to go thither, intending to aid and assist the King's enemies, though they did not pretend to the defendant's that his sld servant was fauey and gavc him (the master's) horfix too much corn; but the course holding this not a sufficient cause for sending a man to the house of correction, leave was given to file an information. 8 Med. 45; P. 7 Geo. The King v. Okey.

An information was filed against one for killing a noblemam's dog, deting forth, that Lord S. was riding in the vill of D. in com. Middlesex, and that his grayhound being then and there following him, the defendant drew his sword, and then and there killed the dog. 12 Med. 377; P. 12 H. 3. The King v. Glairneman.

An information was filed against one for breaking of locks, in the river Thames to the obfruction of navigation. 12 Med. 615. Hill. 13 Ed. 3. The King v. Clark.

Information for a scandalous narrative licensed by the defendant, speaker of the house of commons, being Damgerfield's narrative, reflecting on a nobleman, (the E. of Peterborough;) the defendant pleaded, that he did in order of the house of commons, and demanded judgment if this court will take cognizance of it. The Attorney general demurred, and after the defendant pleaded the common plea, quad non vult contendere cum Dominum Rex, and was fined 1000l. Comb. 18. P. 22 Ed. 2 B. R. The King v. William.

Leve was given to file an information against the defendant, by whom the stattins's wife was inveigled away, and who procured merchants and trademans to fell goods to her, in order to saddel the husband with the debt, he agreeing with the sellers to deliver the goods back again. 12 Med. 454. P. 13 Ed. 3. Bente v. Thur- creaf.

Leave was made for to file an information against the defendant, by whom the plaintiff's wife was inveigled away, and who procured merchants and trademans to fell goods to her, in order to saddel the husband with the debt, he agreeing with the sellers to deliver the goods back again. 12 Med. 454. P. 13 Ed. 3. Bente v. Thur- creaf.

Leave was made for to file an information against the defendant for these words spoke of a justice of peace, viz. He is an old rogue for giving his warrant for me. Hill. Ch. 23, declared the law to be against him, it not being lawful to take a child under age, tho' he pretend to have no friends, &c. and carry him away; for that the parish might have bound him out, and he may have a master; and if not, tie ought to be bound by a justice of peace, and for a reasonable time. Sth. 47. P. 34 Cor. 2. The King v. Wil- liamon.

A coroner having sworn the jury to inquire of the death of one supposed a felo de se, and finding the evidence very strong took off some of the impeet; and tho' it was not unlawful to stay the issue, and acquitt the defendant, yet it was not sufficient to acquitt the man, but they would consider as well qualitatem dolumentum as quantitatem delicti. In this cafe were cited 3 Ed. 3, 19. 43. 44. 38. afterwards, the same term, Starling was fined 500 marks, and the relief of the brewers 100 marks apiece, but with some apology by the court for the smallness of the fine. 1 Lev. 125. 1 St. 17. 1 Ed. 3, 16. Can. 2. in B. R. Rev v. Starling, and other brewers in London.

A coroner having sworn the jury to inquire of the death of one supposd a felo de se, and finding the evidence very strong took off some of the impeet; and tho' it was not unlawful to stay the issue, and acquitt the defendant, yet it was not sufficient to acquitt the man, but they would consider as well qualitatem dolumentum as quantitatem delicti. In this case were cited 3 Ed. 3, 19. 43. 44. 38. afterwards, the same term, Starling was fined 500 marks, and the relief of the brewers 100 marks apiece, but with some apology by the court for the smallness of the fine. 1 Lev. 125. 1 St. 17. 1 Ed. 3, 16. Can. 2. in B. R. Rev v. Starling, and other brewers in London.

A coroner having sworn the jury to inquire of the death of one supposd a felo de se, and finding the evidence very strong took off some of the impeet; and tho' it was not unlawful to stay the issue, and acquitt the defendant, yet it was not sufficient to acquitt the man, but they would consider as well qualitatem dolumentum as quantitatem delicti. In this case were cited 3 Ed. 3, 19. 43. 44. 38. afterwards, the same term, Starling was fined 500 marks, and the relief of the brewers 100 marks apiece, but with some apology by the court for the smallness of the fine. 1 Lev. 125. 1 St. 17. 1 Ed. 3, 16. Can. 2. in B. R. Rev v. Starling, and other brewers in London.
In a certain case, it is said that a publick nature, and wherein the revenue is concerned: and besides, in this case there is a penalty given, and a method for obtaining it. So no rule was made.

Str. 1193. Est. 15 Geo. 2. Rex v. Ford.

The defendant was one of the diffenters who was charged with acts of London and Middlesex, and refused to take up the office: for which an information was moved for against him, as it is an office in which the publick are interested, and therefore not to be compensated by a pecuniary satisfaction to the city. But upon viewing the cause, the court directed the protest to be opened, and the court in the case of Shkleton of York in Lord Hardwick's time. However they declared, that if after the point was determined against the diffenters, others should refuse, it might be a foundation to act for an information.

Str. 1193. Trin. 16 Geo. 2. Rex v. Groynour.

2. Of filing an information; how it is to be laid; the proceedings thereon, and the proviso made relative thereto by statute. It seems to be the established practice at this day, not to admit of the filing of an information except what is exhibited in the name of his Majesty's Attorney General, without first making a rule on the perons complained of to shew cause to the contrary; which rule is never granted but upon motion made in open court, and grounded upon affidavit of some telenachor, which, if the affidavit is not perfectly true, or other such like circumstances, seem proper for the publick prosecution; and if the peron, on whom such rule is made, having been personally served with it, do not at the day given him for that purpose, give the court good satisfaction by affidavit, that there is reasonable cause for the prosecution, the court generally grants the information; and sometimes, upon special circumstances, will grant it against those who cannot be personally served with such rule; as if they purposely absented themselves, &c. 2 Haw. P. C. 262.

But if he shew good cause to the contrary, as he his oath, that he has no more for the same cause, and acquitted, or that the intent is to try a civil right which has not been yet determined, or that the complaint is trivial or vexatious, &c. or where the motion is for an information in the nature of a quo warranto, if he can shew that his right has been already determined before the common council, or by the court of his own country, or that it depends upon the right of his voters, which hath not been tried, or that it do not concern the publick, but is wholly of a private nature, the court will not grant the information without some particular circumstances, the judgment whereof lies in discretion. 2 Haw. P. C. 262-3.

Regularity, the same certainty that is required in an indictment, is in like manner required in an information; but it has been held not to be necessary to repeat the words dixit in hac intelligo &c. in the beginning of every difnation, if the want of them may be sup- posed by a natural and easy construction. See 1 Stat. 375. Roy. 34. 2 Haw. P. C. 261.

In an information against Roberts the ferryman over the river Mersey, which parts Anglesea from Carnarvonshire in Wales, it was laid generally, utique. That this was an ancient ferry time out of mind, and that the d. was to procure a man and boat to d. for 20 cattle, d. for 20 sheep, &c. that Roberts being the common ferryman, between the 7th September Ann. 2, and the day of exhibiting this information, injurio, op- presseio, &c. et ceteris de diversi digiter &c. Dominus Regi signis to the Attorney General, pleading that, "Tertiae personae dominus servitum."
the said informer or informers shall not, within three months after the said cotts taxed, and demand made thereof, pay to the said defendant or defendants the said cotts, then the said defendant and defendants shall have the said benefit of the said recognizance to compel them thereunto.'

"Provided, That nothing herein shall extend or be con"nued to extend to any other information than such as shall be exhibited in the name of their Majesties coroner, or attorney in the court of King's Bench for the time being, commonly called the Muster of the Crown's office."

In the construction hereof it hath been holden, 1. That if procs be illused on such information before such recognizance is given as the statute directs, the same may be for slide and discharged on motion. 2 Hauk. P. C. 263.

2. That this statute extends to all informations, except those exhibited in the name of his Majesty's Attorney general, fo that an information in nature of a quo warranto, tho' a proper remedy to try a right, in respect of which it may not in fact come within the words trespass, &c., yet being also intended to punish a mis"n demeanor, and also as the proceedings therein may be as vexatious as in any other, the same is within the pur-view of the statute, which being a remedial law, shall receive as large a construction as the words will bear. Gach. 503. The King v. The town of Tiverton. 1 Sa!t. 370. 3 & 4, C. C. 115. Adjourned. 3. That no cotts can be had on this statute on an ac"quittal at a trial at bar, not only because the clause that gives cotts, unless the judge certify a reasonable caufe, seems only to have to trials at nisi prius, but also because a caufe, which is of such consequence as to be thought proper for a trial at bar, cannot well be thought within the pur-view of the statute, which was chiefly de"igned against trifling and vexatious prosecutions. 2 Hauk. P. C. 263.

4. That if there be several defendants, and some of them acquitted, and others convicted, none of them can have cotts. 1 & 2, 774.

5. That wherever a defendant's case is such as ar"thorizes the court to award him his cotts, he has a right to them ex debito justitiae; for it seems a general rule, that where judges are impoverished by statute to do a matter of justice, they ought to do it of course. 2 Cm. Cafes 191. 2 Hauk. P. C. 263.

By the 9 Ann. cep. 20. it is enacted, "That in case any person or persons shall usurp, intrude into, or un"lawfully hold and execute the office or franchise of mayor, bailiff, portreeve or other office within a city, town corpora"te, borough or place in England or Wales, it shall and may be lawful, for the proper officers of the county or Queen's Bench, the court of feftions of counties palat"ate, or the court of grand seftions in Wales, with the leave of the said courts respectively, to exhibit one or more information or informations in the nature of a quo warranto, at the relation of any person or persons de"fining to be or professing to be the same, and who shall be mentioned in such information or informations to be the relator or relat"ors against such person or persons for usurp"ing, intruding into, or unlawfully holding and executing any of the said offices or franchises, and to proceed therein in such manner as is usual in cases of informations in the nature of a quo warranto; and if it shall appear to the said re"fpective courts, that the several rights of divers per"sons to the said offices or franchises may properly be de"termined on information, it shall and may be lawful" for the said respective courts, to give leave to exhibit one such information against several persons, in order to try their several rights to such offices or franchises; and such person or persons, against which it should be"exhibited, to plead; and such person or persons, who shall sue or prosecute such information or informations in the nature of a quo warranto, shall proceed therewith with the most convenient speed that may be.

And it is further enacted, That in case any person or persons, against whom any informations, or informations in the nature of a quo warranto shall in any of the said cotts be exhibited in any of the said courts, shall be found or adjudged guilty of any usurpation or intrusion into, or unlawfully holding and executing of the said offices or franchises, it shall and may be lawful to and for the said courts respectively, as well to give judgment of ouster against such person or persons of and from any of the said offices or franchises, as to fine such person or persons respectively for his or their usurping, &c., and also to give judgment that the relator or relators in such suit shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they, for whom such judgment shall be given, shall recover his or their costs therein expended, against such relator or relators; such cotts to be levied by capias ad satisfaciend"um, fori factis et aliquis.

"And it is further enacted, That the statute for the amendement of the law, and all the statutes of Justice," shall be extended to informations in nature of a quo warranto, and informations thereof, for any matters in the said act mentioned."

An information was moved against a clerk for perjury and his admission to a living, upon an affidavit that the pretentation was sinniaenal. But the court re"fused to grant it, till he had been convicted of the offence. "Sm. Min. 4 Ge. 1. Rex v. Lewis."

Defendant came up on a habeas corpus from the Savoy, to which it was returned, that for several years last past the Afnien company had been a body corporate, and retained the defendant in their service, and sent him to the Savoy to be provided with necessaries, till he should embark for Africa, &c. And to the&a, &c. The court discharged the defendant for the insufficiency of the re"quest, and ordered an information against the colony who lifted the men, and the keepers of the Savoy. Sm. 404. Mich. 7 Ge. Rex v. Drew.

On a motion for an information for a libel, in adversing that one Mädke an apothecary had perfornated Dr. Graw a physician, and wrote and took his fee (which the apothecary did not pretend to deny), the Chief Juflice de"clared, that though truth be no justification for libel, as it is for defamatory words, yet it will be sufficient cause to prevent the interpolation of the court in this extraordi"nary manner, and induce them to leave it to the ordi"nary courfe of justice before a grand jury. Whereupon the information was discharges. Sm. 498. Hil. 8 Ge. Rex v. Bickerton. See 14 Vin. Ad. tit. Informations; and for informations on penal statutes, see Acton.

Informatums non sum, or more properly, non sum informatus, is a formal answer made of course by an attorney that is summoned by the court to say what he thinketh good cause of his client, who being not instructed to say any thing material, says, He is not in"formed; by which he is deemed to leave his client un"der"tended, and so judgment passeth for the adverse party. Croll.

Informatum, (informator), Is any one who informs or projects in any of the King's courts of Common law, viz. Exchequer, King's Bench, Common Pleas, &c., against any one, who offend against any law, or penal statute: These in some cafes are called prom"tories; the Civilians term them delatorae. Croll.

Infratitum, is one part of the digests of the Civil law, made by the Emperor by the advice of Robius Stephom, in a chron"icle of the monastery of Peterborough, in the reign of Hen. 3. who tells us, that Beneditt, an abbot of that monastery, who died in the year 1194, describes several law books, amongst the rest, the Infratitum 5, Tulliminam, with the Authentics, the Infratitum, the ok Difq. &c., Croll, edit. 1727.

Jusfages
Ingulfler, The relief which the heir or successor at full age paid to the prime lord, for entering upon the lands which were fallen by death or forfeiture of the former tenant. This relief, usuage or usufruct, was sometimes called ingenium, and sometimes intuasitum, being but a customary due (if not only an honorary present) to the lord from his new vassal for his entry or ingress upon his land or fee. Cassell, edit. 1727.

Ingulfler, magni retulit. See Clerk of the Pipes.

Ingulfler, is that which belongs to the person of the lord, and not to any manor. See &c. in graves, advowson in graves, &c. Co. on Litt. fol. 120.

Ingulfler. (Ingulflator), from the FrenchIngulfler, that is, follicitatis venderet, is one that buys corn growing, or dead victual to fall again, except barley for malt, for the oats, or victuals to retail, by bidding by licence, buying of oats and victuals, other than five or ten, &c. see An. 5 Ed. 6, cap. 14. 5 Eliz., 147. But Whyn, Symbol. part. 2. tit. Indinitals, fect. 94, says, This definition rather doth belong to unlawful ingraining, than to the word in general. See 3 par. Litt. fol. 175. Ingravor is also a clerk that writes records or instruments of law in deeds of partition: As in Henry the Sixth's time, he who is now called the Clerk of the Pipes, was called Ingravor magni retulit; and the Commissioner of the Pipes, was called Duplex ingravor, Speiman. See Ferfailing.

Ingraining, a fine, is making the indentures by the Chirographer, and the delivery of them to the tenant, to whom the cognizance is made. F. N. B. f. 147.

Inhabitants, is a dweller or householder in any place; as inhabitants in a vill, are the householders in the vill. 

Instalment of a will, without any cufume, may make ordinances and by-laws for repARATION of the church, or of a highway, or any such thing as is for public good generally, and in such cafe the major part shall bind all others without any cufume. 5 Rep. 63. Mich. 32 & 33 Eliz. B. B. in the Chamberlain of London's cafe, cites 44 Ed. 3, 19.

Inhabitants, Liberty given to a servant by manumission. Leg. H. 1, cap 89. Si quis per chartarum ingenuos dimitisse fuerit, & a quitulet lumine ad servitutem interpellavit, scil. Inhabitants Regni, Ingenii, &c. libri &c. magno mensis. Freeholders, commonly of the nation. Not that the word was restrained to yeomen or plebeians. For it was sometimes given to the chief barons, as in the reign of Hen. 1. Anfella Archip. Cont. in juxta curiam venit, ingenia poetae ingeniosus ingenium. 22 S. 30. and King's common council. Baddmer. Hist. Nv. fol. 76.

Ingraves, eigreegs, and regretts, Words in leaves of lands, to signify a free entry into, going out of, and returning from some part of the lands let, as to get in a crop of corn, &c. after the term expired. Jacob.

Ingriffit, Is a writ of entry, whereby a man fecketh entry into lands or tenements: It lies in many cafes, and hath many forms. See Cafrp. This writ is also called in particular, pricest quoq reddat; because those are formal words in writs of entry. The writs, as they lie in divers cafes, are these, set down in the Old Nat. Breu. viz. Ingriffit ad terminum et gratiam, fol. 121. Reg. Orig. fol. 227. which lieth where the lands or tenements are let to a man for term of years, and the tenant holdeth over the term. Ingriffit dumm fani cuftom mentis. Reg. Orig. 218, which lies when a man is let it for the place whereof his wife's is, &c. Ingriffit dum fui tuo astatum. Old N. B. fol. 123. Reg. Orig. fol. 228. lies where one under age fells his lands, &c. Ingriffit super difjffitum in le quibus. Old N. B. 125. Reg. Orig. 229. lies where a man is dillaced, and diet, for his heir against the defecor. Ingriffit in le quibus. Old Nat. Breu. 126. Reg. Orig. fol. 229. Ingriffit for cui incites. Vet. N. B. 128. Reg. Orig. 230. both which fee in Cafrp. Ingriffit caufa matrimonii pra-bunit. Vet. N. B. fol. 230. Reg. Orig. 233. which fee in Caufa matrimonii partecritul. Ingriffit in caufa proofit. Vet. N. B. 132. Reg. Orig. 235. which fee in Caufa proofit. Ingriffit cui ante divursionem. Vet. N. B. fol. 130. Reg. Orig. 233. for which fee Cul ante divursionem. Ingriffit in caufa confiuit, for which fee Caufa confirmrit. Ingriffit fine affinii capita. Reg. Orig. fol. 230. It is a writ given by the Common law to the succcssor of him that alienated fine affinii capital, &c. and is so called from those words.

Ingriffit, Cul. Caufa in litter. fol. 325. And Ingriffit ad communem legem. Vet. N. B. 132. Reg. Orig. 234. which lies where the tenant for term of life, or of another's life, tenant by curtely, or tenant in dower, maketh a fechement in fee, and diet, &c. He is the reverer than that, who maketh a fechement in fee, which is in the land, after such fechement made. Cassell, edit. 1727.

Ingriffit, Relief the which the heir or successor at full age paid to the prime lord, for entering upon the lands which were fallen by death or forfeiture of the former tenant. This relief, usuage or usufruct, was sometimes called ingenium, and sometimes intuasitum, being but a customary due (if not only an honorary present) to the lord from his new vassal for his entry or ingress upon his land or fee.
none but inhabitants of ancient meillages could be in-
tituled to it; but here his otherwife appointed by the grant,
every inhabitant that inhabited the same field in the time
and tenements by descent from the same. This in the original

Inheritance, (Haravit.) Is a perpetuity in lands or
tenements to a man and his heirs: For Littleton, h. 1.
cap. 1. hath these words: This word inheritance is not
only understood where a man hath inheritance of lands
and tenements by descent of heritage, but also very
fæcum or the like, when a man by his purchase, may
be fæcal or fætale to the same man that by his purchase,
can be fætale to inherit, for that his heirs may inherit
after him. Several inheritance is that which two or more
hold severally; as if two men had land given them to,
them and the heirs of their two bodies have both
either during their lives, but their heirs have severa

Inheritance. One attending the King in Hersford

Injunction, (injunt.) Is a writ to inhibit or forbid
a judge from further proceedings in the cause depending
before him. See P. N. B. fol. 39. where he putth
prohibition and injunction together. Inhibition is most com-
mmonly a writ issuing out of a higher court to a
lower and inferior, upon an appeal. Stat. 3 Hen. 8.
cap. 12. and 15 Car. 2. cap. 5. and injunction out of
the King to a court of Chriftian, or to an inferior tem-
poral court. Cowel.

An injunction is either bomin or juris; 'tis an infra
visitationem facit, vel aliquam jurisdictionem ecclesiasticam
tenentiam vel voluntariam iacetis. Thus, when an arch-
bishop virit, he inhibits the bishop, when a bishop virit,
he inhibits the archdeacon; and the reason is to prevent
scandal and detraction; and this continues till the relax-
ation of the inhibition, which is not till the laft parish is
visited, and then it is entered nulla pariachia requijit
vita, for he may hear of no faults till he come to the

Now after such an inhibition upon a political vi-
ification, if a lape happen, the bishop cannot interfere,
because his power is suspended, and therefore the arch-
bishop is to inhibit; for it is not only penal in the bishop
do to do, but the inhibition itself is void, because it is
an act of jurisdiction from which he was suspended. 3
Sal. 201. pl. 2.

But it may be a question, in the cause of collation,
whether, if a lape happen, the bishop may collate? Be-
cause it is a kind of title; but the better opinion is,
he cannot, because it is not by way of interdict, but by
way of prohibition, to prevent the losse of the
properties, that being the negligence of the
patrons; this appears, because the patron may present
at any time of a lape, and before collation. 3
Sal. 201. pl. 3.

Injor. This word was neither interpreted nor men-
tioned in any Glossary before the publication of Kenneth's
Parochial Antiquities. It very frequently signifies any corner or
out-part of a common field ploughed up and foured
commonly with oats or tares, and sometimes fenced off
with a dry foot hedge, within that yard wherein the reit of
the farm field lies fallow and common. It is now
called in the North an intack, and in Oxfordshire a
Kickhins, or Hitching. It has sometimes its root derived from the Saxon
injor, a child or meadow, or rather Ivan, within, and
kake, a corner or nook. The making of such intaks, or
separato inclosure by any one lord or tenant, was a
prudence to all who had a right of it.—Prater
Walterus Prior Beresfordvire fieri secit quodam inchoe in
campo warworth millisviro et dominio duobus, in fieldoque
injor, inrophy, et adiacentibus ejus. And he addes: Oje docet fi de communibus
universus veltre non secist quodam inchoe in campo de
Dunston in davana et voluneta prioris et consuetudine de
cold Norton.—Unde quorumdam stratum et aliorum ami-
comi descensis, et confilia proprietatibus inchoe.

p. 298. This trespass or encroachment was expressly
prohibited in some charters.—Hac ratione quad Dominus
bayem nec quasuerum sanccham faciat ab dominibus infra

injoribus.
cause that court cannot compel to make an adequate
title
settlement or provision for his wife; but if the executor
be ordered by such a time to bring in the money,
which he
neglects to do, no injunction will be granted, because
the bill might have been brought only for delay, and the
executor might have secured the benefit of it
in this case the court will, and often does grant an in-
junction, and that the same may extend to try trial, 3

There is another injunction which is never denied;
as in an injunction where the party agrees to give judg-
mint in injunction to prevent trial, to give a release of
su
s
es, and to confer not to bring a writ of error,
and in this it is sometimes added to deliver poffeffion
of the court upon hearing shall direct; this forwards
the defendant at law, and he could have no more if he were

Where a mortgagee brought a bill for foreclosure
and pending the suit an adwovion appant to the mortga-
ged manor became void, and the mortgage being hinder-
red from presenting, brought his quare impedit; and
the court granted an injunction, though he had no bill
filed. 2 Fern. 401.

Where a caufe stated by the death of the Lady Ge-
rard, and the defendant was her executor, who being
served with a copy of the bill of reviver, and my Lord
Keeper's letter, would not appear, being in privilege,
and upon motion an injunction was granted, though the
cause was not revived; and the cafe of Armfrong and
Taffen was cited, where the defendant determined the

So where the Lord Wharton had an injunction to quiet
him in the posfileion of the mines in question, and upon
hearing of the cause an issue was directed to try, whether
the mines in question were within the plaintiff's or de-
defendant's manor; the issue was tried at bar, and found
for the plaintiff, then the plaintiff died, and a bill of
reviver was brought, and before the time for answering
was out, or the cause revived, the plaintiff moved for
an injunction to try the Lord Wharton's working the
mines, having alledged that since the verdict against
him he had trebled the number of workmen, and between
that and Chandianes would work out the mines; and
an injunction was granted, though the cause was not re-

If there be a suit in equity concerning title to a clofe,
and thereupon an order is made, that the defendant shall
suffer the plaintiff to enjoy the clofe till, etc., and no
withholding the defendant upon payment of the money
in his cattle, this is no breach of the injunction; for the
common was in question by the bill. Lancis. 2d. Bens's cafe.

A. obtained judgment against B. but was hung up
from taking out execution for a year and a day by in-
junction out of Chancery; and the question was, wheth-
er he could after take out execution without a fine
fucis; and it was held, that he could not: at B. be-
cause the Common law court cannot take notice of
Chancery injunctions. 2dly, Because it had been no
breach of the injunction to have taken out a writ of exe-
cution, and to have continued it by succession sum mitf
brum. 1 Salk. 322, Booth and Booth. 6 Modi. 2d8. S. C. in B. R.

If a defendant having taken out execution in
breach of an injunction of the court of Chancery, and
some of the bailiffs who served the execution having, as
it was alleged, found his horses, and then
father being appointed their guardian by the spiritual
court, sue the executor there for recovery of them,
Chancery will grant an injunction against his proceed-
ing in such a court; because the spiritual court cannot or-
der the legacies to be put out at interest for the children
left behind possession, in cumberances on her's side of
the father to give good security with two sureties;
so where a husband sues in the spiritual court for a le-
gey given his wife, an injunction will be awarded, be-
Vol. 11. N. 94.
In

mage, that the defendant came into possession by course of law, and the baileys were legal officers, who, if they did any thing amiss, the party ought to take his remedy at law against them, and the defendant ought not to be answerable for their misdeeds. But if the defendant held the order to be right, and he thought it an idle prac-
tice in the court to put a thief to his oath to accuse him-
self; for he that has stolen will not flink to forswear it; and therefore in adlum spelatioris the oath of the party
injured should be a good charge upon him that has done the wrong. Vern. 257. Child. v. Sardy.

As concerning the breach of injunctioins, it hath been of late practised to commit the party on affidavit of the breach, and personal notice given to him, but never on notice
and the order made thereon, the plaintiff's clerk in court files out an attachment against him of course; he is arrested thereon, gives bail to the sheriff, enters his appearance with the registar; so the court has hold of him; the plaintiff files interrogatories in the Examiner's office to examine him; the interrogatories are verbatim according to the affidavit; and if the party does neglect to attend
be examined, it is a motion of course to examine him in four days, or stand committed; if he confesses the contempt, he must submit, own his fault, beg pardon, and pay costs; but if he denies it by his examination, the plaintiff defends to prove it upon him; then the affidavit must be referred to a matter, to see whether
the party is guilty of the contempt laid to his charge or not; here again he hath liberty to be heard, and may except to the reports, and bring on it for the judgment of the court; and if the court is of opinion that he is guilty of the contempt, he must stand committed, and pay his costs; but if the court is of a contrary opinion, (as it sometimes happens) he is acquitted with costs. 3 Bac. Abr. 176, 177. Gilb. Hift. Ch. 198, 199.

3. Also an injunction shall be dissolved.

The methods of dissolving injunctions are various; when the answer comes in, and the party hath cleared his contempt by paying the costs of the attachment, (if there is one,) he obtains an order to dissolve n/s, and enters it on the plaintiff's clerk in court; this order takes notice of the defendant's having fully answered the bill, and by his affidavit, the whole equity thereof, and being regularly served, the plaintiff must give cause at the
day, or the defendant's counsel, where there is no probability of flying cause, may move to make the order absolute, unless cause, fitting the court. 3 Bac. Abr. 177, 178, Gilb. Hift. Ch. 196.

If the plaintiff gives cause either on the merits, or upon filing exceptions; if upon the merits, the court may put what terms they please on him; as bringing in the money, or paying it to the parties, subject to the order of the court, or giving judgment with a reliefe of errors, and confenting to bring no writ of error, or to give
executory to abide the order on hearing, or the like; and to this order is generally added a clause, that the plaintiff shall speed his cause to a hearing. 3 Bac. Abr. 177. Gilb. Hift. Ch. 196.

If the plaintiff shall give cause upon exceptions filed, he must procure the report in four days of the insufficiency of the answer; and if the motion is made at either of the last sealed after Hillary or Trinity term, the court sometimes puts the plaintiff upon opening the exceptions, and they judge whether they are material, or not; the reason of this is, because the defendant, if the motion should be reported sufficient, hath no opportunity to move the court till the order thereon, and thereby we think the motion is greatly delayed; if the court think the exceptions material
and necessary, they will grant the motion; if otherwise, they will deny it, as the cafe appears; and to this is sometimes added a clause to the order, especially when the motion is made at the last seal, and the plaintiff shall procure the report in four days before, not to stand dissolved without further motion; whereas it is not so in open term, or at any of the seals save the last; and this clause being added, the court needs not to hear the exceptions opened, which oftentimes took up too much time. 3 Bac. Abr. 177. Gilb. Hift. Ch. 196, 197.

If the party report and Carter, and Kerry, being a motion of course to dissolve the injunction on the answer's being reported sufficient; but yet the plaintiff may move cause on the merits; for there are many instances where the plaintiff's counsel may think the answer not full, and yet may be mistaken, and notwithstanding this the plain-
tiff may have good cause on the merits for continuation of his injunction; and it seems reasonable that he have liberty to do it; but this must be done on notice given to the other side; he cannot do it when the defendant's counsel come to move to dissolve the injunction, on the answer's being reported sufficient; because, as this is a motion of course, the party takes out execution before the merits, but he may have liberty on notice given. 3 Bac. Abr. 177, Gilb. Hift. Ch. 197.

If the plaintiff who hath an injunction dies pending the faite, in strictin: the whole proceedings are abated, and the injunction with them; but even in this case the party shall not take out execution without special leave of the court; he must move the court for the plaintiff to revive his suit within a time limited, or the injunction to stand dissolved; and as this is never denied, so if the suit is not revived, the party takes out execution. There are some instances where a plaintiff may move to revive his suit to the plaintiff's use, and the court has thereby been dissolved; but where a bill is dissolved, the injunction and every thing else is gone, and execution may be taken out the next day. 3 Bac. Abr. 177, 178. Gilb. Hift. Ch. 198.

For more learning on this subject, see 3 Bac. Abr. and 14 Vin. Abr. tit. 'Injunction.'

Injury, (Injury,) Is a wrong or damage to a man's person or goods. The law will suffer a private injury rather than a public evil; and the act of God, or of the law, does injury to none. 4 Rep. 124.

Inlagation, (Inlagatio,) Is a restraint of one oul-
to the protection of the law, or to the benefit or liberty of a subject. From the Sax. inlagatio. i.e. Inla-
get, Et es e fijum legit patresque ad posse seriat, reddat, ad commodationem atmitteret, LL. Canuti Reg. par. 1.
cap. 2.

Inlagate, To restore to the benefit of the law. - Exempta quin venti ad eum a Scotia & Rex eum inlagat & sumus kamines fuan. Annal. Waver. sub anno 1074.

Inlagh or Inlaugh, (Inlagatus, vel homs hab leges,) Signifies him that is in some frakt-pledge, and not out
of the same, as Breade's word, see 2 Kings, 3, cap. 1. Minor v. & gu infra atato doxicon anorum faueris, utlagari non potest ex extra legem sunt; quia ante talia atabanon est sub leges aliqua nec in decentia, non magis quam furaria, quia utlagari non potest, quia ina non est sub leges, i.e. inlaugh Angles, &c. in francia post fie de-
cerno finis mutatus doxicon annum & ulteras. Gr. In-
cap. 47.

Inland, (Inlandum. terra dominicalis; pars maneri dom-
incis, terra interior,) For that which was let out to
rents was called Uiland. In the treatise of Brithe-
stock, Eviri Kanti, thus, To Wolfgre that inland, to iEgle that utland, i.e. Lega terras dominicalis Wolfgre, tenementos iEgleo. Thus engliished by Lambard, Tw Wolul-
fee (I give) the inland or demesne, and to Algey the outlawry or tenantry. Ex dens. Will. de Eefon 50 acres of inland fas. Rot. Chart. 16 Hen. 3. m. 6. This word is often used; and we think thereby we Terms of Inland, or byland and heritable lands, divided them according to the proportion of their eftates into two forts, inland and
outland. The inland was that which lay next or most
convenient for the lord's manufon-house, as within the
view thereof, and therefore they kept that part in their
hands for the support of their families and the
nomy. The Normans afterwards called these lands Terra
dominicalis.
I N N

1. If a may set up an inn, who deemed a common innkeeper, and the privileges allowed him by law.

It seems to be agreed at this day, that any person may set up a new inn, unless it be inconvenient to the public, in respect of its situation, or to its increasing the number of inns, not only to the prejudice of the public, but also to the hinderance and prejudice of other ancient and well-established inns: for the keeping of an inn is no franchise, but a lawful trade, open to every body, and therefore there is no need of any licence from the King for that purpose. 2 Roll. Abr. 84. Palm. 367. 1 Balf. 109. Godh. 345. 2 Roll. Rep. 345. 2 Keb. 560. Salt. 45.

But as inns from their number and situation may become nuisances, they may be suppressed, and the parties keeping them may at Common law be indicted and fined, as being guilty of a public nuisance; and in like manner may they be dealt with, if they usually harbour thieves, or persons of scandalous reputation, or suffer frequent disorders in their houses. 2 Cor. 549. Dall. Jaffier, cap. 7.

He who has an inn by preceptio may lawfully enlarge it upon the same land which has been used with it, either by erecting new buildings thereon, or turning stables into chambers for entertainment; and he shall have the same privilege in such new part, as in any other part of his house. 2 Roll. Abr. 84.

Alfo it is alleged, that the statute of 5 & 6 Ed. cap. 25, and other statutes concerning the licensing of alehouses, &c. do not extend to inns, unless an inn degenerate into an alehouse: by suffering disorderly tilting, &c. in which case it shall be deemed as such. Hutton 99. 1 Salt. 45.

A person who makes his business to entertain travellers and passengers, and provide lodging and necessaries for them and their horses and attendants, is a common inn-keeper; and it is no way material, whether he have any sign before his door, or not. Palm. 374. 2 Roll. Rep. 345.

But though it be the entertaining of passengers that makes a man an inn-keeper, yet it is said, that if a person having put up a sign before his door, afterwards pull it down, he thereby discharges himself of the burden of an inn-keeper, but if after the taking down his sign he uses to harbour men, it is as much a common inn as if he had a sign. Palm. 374. Godh. 346.

It hath been adjudged, that a person living at Epsom, and lodging strangers for drinking the waters in the fea-son, and selling them wine and beer, and to no other persons except such lodgers, is not an inn-keeper, so as to have soldiers quartered on him, pursuant to the statute 4 & 5 W. 3. cap. 13, for he is not such an hospitator against whom an action lies for refusing to entertain a guest; also in this case lodgers have such an interest in their rooms that they may maintain an action of trespass against any one who should enter into them against their will. Carth. 417. 1 Salt. 387. 5 Mod. 427. S. C. Parkhurst and Jaffier, adjudged.

A person who receives cattle to agist, on an agreement to pay so much a week for them, cannot retain them for payment, as an inn-keeper may the horse of his guest, unless there be a special agreement to that purpose. 2 Cor. 271. Chapman v. Allen.

An inn-keeper is distinguished from other traders, in that he cannot be a bankrupt; for though he buys provisions to be spent in his house, yet he does not properly sell them, but utter them at such rates as he thinks reasonable, and the attendance of his servants, furniture, and his house, &c. are to be considered; and the statutes of bankruptcy only mention merchants that use to buy and sell in goods, or by retail, and such as get their living by buying and selling; but the contracts with inn-keepers are not for any commodities in general, but they are contracts for house-room, trouble, attendance, lodging, and necessaries, and therefore cannot come within the design of such words, since there is no trade carried on by buying...
But where an inn-keeper is a chapman alt, and buys and sells, he may on that account be a bankrupt, tho' not being only an inn-keeper, and this has been frequently done.

For the security and protection of travellers, inns are allowed certain privileges, such as that the horse and goods of a guest cannot be distrained, &c. 3 Dall. 270. C. Lit. 57. 2 Vern. 129.

Also the law takes care of the reputation of an inn keeper; and therefore where in cafe for words the plaintiff declared, that he was poisoned of certain billies in qualum loci vocat Bell-Savage Inn, that he had accommodation for travellers, and that he got his living by the exercising of that faculty; that the defendant was poison'd of another inn, and that a perfon not known inquiring for the Bell-Savage Inn, (whither he was directed to set up his horse,) he said these words, This is Bell-Savage Inn: And at another time he said to another person, You have nothing to do there, he is broke and run away, there is no entertainment for man or horse; by reason of which words he left his customers; and on Not guilty pleased, the jury having found for the defendant as to the first words, and as to the last for the plain-tiff, it was adjudged clearly for the plaintiff; and Hale Ch. J. held farther, that if a man keeps an inn, and another that lives just by him, designing to get away his customers, tells a person who inquireth for such inn, that if no one lives there, this is actionable; also it was said by Hale to have been adjudged actionable to disfigure a person from going to an inn, by telling him the small box was there. Till. 25 & 26 Car. 2. Southwell and Allen. Raym. 231. S. C.

2. Of the duties enjoined inn-keepers; and of offenses committed by them in selling corrupt commodities, or at exorbitant prices, and in refusing to harbour or entertain guests.

The duty of inn-keepers extends chiefly to the entertaining and harbouring of travellers, finding them victuals and lodgings, and securing the goods and effects of their guests; and therefore if one who keeps a common inn refuses either to receive a traveller as a guest into his house, or to find him victuals or lodging, upon his tendering him a reasonable price for the service, he is not only liable to render damages for the injury in an action on the case, at the suit of the party grieved, but also may be indicted and fined at the suit of the King. 9 C. 87. Dyer 158. Br. Allen for Caf. 79. 92.

For he who takes upon himself a publick employment, and assumes to be a publick as far as his employment goes; therefore an inn-keeper shall not only answer for his own neglects, but also for the neglects of those who act under him, though he should expressly caution against it. 1 Salk. 18.

But the duty of an inn-keeper does not extend to the finding of gueft with clothes or wearing apparel. 2 Rad. Rep. 79. Also if the gueft be assassined and beat within the inn, he shall have no action against his host; for the charge of the host extends to the movables only, and not the person of the guest. 8 Co. 32. In Cafe's cafe.

If a man comes to a common inn to harbour, and defires that his horse be put to graze, and the host put him to graze accordingly, and the horse be stole, the host shall not be charged; because by law the host is not bound to answer for any thing out of his inn, but only for those things that are infra hospitium. 8 Co. 32. 8 Co. Rep. 79. 8 East. 60. 2 Ken. 82. 2 S. P. adjourned. 2 Brown. 255. S. P. per curiam.

But if the owner does not require the host to put his horse to graze, but the host does it of his own head, if the horfe be stole, he hath answer for it. 8 Co. 32. 4 East. 79. 2 Brown. 255. S. P. per curiam.

Also if the host upon the coming of the guest puts the horse to graze, and by the voluntary and wilful negligence of the host the horse be stole, as the host voluntarily leaves open the gates of the clofe, by which means the horse strays out, and so is stole or lost; or an athen on the cafe lies against the host. 1 Rad. 4t. 4. Howley and Fyfher.

The horse and goods of a guest may be restrained from selling at exorbitant prices, and may be indicted if they extort any greater or larger sums than those rates and prices that arc imposed on their commodities. Carth. 150. Skin. 291.

And to this purpose it is enacted by 21 Jas. 1. cap. 2. that all hoftlers or inn-holders shall sell their horse-bread and their hay, oats, beans, pease, provisions, and all kind of victual both for man and beast for reasonable gain, having respect to the gain for which they shall be sold in the markets adjoining, without taking any thing for litter. And it is further enacted, by the said statute, That every hostler and inn-keeper dwelling in any town or village, being a thoroughfare, and any city town corporate or market town, wherein any certain baker, having been an apprentice to the trade for seven years, is dwelling, may make within his house horse-bread sufficient, lawful, and of due affile according to the price of grain and corn. And it is further enacted, That if the horse-bread which any of the said hostlers or inn holders shall make be not sufficient, lawful, and of due affile according to the price of grain and corn as above-said, or that if any of them shall offend in any thing contrary to this act, the justices of assize, justices of oyer and terminer, justices of peace in every free, liberty or franchise within this realm, shall forthwith in their care and orders, and wliereunto my may inquire, hear and determine the said offenses of the said hostlers and inn holders, who shall be fined for the fifth offence, according to the quantity of the offense: And for the second offense shall be imprisoned for one month, and for the third offense shall stand upon the pillory.

If an inn-keeper sells corrupt wine or victuals, an action lies against him, also if his servant fell such corrupt wine or victual, an action on the cause lies against the matter, though he did not order the service to be sold to any particular person. 9 Hn. 53. 1 Rad. 4t. 19.

It has been already observed, that if one who keeps a common inn refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging, upon his tendering him a reasonable price for the service, he is not only liable to render damages for the injury in an action on the case, at the suit of the party grieved, but also may be indicted and fined at the suit of the King. Dyer 158. 2 Brown. 254. 2 Dall. Rep. 345. Kier. 50. Palm. 367. Godb. 346. 1 Salk. 328. Carth. 150. S. P. admitted.

Also it is said, that an innkeeper may be compelled by the power of the crown to receive and entertain a person as his guest. 5 Ed. 4. 2. Dal. cap. 7. 1 Show. 268.

Also an innkeeper, or a person keeping a lively-liable, is obliged to receive a horse, tho' the owner does not lodge in his house; for by taking upon him publick employment, he is obliged to serve the publick as far as his employment extends. Mair 867. pl. 1292.

Innkeepers are clearly chargeable for the goods of guests stolen or lost out of their inns, and this is without any contract or agreement for that purpose; for the law makes them liable in respect of the reward, as also in respect of their being places appointed and allowed of by law, for the benefit and security of traders and travellers. Dyer 268. Co. Rep. 374. their Pou/ 178. N. 75. 715. 727.

And this duty and burthen, enjoined innkeepers by law, they cannot discharge themselves of, under pretense of sickneph, want of understanding, absence from their houses, &c. Fins. Fyjfer 5. Brs. Action for ccf 41.

Also it is observed, that a man coming to an inn is not to be entertained by him, which the innkeeper refuses, because his house is already full; whereupon the party says, he will shift among the rest of his guests, and there he is robbed.
The writ need not mention that the defendant keeps a common inn, for it must be so intended, for the special of the writ is, Innkeepers take keep common inn, &c., and the latter words depend upon the former; but the plaintiff ought to count that he kept a common inn. 8 Cro. 32. a.

If in such an action brought by the master for goods stole from his faculty, the plaintiff intreats the defendant to keep the innkeepers ought safely to keep the goods of their guests, and all other goods into their inns brought; the custom is sufficiently alleged to maintain the action, notwithstanding it was objected, there was no such custom to keep the goods of others legally. Cro. Jac. 244, Bridle and Morris, adjourned, vol. 162. S. P.

If in his declaration the plaintiff lays the custom for common inns, and then lays that he was hospitatus in hospitio, &c. this is well enough; for it must be intended that it was common, else it is damnum & non jus bispitium. Hud. 245. and see Reg. Ent. 425. Rob. Ent. 221.

The declaration against an innkeeper was thus: Praed. D. com' hospitatus adunus & sibi adsit exspectat in stabulum deliberravit a certain gelding, to be by him safely kept, at a reasonable rate, and to be by him safely re-delivered to the plaintiff; and after verdict for the plaintiff, it was objected, that for again the hoarse was put into the defendant's stable, the innkeeper loses the detention which he is not bound to take any care of it; for the words being Praed. D. com' hospitatus exspectavit may as well be taken in an ablative as dative case: but the court held, that the words being indifferent to an ablative or dative case, they ought to be taken in that case which makes the declaration better, and therefore gave judgment for the plaintiff. 6 Med. 223, Stargys and Davis. 1 Salis. 404. S. C. but not S.P.

4. Of the innkeeper's remedies against his guests.

Innkeepers may detain the person of the guest who eats, or the horse which eats, till payment, and this he may do without any agreement for that purpose; for men, that get their livelihood by entertainment of others, cannot annex such disobliging conditions that they shall retain the party's property in case of non-payment, nor make such disadvantageous and impudent a supplication, that they shall not be paid; and therefore the law annexes such a condition without the express agreement of the parties. 30 H. 6. 18. 5 H. 7. 15. 2 Reg. Ent. 85. Cro. Car. 271. Cartb 150. 1 Salis. 388. May detain the person of his guest. 1 Shaw. 260.

If an injury be done and/error taken away the hoarse of B. and put him into an inn to be kept, and B. comes and demands him, he shall not have him until he satisfied for his meat for, if an innkeeper takes a horse into his keeping he is not bound to inquire who is the owner of the hoarse, which he is obliged to keep, let him belong to whom he will, and therefore no reason why the innkeeper should be obliged to deliver him till he is satisfied. Vol. 67. 3 Boll. 269. 270. 2 Reg. Ent. 85. Poph. 128. 175. 2.

If A. deliver a horse to an innkeeper, and B. promises that in consideration that the innkeeper will deliver over the hoarse to A. he will, viz. B. will satisfy him for his meat, this is a good promise; for here is a good consideration, insomuch that the hoarse is not the property of B., for B. is not the proper owner of the horse; A. desists his horse, that is a damage, and A. regains his horse, that is to his advantage. Hinton 101.

An innkeeper that retains a horse for his meat cannot sue him, because he detains him as in the custody of the law, and by consequent the detention must be in the nature of a deditus, which cannot be used by the dilator. Mor 877. 2 Roph. Reg. 458.

By the custom of London and Exeter, if a man commit an horse to an hoffler, and he eat out the price of his head, the hoffler may take him as his own, upon the rea-sonable appraisement of four of his neighbours; which custom, it tends to the advantage of the innkeeper, to the charge of his trade, and others, and it is a great damage, and it has been used by the droppak to charge them with the action; but the innkeeper hath no power to sell the horse, by the general custom of the whole
If a man commit his horse to an innkeeper, and he put him to pasture, he may detain the horse until he is satisfied for the meat; for the pasture of such perfsons, fet up by the law for entertainment, hath the fame privilege with the tenant. 2 Roll. Atq. 85, 3. 2nd B. 3!nqti(on, for And 'Tis done, J. man privilege and take detention wherever he is satisfied, the inn, this horse, be a tiff F if which property cannot the law, for the debt that sifies from the thing itself, and not from any other debt due from the same party; for the law is open for all such debts, and doth not admit private perfons to take reftraints. 2 Roll. Rep. 438, and see 3 Roll. Rep. 438.

If an horse be committed to an innkeeper, and be detained by him for his meat, and the owner take him away, the innkeeper must make fresh purfuit after him, and retake him, otherwise the custody of him is lost; for he is now in the custody of the innkeeper. If a diftrefs be refcued, and the party upon fresh purfuit do not re- take it, the diftrefs is loft; for no man that has only a naked custody can make a reftraint, when the thing is out of his custody; for it is the privilege of an owner and proprietor, and of him only, to retake his property, wherever he finds it. 2 Roll. Rep. 438.

But if an horse be committed to a hofteller, and he detain him for his meat, and after the owner comes to an agreement that the hofteller fhall retain him till he is satisfied, here he hath not the custody of him as a diftress, but all the property in him as a pledge; and if the owner take it from him, he must not retain it, but deliver it up to his perfon, but where he meets it; because he had a property by such contrary, and a man that hath a property may retake his own where he meets with it. 2 Roll. Rep. 438.

Upon evidence the case was: A man had a horse in an inn, and came thither, and directed that the innkeeper should not give him any more food, for he would not be responsible for it; and the question was, whether for the food, after this direction given, by the innkeeper to the horse, he who brought the horse thither shall be charged, or not; and Holt Ch. J. at first inclined that this is a difcharge, and that the horse (the 'ho might be retained by the innkeeper), yet is but in the nature of a diftress, and it being in the custody of the innkeeper in this, this is a pound covert, and the horse afterwards ought to be found and maintained at the peril of the innkeeper; but after, mutata opinione, he directed, that this was not a difcharge; for then any innkeeper might be deceived, and it is the deftingue of the security of an innkeeper, who may detain, and, by the custom of London, fell the horse for his keeping. Skin. 648. Geder v. Berkeley. In trover for three horses the defendant pleaded, that he kept a publick inn at Glafenbury, and that the plain- tiff was a carrier, and used so to fup his horses there, and 96. biding him to him at any other time, for the keeping of the horses, which was more than they were worth, he detainted and sold them, proit ei bene licuit: And on demurrer judg- ment was given for the plaintiff; an innkeeper having no power to fell horses, except within the city of Lon- don, 2 Rel. Ab. 85. 1 Fern. 71. 616. 3rd 67. And besides, when the horses had been once out, the defendant could not leave them for what time he pleased before he did not fatisfy at their coming in again. Stran. 556. Effl. 9 Gen. 1. Jones v. Pearle.

For more learning on this subjedt, see 3 Bac. Abr. 4th 14. Vin. Abr. iii. Inn and Innkeepers. And see Metclesettic on agents of court, (Hajstitia curvis.) Are so called, be- cause the students therein do study the law, to enable them to practive in the courts at Westminster, or cif- where; and also because they use all other genicide exer- cises, as to make them more serviceable to the King in his court. Fortescue, cap. 49. of which there are not well known, v. The Middle-Temple, Inner-Temple, Lincoln-Inn and Gray's-Inns, which with the two Ser-jeants-Inns, and eight Inns of Chancery (as Sir Edward Coke fays) make the moft famous university for the pro- fectors of any one human science in the world; concerning which see Bagdul's Original Jurisprudences. Cowell, ed. 1727.

Innuendo, (From invenio, to beckon or nod with the head) is a word frequently used in writs, declarations and pleadings, and the office of it is only to declare and inform the court concerning any perfon or thing which was named or left doubtful before; as to say, He (invenio) is a thief, where there was mention before of another perfon; but this inuendo must neither enlarge the fene of the words, nor make a supply, or alter the media where the words are defective. See Hutton's Rep. fol. 44.

Innuendo can't reduce to a particular, that which be- fore would bear a more large construction. Per Holt, Comb. 460. The King v. Grey. In every inuendo, there must be something precedent to induce it, something whereby it may be applied, that the man meant fo as the inuendo would have him. Per Holt. Comb. 460. The King v. Grey cites Hob. 6. Midd. 257.

Innuendo may serve for an explanation, where there is precedent matter, but never for a new charge; it may apply what is already expressed, but cannot add or en-large the importance of it. 2 Salt. 513. Mich. 9 W. 3. B. R. The King v. Grey. See 1 Vin. Abr. p. 524.

Inquutia, is one of the lawful means to exempt a man from appearing in court. In Leg. H. I. cap. 61. Cause quae ad exajimentam sufficient, & lic ille, vel infirmitas, vel domini necissitatis, vel contrarionandam, vel regim interciuationem, vel inoperantium causa, that is, on the days in which all pleadings are to cease, or in diabus no- minus.


Inquutis and Anquutis, In the register of the priory of Colsford, pag. 25, thus, De inpeyny & outpany confe- tudata talis offered in villa de Easft Radhoom, de omnibus terris, that infra Burgomium tenentur, &c. Quod ille, qui wenderti- detiam tenenem aliqui, dubi pro exitu sui de edad temora unam demorat, & filie pro ingenia altius. Et si pradelli dominii arere furint, Ballatici dominii dirigintur pro occasum domini in sedem tenure. These words and the same were alfo mentioned in the rolls of a court there held, about the feast of Epiphany, Anna 12 Ric. 3. 5pel.


Inquutis, (Inquutis) is an inquut sailed by jurors, or a jury, which is the moft usual trial of all causes both ci- vil and criminal within this realm; for causes civil, af- ter proof is made on either fide, of so much as each party thinketh good for himself; if the doubt be in fact, it is referred to the discretion of twelve indifferent men, unimpeached by the flerry for that purpose, and as they bring in their verdict, so judgment paffeth; for the judge faith, the jury findeth the fafaft, and the law is thus: For the inquut in criminal causes, see 3dury, and Smith in Reg. Abr. Lib. 2. cap. 19. An inquut is either extoffices, or of office, and at the like of the party. Snapper. in cli. This word is used in the rolls of 25 Ed. 3. c. 3. 28 Ed. 3. c. 13. and almot in all statutes that speak of trials by jurors. Cowell. See Jury.

Inquutiius, Is an authority given to a perfon or per- sons, to inquire into something for the King's advantage, which in what cases is frie, See Reg. Orig. fol. 72, 85, 124. 265, 265. 267.

Inquisition,
INR

Inquisition, is a manner of proceeding by way of
arrest or examination, and used in the King's behalf in
capturing, inquests, and process; in which sense it is
conceived with office. Stow. Praegeg. 51. This in-
quision is upon an outlawry found, in case of treason
and felony committed; upon a felo de fes, &c. to intitle
the King to a forfeiture of lands and goods: And there is
none other inquest than this inquisition, as in the
cause an inquisition is only to inform the court how
proceed shall be for the King, whose title accrues by
the attainer, and not by the inquisition; and yet in the
acts of the King and a common person, inquisitions have
even been void for insolvency. Lane 59.

If it be found there are two or more inquisitions, one
to inform the King, the other to vell an interest in him;
the one need not be certain, but the other must; and
where an inquisition finds some parts well, and nothing as
to thers, it may be helped by melius inquirendum. 2 Saik.

Inquisition de vita vel membris shall be granted free,

All of the township of twelve years old ought to
come to inquisitions of the death of a man, St. Mart. 2
H. 3. c. 24.

Shall be of sufficient men, &c. St. Wifem. 1. 3 Ed.
4. c. 13.

Articles to be inquired of concerning the King's lands,
tento manuri, 4 Ed. 1. ft. 1.

Inquisitions and indentments shall be taken by twelve
men who shall put their seals to them, St. Wifem. 2.
5 Ed. 1. c. 13.

Men may be sworn of inquests for want of freem-
men, St. Exon. 14 Ed. 1.

Inquisitions to be taken before the granting liberties,
1. de Libert. Perqur. 27 Ed. 1. ft. 2.

Commissions of general inquiry shall not be granted,
4 Ed. 3. c. 1.

No offices found before echetors shall be tried
in the King's Bench, 34 Ed. 3. c. 14.

Commissions to inquire of certain articles shall be
granted to the judges, &c. 42 Ed. 3. c. 4.

Commissions shall take inquest by men impanelled
by the sheriff, 8 H. 6. c. 10.

Lands feised into the King's hands upon office found,
shall be let to farm to him that tenders a traverfe, 8
H. 6. c. 16. 1 H. 8. c. 10.

Offices found before echetors shall be returned within
month, 8 H. 6. c. 16. 18 H. 6. c. 7.

No lands shall be granted by patent till the King's
title be found, 18 H. 6. c. 6.

No peace may take an inquest, to inquire of the
concealment of other inquests, 3 H. 7. c. 1.

The qualification of commissioners to inquire of lands,
1 H. 8. c. 8. sect. 1, 2.

How inquisitions shall be taken and returned, 1 H.
8. c. 8.

How they shall be traversed, 2 & 3 Ed. 6. c. 8.

Lefeesses, copyholders, &c. not to lose their inter
right, though omitted in an office, 2 & 3 Ed. 6. c. 8.

The interest of Strangers sved, though not found
by the inquest, 2 & 3 Ed. 6. c. 8. sect. 3.

For other matters, see Coyner, Elicheato.

Enquiries. (Inquiritionis) Are hearers, coroners, far-
pers wibiam corponi, or the like, who have power to in-
quire into certain causes. Statue of Marlbridge, cap.
18. Britton, fol. 4. and Wifem. 1. Enquirors or enquini-
ners are included under the name of ministri. 2 part.
indul. fol. 211.

Inquestment. (Inquitamentum) Is the registering,
recording or entering of any lawful act in the rolls of the
Chancery, as a recognition acknowledged, or a statute,
or a final levied, or in the rolls of the Exchequer,
King's Bench, or Common Pleas, or in the rollings of
London, or by the clerk of the peace in any county,
as the courts of assizes, or recognized, or a deed of
purchase enrolled. See Wifem. Symbol. part. 2. tit. Facta.
sect. 132. and 27 H. 8. c. 16.

By Stat. 27 H. 8. cap. 16. sect. 1. No lands or hei-
reditaments shall pass whereby any state of inheritance
or freethold shall be made, or any use thereof, by rea
son only of any bargain and sale, except the bargain
and sale be made by writing indented and enrolled in one
of the King's courts of record at Wifemington, or within
the county where the lands lie, or before the cufpes ro-
tulorum and two justices of peace, and the clerk of
the peace of the county, or two of them, whereof the
clerk of the peace of the county shall be enrolled in an in-
quision as in the case of treason, and unless the in-
quision be made within six months after the date of the
writings; the cufpes rotulorum, or justices of peace and
clerk, taking for the inrolment, where the land exceeds
not the yearly value of 40 l. 2. viz. 12 d. to the ju-
itics, and 12 d. to the clerk; and for the inrolment of
such writing wherein the land comprised exceeds 40 l.
in the yearly value, 5. and the clerk of the peace shall
inroll the deeds, and the rolls thereof at the end of every
year shall deliver unto the cufpes rotulorum, to remain in
his custody among other records of the counties.

Sec. 2. This act shall not extend to lands within
any city, borough or town corporate, wherein the
mayors, recorders or other officers, have authority
to enrol deeds.

Stat. 34 & 35 H. 8. cap. 21. All recoveries, deeds
enrolled, and releases to be taken and acknowledged
before the mayors, recorders or other head officers, as well
of the city of London as of any other city, borough or
Town corporate, having power to receive the same ac-
ccording to the customs of the said cities, &c. shall be of
like force as they were before the making of the act
27 H. 8. cap. 28. which fee in Eliz.

Stat. 5 Eliz. cap. 26. sect. 1. All inrolments of writs
indented, 27 & 28 Ed. 16. of any bargain and sale of
lands or hereditaments in the counties of Lancashire
and Durham, being made and indented within six months
after the date in the Queen's court of Chancery at
Lancaster, or before the Queen's justice of assize at
Lancaster, concerning lands within the county of
Lancaster, or in the Queen's court of Exchequer at
Chester, or before the Queen's justice of assize at
Chester, concerning lands within the county of
Chester, or in the court of Chancery at Dursyn, or before
the justice of assize at Dursyn, concerning lands within
the county of the Bishoprick of Dursyn, shall be as good in
law as if the same had been indented in any of the Queen's
Courts at Wifemington.

Sec. 2. This act shall not extend to lands within any
city or town corporate wherein the mayors or other
officers have authority to enrol deeds.

Stat. 10 Ann. cap. 18. sect. 3. Where in any decla-
fation, avowment, or other pleading, whether of bargain
and sale enrolled shall be pleaded with a prefert in curia,
the person so pleading may, to answer such prefert,
as well against her Majesty as against any other per
son, a copy of the inrolment of such bargain and sale;
and such copy examined and signed by the proper officer,
and proved upon oath to be a true copy, shall be of the
same force as the inrolments of bargain and sale should
be of.

Inrolment of a deed is to no other purpose, but
that the party shall not deny it afterwards; but if he
wants the deed to plead it, and lose it, he shall not plead
the inrolment; or ought to plead it, if he be not in
If a deed be lost, yet the inrolment is good evidence, if
it can be proved to a jury by circumstances, that there
was such a deed; for the loss of a record or deed is not
the loss of a man's title, it can be otherwise proved.
2 Ed. P. R. 68.

If a deed be enrolled according to the statute 27 H. 8.
cap. 10. it must be in parchement for the strength and
continuance thereof, and not in paper; and so it was re-
olved in parliament by the judges, in anno 23 Eliz. Co.
Lit. 35. & 36. c. 2 Inf. 673. says, so much is imply'd when
the inrolment is in any of the King's courts of record at
Wifemington, etc. that the inrolment shall be in parchement
and that so it was adjudged, as Mr. Pleydell cited it, before
the lords in parliament, anno 23 Eliz. in the great cafe be
tween Robert and Ver-

An
An indenture of bargain and sale was involved in Chancery, exemplified under seal, and at the end was a memorandum, viz., that the plea was inquired, but no time mention’d when the same was done, but plaintiff offered to prove by circumstances, that it was inquired within the six months; upon which great debates arose; but a clerk before the court of B. R. to the inquisition-office to know their usage and custom, as to the inquiring the time of the inrolment, he certified the court upon his oath, that they inform’d him, that before the 16 Eth., at which time the inrolment-office was erected, they did not use to infer the time, but they use to do otherwise now. 2 B. R. 119, 120. Mich. 17 B. R. 632 p. 572.

In 2 L. P. R. Involment 68. it is said, that, before the 20th year of Queen Elizabeth it was not used to infer the inrolments of deeds upon the back of them, as it is now used to be done. Cites Mich. 23 of Car. 1. B. R. but adds, that now it is constantly used, and to good purpose, in respect of the more easy and readiness of the proof of the inrolment upon any occasion; for credit is given to that inrolment without any further proof, as being made by a known officer, and intrusted for that purpose. In the case of an inrolment for safe custody, the deed may be said to be recorded; but where a bargain and sale is inquired pursuant to the statute, the inrolment is a record, so that the copy of it may be read in evidence, for Matter of the Rolls. Note: Afterwards upon a rehearing, an inrolment was in the way was directed whether such deed of uses was executed, and upon the trial the copy of the deed was allowed to be read as evidence on the trial. Mich. 1704. 2 Vern. 471. Combe v. Spencer. R. 591. Combe v. Dowell. S. C. C.

A. in consideration of blood, covenants to land feised to the use of B. his son, and the heirs of his body, and in default of such inrolment, then to the use of J. S. in consideration of one, B. died without issue. The deed was not inrol’d; quære if the uses arise partly by covenant to land feised, and partly by bargain and sale, or whether it must arise wholly one, or wholly the other, and not by fractions? Bridgman Ch. J. said, in this case, that there was a mix confusion, and there needed no inrolment. See C. 144. Trin. a 2 W. & M. B. R. Carris v. Wentworth.

If land be convey’d in a deed for money only, then the deed must be inrol’d, else, the land will not pass by the deed. But if land be convey’d in consideration of money paid, and also in consideration of natural love and affection, or child, or relation, then it is not necessary to inrol the deed, but the lands will pass, tho’ the deed be not inrol’d; for in the former it is a mere deed of bargain and sale, which passeth nothing without inrolment; but in the latter case, the land will pass by way of use. 2 L. P. R. 69.


Inscriptions. Were those written instruments of charters by which any thing was granted. In C. Clavstoa anno 800. His dicta praeferunt ista inscriptions manuferri, &c. terrarumque sibi addictionem.


Instrict. To reduce to aervitude. Si ingens auscillum nomen, et si juxta pugna fuerit inferrens. De Conde. So infrivere tenentia est subjicere iliac satis, Brodtin, cap. 54.

Instrinca. (Sax.) An indiction. Item ordinarium quod quidem acce prochatic, injustitia & uterque gentium omnium et de. Ordinato Romenisca Matri, p. 73.

Inuillae. The same as Figilae or Excubiae. Flota, lib. i. cap. 2. 3. Inuillae autem eadem non sunt teneri visores, sed solvi solvi in caputibus inuillae afflictus, &c.

Insitutios statum, Way-layers, or such as lie in wait, are words which by the 4 Hen. 4. cap. 2, are not to be put in inrolments, arrangements, appeals, &c.


Inflamm. computatissim. Is a writ or action of account which lies not for things certain, but only for things uncertain. 22. 1st. 9. 1. The common declaration upon the wrong against account is to say, that the plaintiff and defendant such a day, year and place, account together between themselves of and concerning divers sums of money, &c.

Inflamm. retinu, is one species of the writ called a suit bill. 1. & 2. 2. Fuston. 2. 2. Inflammation, (Infamia) is a covert, and cunning creeping into a man’s favour; mentioned in that plat. 22. Hare. 8. c. 5. Inflammation of a will, is amongst the Giulioms, the first production of it, or the leaving it persons registraria, with the registrator, in order to its probate. Cowell. 177.

Inflamm. Till of late the Chancery would not put out an inrollm. trust for that he was intrusted by the donor; for Eyres J. Comb. 185. Mich. 3 W. & M. B. R. in case of Hill v. Mills. An insipient peril made executor cannot be put out by the ordinary; for he is intrusted by the testator, as the former of the Chancery would compell him to give security before he shall proceed upon the trust. Carth. 458. Mich. 9 W. 3. B. R.

Inflamm: Debts, relieved, 1 Aven. f. l. c. 25, 3 & 3 Ann. c. 16. 6 Geo. 1. c. 22. 11 Geo. 1. c. 21. 2 Geo. 2. c. 25, 22. 21 Geo. 2. c. 31. 28 Geo. 2. c. 13. 25 Geo. 2. c. 18. 3 Geo. 3. c. 17. 5 Geo. 3. c. 45.

Inspection. See Infantry and age, Estral. Inscriptor, Letters patent so called, and is the same with exemplification, which begins thus, Rex numus, &c. Inscriptus irrationatae quœrandi, literaturam patent. It is called Inscriptus, because it begins after the King’s time, in that case, severally into his name, and is much confounded in law; and though it cannot be actually divided, yet in conception it may, and applied to several purposes, as if they were several times. Whereof is fee in Pevsneri Commentariorum, Fullerston and Stawards case, where the statute of 31 Hen. 8. is explained concerning an abbot’s letting of lands, &c. and there it is, say, that in the term time of the second lease, he surrenders his former term; and so if the same be faint of taking the second lease, the former is expired. And in the case between Petit and Hales, who kills himself commits not felony till he be dead, and when dead he is not in being, so as to be termed a felon; but Cowell is adjudged in law as infracte, at the very instant of the fact, and thar there are many other cases in law where the instant time, that is not deifiable in nature, in the consideration of the mind is divided. Cowell.

An infant is not to be considered in law as in lag as a point of time, and no parcel of time; but in our law things which are to be done in an infant, have a priority of time in them; as lessees for life makes a lease for years, they both surrender to him in reverson, though ‘tis made in an infant, yet it shall be understood to have degrees, filiety, the
INS

We think of the surrender of the llef for years to tenant for life, and then the surrender of tenant for life. Arg. Meth. 32 E. it has been for many years acknowledged, that a devise by one joint tenant of part; for no devise can take effect but by the death of the devisor, and by his death all the land comes immediately to his companion; and there takes notice, that Lection by the words p. 18 mortem & per mortem (f. 297) though they junct two infant, yet alloweth priority of time in the infant, which he distinguishes by per & post, and says, that the reason of the priority is, because this survivor claims by the first feoffor. And in several cases a difference is allowed in our law in an infant, as per mortem & mortem post mortem, but such is the case of The King v. Dr. Birch and the Bishop of London.

So, devise of a term to his son, and that his wife shall have it during the minority of his son; this shall be continued still a devise to the wife, and after to the son when he comes of age. Finn. Law 18. 5.

So where a man grants a reversion of land to A. and by the same deed grants a rent out of it to B, and delivers the deed to both at one and the same time; this shall ensue as to the rent first. Ibid.

Infatuum, is used in deeds for a flock of cattle, item manum. id nulnum habet pratum. Mon. Angl. 227. 16. We very rarely see it taken in at the same port another cargo. And with that proceed to the West Indies or other ports, and back again to Cadiz, and from thence to London; this policy being general and dangerous, feldom procures subscriptions, or at least very chargeable ones.

As goods and merchandise are commonly injured, so likewise are the ship's tackle and furniture; but in regard there seldom happens a voyage but somewhat is missing or lost, the premium commonly runs higher than for merchandise.

Affurances may be made on goods sent by land, so likewise on boats and the like, and may be made on the backs of men; as if a man is going for the Spanish, and perhaps if of some fear that he may be taken by the Moors or Turkizh pirates, and so make a flave, for the redemption of whom a random must be paid, he may advance a premium accordingly upon a policy of assurance; and if there be a capti6n, the affuer must answer the random that is fetched or rate upon goods out and in, with liberty to touch at all ports that are mentioned in the policy.

So likewise on ships that go trading voyages, as round to Cadiz; and that it shall be lawful, after the ship's voyage, to deliver in London, for goods taken in any place, and in that place, and there to charge the goods, and take out again in London, to the same place; this is so in the Act for the West Indies, and the Act for the Red Sea Trade.

The policies now are so large, that almost all those curious questions that former ages, and the Civilians according to the law marine, say and the Common Law in regard of the said, are now out of date. Searce any misfortune that can happen, or provision to be made, but the fame is provided for in the policies that are now used; for they infringe against heaven and earth, fires of weather, storms, enemies, pirates, robbers, &c. or whatsoever detriment shall happen or come to the said insured, &c. Mobile, b. 2. c. 7. sect. 4. cites Meth. 29 Car. 2. in. B. R. Liff v. Seignouret.

The policies now are so large, that almost all those curious questions that former ages, and the Civilians according to the law marine, say and the Common Law in regard of the said, are now out of date. Searce any misfortune that can happen, or provision to be made, but the same is provided for in the policies that are now used; for they infringe against heaven and earth, fires of weather, storms, enemies, pirates, robbers, &c. or whatsoever detriment shall happen or come to the said insured, &c. Mobile, b. 2. c. 7. sect. 7.

1. Statutes concerning insurance.

2. What shall be deemed baristry and deviation; and of charging and discharging the insuring person.

3. Of the employment of policies, having the words warranted to depart with convey.

1. Statutes concerning insurance.

Stat. 6 Geo. 1. cap. 18. sect. 1. It shall be lawful for his Majesty by two charters, to grant that such persons (who shall be named and allowed as members into the Reay Exchange assurance and London assurance company, shall be each a separate body politic and corporate for the assurance of ships and merchandise at sea, or going to sea, or for lending money upon bottomy. And the said corporations shall have power to choose, direct, directors and other officers; and the governors and directors shall continue in their offices for three years; and in case of death or removal be supplied, as shall be preferred in the charters; and each of the said corporations shall be capable of

Jews in the year 1182. but whoever was the first con-


triever or original inventor of this useful branch of busine-


capable in law to purchase lands not exceeding 1000 l. per annum.

Sec. 4. Each of the two corporations shall be obliged to cause such stock of ready money to be provided, as shall be sufficient to answer all just demands for loans, and shall satisfy all such demands; and in case of refusal or neglect, the parties assured may bring action of debt, &c. Sec. 5. The courts of record are Wasmington, in which the plaintiffs may declare that the same corporation is indebted to them in the monies demanded, and have not paid the fame according to this act.

Sec. 6. The corporation in general courts may raise such capital stocks, either by taking subscriptions of particular persons, or all of money from their members, or by such other ways, as to such general courts shall from expedient; and all subscribers shall have a share in the capital stock, and shall be admitted members; but no person shall be intitled to any greater share in the stock than the money which they shall have paid. Sec. 7. The corporations shall have power in their general courts to call in from their members any farther sums as shall be judged necessary; and in case any member shall refuse to pay his share at the times appointed by notice in the Gazette, and upon the Royal Exchange, the corporation may not only flip the dividend offered on such member, but also flip the transfer of the shares of such defaulter, and charge him with interest at 5 l. per cent. per annum. and if the principal and interest shall be unpaid three months, the corporations, or their courts of directors, may authorize pursuers to sell so much of the stock of such defaulter as will satisfy the fame; and the money so called in shall be deemed capital stock. Nevertheless the corporations in a general court, may cause any sums called in to be divided amongst the then members, and the shares in the capital stock shall be proportionably abated.

Sec. 8. For enabling the corporations to lend money on parliamentary securities, they shall have power to borrow money upon bonds, under their common seal, at such interest, for any time not less than six months, as they shall think fit, so as the principal shall not exceed the principal monies then owing to them on such parliamentary securities; and such bonds shall not be chargeable with any duties.

Sec. 9. The shares in the capital stock shall be transferable and devisible; and their bonds shall be assignable and recoverable as his Majesty by the charters shall prescribe; and the capital stock shall be adjudged a personal and not a real estate, and shall go to the executors, and not to the heirs of the bondors. The stock shall be exempted from taxes; and no governor, director or other officer of the corporations, shall for that cause be disabled from being a member of parliament, nor in respect of such share be liable to be a bankrupt; and no stock in the corporations shall be subject to foreign attachment by the writ of 

Sec. 11. His Majesty by the said charters may grant to each of the corporations power to make by-laws, and such further powers relating to the affurance of ships, &c. or lending money upon bottomy, as to him shall seem meet.

Sec. 12. All other corporations, and all partnerships for affuring ships or merchandizes at sea, or for lending money upon bottomy, shall be restrained from writing any policies, or making any contracts for assurance of ships or merchandizes at sea, or going to sea, or for lending money by way of bottomy. And if any corporation, or persons acting in their own names (other than one of the two corporations to be estabhshed) shall underwrite any such policy, or make such contract for assurance of ships, &c. or agree to take any premium for such policies, every such policy shall be void, and every policy so underwritten shall be forfeited, and may be recovered at the suit of the corporation, or to the person who shall sue for the fame in any court of record at Wasmington; and if any corporation, or persons acting in such partnership, agree to lend money by way of bottomy contrary to this act, the security shall be void, and such agreement shall be adjudged an unjuft contract; Nevertheless any particular person shall be at liberty to underwrite policies, or may lend money by way of bottomy, so as the fame be not on the account or right of a corporation, or of persons acting in partnership.

Sec. 13. If any person shall forge the common seal of either of the corporations, or counterfeit or alter any policy or obligation under the common seal, or shall offer to dispofe of or pay away any such counterfeit or altered policy, &c. knowing the fame to be such; or shall demand the money therein contained of either of the corporations, knowing such policy, &c. to be counterfeit, &c. with intent to retain the said corporation, or any other person; such officer being convicted shall be guilty of felony without benefit of clergy.

Sec. 14. No person shall be capable of being elected governor, sub-governor, deputy governor or director, of either of the said corporations, during the time he shall be governor, &c. of the other corporation; and if any governor, &c. or member of either of the said corporations, having any share in the capital stock of that corporation, shall in his own name, or in the name of any other, purchase any share in the stock of the other corporation, the share so purchased shall be forfeited, one moiety of the price of his share, the other to the procurer, to be recovered as before mentioned.

Sec. 15. Upon three years notice to be printed in the Gazette, and affixed upon the Royal Exchange, by authority of parliament, at any time within 31 years, to be reckoned from the dates of the two charters, and upon payment by parliament to the corporations of the sum of 300,000l. which the corporations were to pay to his Majesty without interest, the corporations shall cease; and any vote of the house of commons, signified by the speaker in writing, to be inferted in the Gazette, and affixed on the Royal Exchange, shall be deemed sufficient notice.

Sec. 16. If after the expiration of 31 years, his Majesty shall judge the farther continuance of the said corporations to be hurtful to the publick, it shall be lawful, by letters patent under the Great seal, to make void the fame corporations; and the same shall become void accordingly, without any inquisition, fine, farch, &c.

Sec. 17. In case the corporations shall be redeemed within 31 years, or be revoked by letters patent after 31 years, the same corporations, or any corporation with like powers, &c. shall not be granted again.

Sec. 26. It shall be lawful for the South Sea company, and the East-India company, to stand on the bottom of any flag, to transport goods on board ship, in the service of the said companies respectively, to any captains or other persons employed in the service of the companies, any money by way of bottomy, this act notwithstanding.

Sec. 29. If any governor or member of either of the corporations shall, on account of the said corporations, lend to his Majesty money by way of loan or anticipation, on any part of the revenues, other than such funds on which a credit of loan shall be granted by parliament, the said governors, &c. or other members confenting to such loan, being convicted thereof, shall forfeit twice the value of the sums lent; one fifth part to the informer, to be recovered in any court of record at Wasmington by action of debt, &c. and the residue to be disposed of to public use, as shall be directed by parliament.

Stat. 7 Geo. 1. cap. 27. sect. 26. The corporation called The London assurance having paid into the Exchequer all the sums and proceeds of the said company (other than the said sums and proceeds of the company to be paid by 28,750l. farther part thereof in three months; and the corporation called The Royal Exchange assurance of houses and goods from fire, having done the like, the residue of the said sums amounting together to 300,000l. shall be released. Stat. 3 Geo. 1. cap. 15. sect. 25. Where the Royal Exchange assurance, and the London assurance, are subject to pay double damages besides costs, the plaintiff shall recover against them only single damages and costs.
Stat. 11 Geo. 1. cap. 30. sect. 43. On all actions of debt against either of the corporations called The Royal Exchange assurance, and the London assurance, upon any policies under the common seal for the assuring of any ship or merchandizes at sea, or going to sea, it shall be lawful for the said corporations to plead generally, that they have not broken the covenant in such policy contained; and if thereupon issue be joined, it shall be lawful for the jury to give such part only of the sum demanded, if be an action of debt, or so much in damage, if it be an action of covenant, as it shall appear upon the evidence that the plaintiff ought in justice to have.

Section 44. When a ship shall be insured, a policy duly stamped shall be issued or made out within three days at least; and the insurer neglecting to make out such policy shall forfeit 100L to be recovered and divided as other penalties may be by the laws relating to the stamp duties, and all promissory notes for assurances of ships or merchandizes at sea, are declared void.

Stat. 19 Geo. 2. cap. 37. sect. 1. No assurance shall be made by any person or bodies corporate on any ship belonging to his Majesty or any of his subjects, or on any goods on board any such ship, interest or no interest, or without further proof of interest than the policy, or by the way of wagering, or without benefit of salvage to the assured; and every such assurance shall be void.

Section 2. Assurance on private ships of war, fitted out by his Majesty's subjects solely to crush against his enemies, may be made by or for the owners, interest or no interest, free of average, and without benefit of salvage to the assured.

Section 3. Any merchandizes or effects from any ports in Europe or America, in the possession of the Crown of Spain or Portugal, may be assurred in such manner as this act had not been made.

Section 4. It shall not be lawful to make re-assurance, unless the assured be insolvent, become bankrupt, or die; in either of which cases such assured, his executors, administrators or assigns, may make re-assurance, to the amount of the sum before by him assured; provided it be expedient in the policy to be a re-assurance.

Section 5. In all assurances brought upon any policy of assurance, the plaintiff or his agent shall, within fifteen days after he is required to do in writing by the defendant or his agent, declare in writing what sum he hath assured in the whole, and what sums he hath borrowed, for the voyage or any part of the voyage in which that ship hath been assured.

Section 6. It shall be lawful for any person or body corporate, sued upon any policy of assurance, to bring into court any sum of money; and if any such plaintiff refuse to accept such sum with costs to be taxed in discharge of such action, and afterwards proceed to trial, and the jury shall not damage to the plaintiff and in all actions in which such plaintiff shall pay to such defendant costs to be taxed. See Blettempy.

2. What shall be deemed baratry and devastation; and of charging and disharging the injured thereon.

Baratry is when the master of a ship, or the mariners cheat the owners or infringers, whether by running away with the ship, bunking her, defecting her, or imbedgling the cargo. Dict. Tr. and Com. 214.

Baratry of the mariners is a disease to epidemic on shipboard vessels. It is very prevalent for a master, he is industrious never to great, to prevent it; a span of villainy on shipboard soon spreads out to a cloud, for no other cause but that of the circular encouragement that one knavish mariner gives another. However the law does in such cases impose offences and faults committed by them to the negligence of the master, and were it otherwise, the merchant would be in a very dangerous condition. The
the defendant under-wrote a policy from Falmouth (where the goods were taken in) to Marfelles. Before the ship departed from the port of London, the defendant advertised her to carry private goods to Genoa, Leghorn and Naples: and the plaintiff's agent was told, it was intended to go to those ports first, and then to come back to Marfelles: But he inferred that his bargain was to go first, or directly to Marfelles, and he would not consent to let her pass by Marfelles, or take any other port: The ship however did pass by Marfelles, and after delivering her cargo at the other ports, set out on her return for Marfelles with the plaintiff's goods; but in her voyage thither, was blown up in an engagement with a Spanish ship. And in an action upon the policy, the breach was allowed of a loss by the baratry of the master. And the plaintiff's counsel insisted, that any fraud or malversation of the master was within the meaning of the word baratry. Du Praye terms it abus qui fit in contradistinctio; and so do all the dictionaries, as Floris's Italian Dictionary verbo Baratrya; Miftus, Partiet, &c. And that in the cases of Knight and Cambridge (the preceding cases) and Knight and Brand, would the loss be laid to be per fraudem of the master, the court held it a good assignment of a breach, there being the word baratry in the policy. The defendant's counsel insisted, this was no more than a deviation, in which case the insurer was discharged, and the plaintiff's remedy is against the master, or master's agent. The jury laid it down a crime of the master, when he is acting all the while for the benefit of his owners. The Chief Justice in his direction to the jury told them, that this being against the express agreement to go first to Marfelles, seemed to be more than a common deviation, being a formed design to deceive the contrac- to; and compared it to the case of falling out of port without paying duties, whereby the ship was subjected to forfeiture, and which has been held to be baratry. The jury found the same time, and, upon their return, asked the Chief Justice, whether the master was to have no benefit to himself by passing by Marfelles, and went only for the duty, that he paid a baratry. And the Chief Justice answering, no, they found for the defendant. And now a new trial being moved for, the case was argued; and all the court was of opinion that the verdict was right. For the master has acted con- fidently with his duty to his owners, and the plaintiff's agent knew that he had intended alteration of the goods would put on board, and might have refused to ship them, or have altered the insurance. To make it ba- ratry, there must be something of a criminal nature, as well as a breach of contract; and that here the breach being assigned only on the baratry, was not supported by the evidence. So the defendant had judgment. Law. 11 Ed. 4. 166. 20. Stamma v. Brown. The insurance was from Carolina to Lybun, and at and thence to Brijfif; It appeared the captain had taken in salt, which he was to deliver at Falmouth before he went to Brijfif; but the ship was taken in the direct road to both, and the salt came to the point where this cannot be shipped off to Falmouth. And it was held the insurer was liable; for it is but an intention to deviate, and that was held not sufficient to discharge the under-writer. In the case of Carter v. The Royal Ex- change Assurance Company, where insurance was from Honduras to London, and a consignment to Amsterdam; a goods happened before the came to the dividing point be- tween the two voyages, which the insurers was held to pay for. Stran. 1249. 19 Gez. 2; Fijfer v. Wilmor. The ship Mediterranean went out in the merchants service with a letter of marque, and being bound from Brijfif to Newfoundland was infurred by the defendant. In the voyage, a prize, and Brijfif, and received back a proportional part of the premium. Then another policy was made, and the ship set out with express orders from the owners, that if they took another prize they should put some hands on board such prize, and send her to Brijfif; but the ship in question should proceed with the merchants goods. Another prize was taken in the due course of the voyage, and the captain gave orders to some of the crew to carry the prize to Brijfif, and designed to go on to Newfound- land; but the crew opposed him, and infurred he should go back. He abundantly acquainted them with the orders upon which he was forced to submit, and in his return his ship was taken, but the prize got in safe. And now in an action against the insurers it was infurred, that this was such a deviation as discharged them. But the court and jury held, that this was excused by the force upon them, and they were not entitled to have made it within the excuse of necessity, which had always been allowed. The plaintiff's counsel would have made ba- ratry of it, but the Chief J. thought it did not amount to that, as the ship was not run away with in order to defraud the owners. So the plaintiff had a verdict for the sum infurred. Stran. 1264. 2 Gez. 2, Etten v. Bridgen. Cafe upon a policy which was to infure the William Galley in a voyage from Bremen to the port of London, warranted to depart with convoy: The cafe was, the galley set fail from Bremen under convoy of a Dutch man of war to the Elb, where they were joined with two other Dutch men of war, and several Dutch and English merchant-ships: whence they failed to the Texel, where they found a squad of English men of war and an admiral: After a stay of nine weeks they set out from the Texel, and the galley was reaper in a gale, by a Dutch privateer, and paid 80 f. salvage. And it was ruled by Hol Ch. J. that the voyage ought to be according to usage, and that their going to the Elb, though in fact out of the way, was no deviation; for till the year 1703, there was no convoy for ships di- rectly from Bremen to London: And the plaintiff had ver-dict. 2 Salk. 445. Feb. 14, 1704. Bond v. Genfalt. If after a policy of infurance a damage happens, and afterwards in the same voyage a deviation, yet the assured shall recover for what happened before the deviation; for the policy is discharged from the time of the deviation only. Vid. Shaver 129. Kemp and Andrews. 2 Salk. 444. 3. Of the conclusion of policies, having the words warr- anted to depart with convoy. The plaintiff infurred in goods in the John and Jane from Gottingham to London with a warranty to depart with convoy from Flockery. In July 1744, the ship failed from Gottingham to Flockery, and there the waited for convoy two months. On the 21st of September at nine in the morning three men of war, who had an hundred ships in convoy, filed off Flockery and made a signal for the others to there go out, and likewise gave them a pass to order them out. There were fourteen ships waiting, and the John and Jane got out by twelve o'clock, and one of the first, the convoy having failed gently on, and being two leagues a-head. It was a hard gale, and by fix in the afternoon came up with the fleet, but could not get to either of the men of war for failing orders, on ac- count of the gale of wind. It was stormy all night, and at day-break the ship in question was in the midst of the fleet, but the weather was so bad that no boat could be sent for failing orders. A French privateer had failed amongst them all night, and the 22d, it being foggy, at- tended the ship's company about two leagues back, in a yawl to order them out. So that the ship recovered. Stran. 1250, 19 Gez. 2, Vichte v. Cleve. On an infurance from London to Giverton, warranted to depart with convoy, it appeared there was a convoy appointed
of the words warranted to depart with convoy, Salk. 443. 445. And if the parties meant to vary the insurance from what is commonly understood, they should have particular’d their departure with convoy from the Downs. The plaintiff, &c. was fixed, that both cargoes held for the plaintiffs upon the strength of this direction. Salk. 1254. 2 Geo. 2. Gordon v. Mervy, and Cambel v. Bordieu.

Admon on a policy of insurance: the defendant pleaded non assumpsit, and the jury found the policy, by which the insurers undertook against the perils of the sea, pirates, enemies, &c. from London to Fenvier, warranted to depart with convoy. Et per cur. The words warranted to depart with convoy, mean only that: he will leave the port, and fail with the convoy without any willful default in the matter; therefore, if by default of the matter, the ship is separated and parted from the convoy, and if there be no default, the matter having done all that could be done, and the ship is taken, they are liable: So if the ship be left by force of weather; for they refuse against these by their own agreement. Salk. 443. Hill. 2 W. & M. in B. R. Jeffries v. Legrandia, S. C. 3 Lev. 320. 4 Mid. 58. 1 Shaw. 320. Cather. 216. Holt. Dep. 147.

Admon on a policy of insurance by the defendant at London, infuring a ship from thence to the East-Indies, warranted to convoy; and it was shown the ship went from London to the Downs, and thence to convoy, and was lost. After a frivolous plea of good will, it was objected, that there was a departure without convoy. Et per cur. The clause warranted to depart with convoy, must be construed according to the usage among merchants, i.e. from such place, where convoys are to be had, as the Downs, &c. Holt Chief Justice contra 3. We take notice of the laws of merchants that are general, not of those that are particular usages. It is no part of the law of merchants to take convoy in the Downs. Salk. 443. Mich. 4 W. & M. in B. R. Lethulier’s case.

The words warranted to depart with convoy have been referred to import, by the insurers’ policy, a conveyance with that convoy as long as may be. Lax. Rep. 257. The plaintiff being sued at law upon a policy of insurance of a ship, and against the baratry of the master, which was assigned in the declaration, brought his bill in Chancery to be relieved, and moved for an injunction; charging that one Matthevs, the master, and also owner of the ship, had, before the voyage, entered into a bottomry bond to the defendant for 200l. and that after, by bill of sale, he assigned over his interest in the ship to the defendant as a security for this 200l. and infilit that Matthevs was not entitled to be considered as the owner of the thing in law the ownership and property would be looked upon to be in the defendant, and inmitted, that the owner of a ship could not, either in law or equity, be guilty of a baratry concerning the ship, and therefore prayed an injunction, and that the policy might be ordered up. The voyage infurred was from London to Marcellis, with a declaration to some port in Holland. The case was, that the master failed with the ship to Marcellis, and then, instead of pursuing the voyage, sailed to the West-Indies, and there sold the ship, and died insolvent. These matters being confessed by the answver, it was considered of merchants, and that a mortgagee is to be considered in equity as owner of the thing mortgaged, and that Matthevs, the master, being owner, could not be guilty of baratry. To which new, Vol. II. No. 95. a cafe was cited of Hanna and Brown, where it was determined the preceding term in the King’s Bench. Lord Hardwicke, the jurer, Baratry was shown to have been done by the master against the ship and goods; and this being in the cafe of a ship, the question will be, who is to be considered as the owner? There are several cafes that might be put where baratry may be aliigned as the breach of an assurance, and baratry or not, is a question properly determined by law; but it appears, for the courts of law will not consider a mortgagee as having any right or interest in the thing mortgaged; and there are many cafes where a man may come into a court of equity for relief, in respect of a part only of his case. It might indeed be considered at law, whether what the master hath done, in disposing his own cargo or not, was not a breach of the contract, as master of the ship, and a baratry; and this may be considered likewise in this court. But at law a defendant cannot read part of the plaintiff’s answer to a bill brought against him here; the whole answer must be read, which hath been often a reason for this court interposing by injunction upon a plaint at law; and considering the mixed nature of this cafe, I think; an injunction ought to be granted. Ordered accordingly. Dict. Tr. and Cam. 147. 16 Geo. 2. Lenon v. Swaffs.

The plaintiffs being merchants residing at Gibraltar, and one of their ships, called The London, was found to be fit for the place, bought to return the value of 300l. and in order to forward them to the aforesaid place, he took freight on the ship Ranger, Captain Taylor, which he law put up, as usual, at the Royal Exchange and Portugal coffee-house, with a declaration infurred in the said advertisement, that the ship was to fail with the first convoy; and in consequence thereof he shipped his merchandise and made insurance thereon to the amount of 20,00l. and infurred in the policy the words warranted to depart with convoy, in conformity with the said declaration. The ship when loaded failed from Gravesend the 4th of May 1704, and arrived at Spithead, and was then in the 7th, where they continued till the 21st, in consequence of the Otter convoy, and some English merchant ships, and three Dutch East-Indi ship, Captain Twillah, whilst he lay in the Downs, having received intelligence that the convoy at Spithead was ready to fail, went on board the Otter etc., to take the Ranger under convoy. On the 12th of May, the Otter etc., the Dutch, and the three East-Indianch, as did also some English ships for the benefit of the convoy; and a few hours after they were under sail, the Otter etc. parted from them on her cruize, and the Ranger kept company with the three Dutch ships, till between four and five o’clock the next afternoon, climbing that one Matthevs, the master, and also owner of the ship, had, before the voyage, entered into a bottomry bond to the defendant for 200l. and that after, by bill of sale, he assigned over his interest in the ship to the defendant as a security for this 200l. and infilit that Matthevs was not entitled to be considered as the owner of the thing in law the ownership and property would be looked upon to be in the defendant, and inmitted, that the owner of a ship could not, either in law or equity, be guilty of a baratry concerning the ship, and therefore prayed an injunction, and that the policy might be ordered up. The voyage infurred was from London to Marcellis, with a declaration to some port in Holland. The case was, that the master failed with the ship to Marcellis, and then, instead of pursuing the voyage, sailed to the West-Indies, and there sold the ship, and died insolvent. These matters being confessed by the answver, it was considered of merchants, and that a mortgagee is to be considered in equity as owner of the thing mortgaged, and that Matthevs, the master, being owner, could not be guilty of baratry. To which new, Vol. II. No. 95. words
words warranted is depart with convoy, as they did not imply that they ought to have departed with convoy from any part of London; as the rendezvous for the fleet bound to Gibiltera and the Straitst, is generally at Spithead, where they join the convoy; and although pofitibly there may be an instance or two of a convoy falling from the Nore and the Downs to Gibiltera, yet this is an uncommon, and no man thinks, and would not have been expected on this occasion; on the contrary, it was then known, that the convoy for those parts was to be Spith-ead, and many ships went there from London to take the benefit of it, so that the warranty could only be un-derstood from Spithend, as it was from the convoy there the Captain was to receive his falling orders; besides, as it was unsafe to lie in the Downs without a man of war, the plaintiff conceives the Ranger would have run a much greater risk, in continuing after the Outer’s departure, than did in falling with her and the Dutch ships, tho’ they were no regular convoy; and the plaintiff paid the same premium for his insurance as was given on several ships at the same time, with a warranty to depart from any port of the channel; and it was the opinion of several merchants, that ships falling with convoy are to make the best of their way to the convoy, and not stay for an immediate one. The jury found a verdict for the plaintiff.

For more learning on this subject, see Law of Bills of Exchange, Insurances, &c.

Antifate. Were a fort of thieves in Riddifdale, in the faftibst Northern parts of England, mentioned 9 Hen. 5. cap. 8. and called, because they dwelling within the liberty, did take in and receive such booties of cattle, and other things, as their confederates the out-partners brought in to them from the borders of Scotland. Cowell, edit. 1727. See Out-partners.

Antifate. See Eftatum.

Argumentum ad locum, (IntelliSta legis,) The understanding, intention, and true meaning of law. Co. Litt. 76b. says, the judges ought to judge according to the common intendant of law.

By intendment of law every parfon, or rector of a church, is supposed to be reftant in his benefice, unless the contrary be proved. Co. Litt. 78b.

One part of a manor by common intendment, shall not be of another nature than the rest. Co. Litt. 78b.

Of common intendment a will shall not be supposed to be made by collusion. Co. Litt. 78b.

The law presumes that every one will act for his best advantage; and the party, whatsoever is to his own prejudice. Fin. Litt. 10b. 53.


Covin shall not be intended or premised in law, unless it be expressly averred. Arg. Bridgen. 112. cites the cafe of Tyrer v. Littledale.

When one word may have a double intendment, one according to the law, and another against the law, that intendment shall be taken which is according to the law; and this by a reasonable intendment. 3 Blufh. 306. Misch. 1b. 25a. Gome v. Harrow.

In intent or Intention. The words of deed shall be construed according to the intent of the parties, and not otherwise. Pl. C. 160. b. Pas. 3. M. 1. 179morton v. Tracy.

The intent shall be destroyed where it does not agree with the law. Pl. C. 16b. 2. Tyrwhittmorton v. Tracy.

In intent the intent is the chief thing that is to be considered; and if by the act of God, or other means not arising from the party himself, the agreement be performed according to the words, yet the party shall perform it as near the intent as he may. Arg. Pl. C. 25b. Fin. Litt. 7b. cafe of Chopan v. Dalton.

Common usage and usages are the governors of the matter, and direct the intention of the parties; as upon face of a barrel of beer the barrel is not fold, but upon tale of a hoghead of wine it is otherwise. Sweth 1. 124.
Nets of fins; and let him be anastoma manum atba for ever with the devils in hell. Fiat, fiat, fiat. Amen."  

Dr. Franklin.

Interest. (Interest) Is usually taken for a term, or chasht real, and more particularly for a future term; in which case it is said in pleading. That he is possessed of...term. Further, but the said Lord Mountjoy, his heirs and assigns, that the Lord Mountjoy, his heirs and assigns, might dig for ore in the lands (which were great waffles) parcel of the said manor, and to dig turf also for the making of almu. Resolved, that this did amount to a grant of an interest, and inheritance to the Lord Mountjoy, to dig, 

C. 164. b.

At Guildhall: In ejectionment for a messuage in London, it was objected against the title of the plaintiff, that this was a messuage above 40 l. per annum, and that the curfew of the city, is that there ought to be warning given for the fourteenth of the month of August, in which, there is the Feast of St. John, and by the space of a quarter of a year, where it is under such a rent; the question was, if this curfew gave the party an interest; or only intituled him to an action if he be ousted within the time, as in the common cases of leases for years, or at will, with agreement of quarter's warning; though Hol Ch. J. said, that he had heard that North Ch. J. ruled upon evidence, that the curfew gave a certain term; and though it was objected, that if it did not give an interest, it was not of any benefit to a citizen, who ought to have a reasonable time to remove his effects; yet the Ch. J. inclined to the contrary, and referred for his opinion. 


A mortgage is an interest on land, and on non-pay-ment, the estate is absolute in law, and his interest is good in equity to intitle him to receive and enjoy the profits till redemption or satisfaction, and, on a fore-closure, has the absolute estate both in law and equity. 


If A. makes a lease to B. for life, and after his death to the executors and assigns of B. this is an interest in B. to dispose of it. But if it had been limited to B. for life, and afterwards to the executors and assigns of C., this is not an interest in C. But if A. has mortgaged his estate, they are not parties or privies to the first interest: Brookn. 136. Per Or. 4th. Clerk v. Sydenham.

A. devised a term to his wife for six years, and made her executrix, and that after the said years, then John my son, if he come home, shall have the benefit of the said lease during the residue of the said term; and if John does not come home, then William my son shall have, &c. till John my son do come home. The wife claims as legatee. William makes his will, and devises the lease to J. S. and dies. The six years expire, John being not come home; this was held a good devise by the courts, and that it was a leasehold interest, but an interest in the term after the six years expired, 


Interest of money. Where an estate is devised for payment of debts, Chancery will not allow interest for book debts. 3 Ch. R. 94. Delman v. Pritman. 

The debts are charged with payment of a sum in gross, they are also chargeable in equity with payment of interest for such sum. Hill. 29 Car. 2. Fin. R. 286. Shipton v. Tyrell.

Interest is recovered by way of damages, where damages are recovered rataeum determinati debiti; but not where damages wholly are recovered. See the case of recovered accustae damnum; per Powell J. 2 Salk. 623. Hill. 10 W. 3. B. R. Swayne v. Spire.

A bill was to foreclose an infant, and an account was decreed. The master reports 2600 l. due; a subsequent order being to compute interest from the report; 

Wright K. doubted if interest should be allowed for the interest. Mich. 1700. 2 Vern. 392. Bennet v. Edward...and Salky. 

3

Lands by deed or will subjected to the payment of debts; if there be a bond debt, and the interest has out-run the penalty, it shall not carry interest beyond the penalty; for the design of the settlement was not to increase the debt with what is due, but to give a further security: However if device or truce neglects to pay in a reasonable time, he shall after such neglect pay interest beyond the penalty; per Lord C. Cretor 1707. 1 Salk. 154. Ams.

A term was vested in trustees for payment for all debts; he did owe at his death, without preferring one before another, there were owing debts by order and by simple contract. Lord C. Harcourt declared, that this term, the simple contract debts became, as debts due by mortgage, and consequently should carry interest, as well as the debts secured by bond. 


By where a general and national calamity, nothing is made out of lands which are assigned for payment of interest, it ought not to run on during the time of such calamity. MS. Tab. cites 25 June 1715. Bajif v. Ashley. 

A recompense was entered into to pay 1000l. a year annuity to a third perfon. The same was not to be paid for several years. Decreed per Lord Caugher, that the re- cognizance being in nature of a bond, the annuaries were a debt secured thereby, and so must carry interest from the time they became respectively due. Mich. 3 Geo. 1. 145. Legats v. Stavell. 

No interest to be allowed for colts. MS. Tab. cites 6 Feb. 1719. Butler v. Barc.

By marriage-articles the lady's father was to pay fe- veral sums at several times for discharging the husband's incumbrances; he advances money to the son-in-law, and maintains the wife and child for two years; such money and advances for maintenance, shall be paid, to the foot of the account, and not carry interest. MS. Tab. cites 1721. Kirkman v. Blake. 

Where excessive rates are allowed for work in respect of flow payment, there should be no interest allowed; for interest is only allowed to supply the want of prompt payment. MS. Tab. cites 27 Feb. 1723. Duckstof. vs Marlborough v. Strange. 

An annuity of 200l. a year was devolved by A. to J. out of A.'s personal estate, payable quarterly, and the same being three years in arrear, it was instilled that it should have interest. But the court said, that this is only done where there are great debts; but it is not usual to compute interest for so small a sum. Trin. 1723. at the Rolls. 2 Wint's Rep. 167. Batten v. Earnly. 

The areas of annuity, or rent-charge, are never de- creed to be paid with interest, but where the sum is cer- tain and fixed, and also where there is either a clause of carry, or annuitate, or some penalty upon the grantor, which he must undergo if the grantee sued at law, and which would oblige him to come into this court for relief, which the courts will not grant but upon equal terms, and can be no other, but decreeing the arrears in Hills. 4th. 27. Per Lai. C. Talbot. Cases in Obl. in Lord Talbot's time 1 Mich. 1733. in the case of Lady Ferres v. Lord Ferres.

For more learning on this subject, see 14 Vin. Abr. tit. Interfet. 

Interior, (Interior) Is that which decides not the cause, but only settles some interesting matter; the cause is left to the courts; as when an order is made, by motion in Chancery, for the plaintiff to have an injunction to quiet his possession, till the hearing of the cause. This, or any such order, not being final, is interlocutory. Cowell, edit. 1727.

Interpleader. See Entreplead.

Interrogatories. Are questions, exhibited in writing to be asked witnesses, or contemporaries to be examined. P. R. C. 217.

They are exhibited by the party, or directed by the court, to be propounded, and asked the witnesses examined in
in the causa, touching the merits thereof, or some inci-

They are either direct, on the part of him who pro-
duce the witnesses, or counter-interrogatories, in the behal-
of the adverse party. P. R. C. 219, 220.

A person in contempt appeared on an attachment, and
offered to be examined on interrogatories; the court or-
termed them to be halted and filed in 4 days, (tho' the
common time allowed is 8) or the party to be discharged.
P. R. C. 219.

One who is by rule of the court to be examined by
interrogatories in the Crown-office, ought to attend the
Master of the office, who is to examine him within 4
days after the interrogatories are put in for him to be
examined upon, for the special dispatch of justice; and
he is not bound to attend before 2. P. R. C. 73. cites
Act 32 Geo: 1. c. 4.

Note: Upon a motion to be discharged because no in-
terrogatories were put in within four days, it was ruled,
that the four days must be in term. Couch. 3. Hill 12 &
2 Jac. 2. B. R. Anw.

Counsel was ordered to have not a copy, but a fight
of the interrogatories, to which the defendant was to be
Bellinghys.

A defendant, who after four insufficient answers, was
to be examined, had by order of the court (for special
reasons) leave for some of her counsel (the inter-
rogatories being put in, on the fifth day) to appear
before the court, (as order of law) but not to have a
copy. P. R. C. 218.

Ordered to have a copy. N. Ch. R. 119. 19 Car. 2. Hجازv v. Pelloq, S. P. if the party be to be examined on a bare contempt. P. R. C. 218.

A man is charged with a contempt; upon interro-

gatories he cleared himself on his oath; the other party
can proceed no further in this matter, but shall take his
remedy by action if he will. Couch. 63. Mich. 2 Jac. 2.
B. R. Anw.' See Contempt.

Interpellati, To fequester or put in a third hand, viz.
when anything is stolen, and sold to another, and after-
wards demanded by the right owner of the thing in whose
possession 'tis found; it was usual to fequester the thing
unto a third person, who was to keep it till the buyer
produced the seller, and fo on to the thief. Leg. fr. equad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Intricat, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Intricat, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Intricat, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad

Interdicts, (Interdicts.) There are two kinds of inte-
ddicts; one that makes no will at all; another that makes
a will, and nominates executors, but they refuse; in
which case he dies an interdict, and the ordinary commits
administration, 2 Part. left. fol. 397. In former times,
where he died interdict was accounted damned, because (as
Mat. Par. tells us) he was obliged by the canons, to leave
half of his estate to the second person, who was to keep it till
the buyer produced the seller, and so on to the thief. Leg. fr. aequad
...
ship, and confign'd to a factor or correspondent in another country. Stat. 12 Car. 2, c. 24.

32. Signum, signifies c, as the pardon inrebus, Stannard, Praev, fol. 40. See Cit. riders.

Jorber, is used for one that buys or sells cattle for others. Stat. 22 & 23 Car. 2.

Jorlius, (fr. Jovialis) Jewels. Edward the First employed John de Andover, and several Jews in uniparadisa. Clar. Edw. 28. To Pretender's confudenting grastan sub-stantiam, quam premfati abba & manachi (Reading) nobis fuerunt de magnis & precipia joculibus ac alii rebus suis in jubilum expedierun etfumpsum, que circa praeferunt quasdam nostrarum verbarum partes translationem. &c. In Mem. Soc. de anno 22 Edw. 3 Trin. rot. 3. The word Jorlius is derived from the Lat. jucul, joculis, and jocula, which seems to comprehend everything that delights us; but in a more refined sense, in those things which are ornament to women, which in France they call their own, as ear-rings, bracelets, &c. But Du Frieze tells us, that at Arragon in Spain, the question was, whether a woman's closetts would pass by the device of her husbands? And that the judge upon great deliberation, and consulting with others, was of opinion they did not pass. In England, a wife shall not be intituled to jewels, diamonds, &c. on the death of her husband, unless they are suitably to him. If the husband leaves after to pay debts. &c. 1 Rol. Abr. 911


Joratius, A jeller. In a deed of Richard, abbot of Bernes, to Edw. his son, a fee dat. among the witnesses to it was Willianus tunc jocario Domino Abbotis. But in Downes say's firm Burdi was Jocalel Regin, the King's jeller.

Jorlet, (Sax.) Predictimul, egri stendi partiuscolu. A little farm or manor; in dome parts of Kent a yeeker, as requiring, but only a small plate of corn to till it. See Dom. 554.

Jorus partitus. 'Tis so called when two propofals are made, and a man hath liberty to choose which he will. Nec potest transfare, nec pacifie, nec jocum partitum facere, nec addid. Brahson, lib. 4. trac. 1. cap. 32. par. 2. Etiam si apparentors parvius querellor & respondentor, five legibus per non tenarum vel per quernque diperti jocum civitator, &c. Henglum Magn. cap. 4.

Joiner in action, Is the coupling or joining of two in a suit or action against another. P. N. B. fol. 181, 201, 221.

They were robbed of one joint farm between them both; they may join in a suit against the hundred upon the statute of Winton; but 'is otherwise, if they were robbed of several farms. Pag. 23 Eliz. Dyer 370.

Two are partners in merchandise, one of them appoints a factor; they may both have several writs of account against him, or they may join. Mich. 20 Eliz. 90. Mor 188. Dowbey v. Gus & al., S. P.

Due bond upon the defendant pleaded a release, which was in those words, viz. The oblige confesseth himself to be discharged of all bonds, &c. and that he will deliver up all, except one, which is not yet forfear, in which the defendant, and two others, fund bond to the plaintiff; and thereupon the plaintiff in his replication avered, that this was the bond upon which the action was brought; and upon demurrer it was ad-joined against him, because the action was brought against the defendant alone, when by the plaintiff's own con-fession it appeared, that the bond, was made by him and two others, who ought to be joined in the action. 9 Rep. 52. Hitchins's cafe.

The lefier being feised in fee of one house, and being pollarded of a term of years in another, made a lease of both for ten years, and the lefier covenant'd to repair, &c. During the poffeion of the landlord, and the reversion in fee to the plaintiff, by one deed, and the reversion for years by another, deed; and for not repairing he brought an action of covenant against the lefier; and upon demurrer to the declaration, the plaintiff had judgment; and upon error brought, it was allowed for error, that he having two revolutions, the one in fee, and the other for years, and that by several deeds, he ought to have brought feveral actions; but adjudged, that the action was well brought. 3 Bros. 329. Pyll v. Lady St. John.

Two lefiers for years, rendering rent; one of them afterwards was given to the other of the defendants, and the tenant made his will, and appointed an executor, and died; the rent was behind after the assignment made by one, and after the death of the other lefier, and an action was brought against the defendant in the debt and determin; it was objected, that a joint action would not lie against him, in two actions, but the court decreed, that the terret was divided; one by assignment, and the other as executor; but adjudged, that the severance of the land shall not make any severance of the action. 3 Bul. 211. Ipworth Bailiffs v. Martin and Parkcr.

In trespass, the plaintiff declared, that the defendant was guilty of trespass on his lands. Upon jury, the plaintiff pleased, it was found for the plaintiff; but the judgment was reversed upon a writ of error, because it appears upon the plaintiff's own shewing, that the action ought to be brought against two; but if trespasses had been brought against one, who pleaded, that it was done by him, and by his order, the plaintiff had no right. The plaintiff traverse the release in such case, because the matter doth not appear upon the plaintiff's shewing, but comes in on the part of the defendant, the declaration is good. 1 Leon. 41. Henley v. Breed.

Two cannot join in an action of slander, because the defendants are not the defamation of the other. Tom. 28 H. 8. Dyer 15.

Two brought trespass against the defendant for breaking their clofe; upon Not guilty pleaded, the jury found that one of them was sole feied of the lands, and that he ex professo ad cultum to the other to plough and sow by. But the defendant might have refayed all the cufoms, and the words, but that he was full feied sole, and by confef- sion they could not join in this action. 1 Leon. 315. Harv v. Oakley, Giffins, 77. S. C.

In replevin, the defendant made conuance as bailiff of G. D. for damage featant, setting forth, that W. R. was feied of the lands, and devised them to G. D.; but because it appeared in the pleading, that the said G. D. was tenant in common with the heir at law, exception was taken to the conuance, for that tenants in common ought to join in an awovy; and the conuance must be in both their names; but adjudged, that a tenant in his own right has no such cause of action, without the aid of his partner, and he alone may disconfirm the taking, the his awovy be by way of action. Gra. Eliz. 530. Willks v. Fischer.

Tenants in common cannot join in an action of waste against their lefiers; but tis otherwise in the cafe of co- parceners or_jointants. Mor 34.

Two persons exhibited two informations at the same time, against a parfon for taking a lease of lands contrary to the statute of 21 H. 8, adjudged, that he shall not plead to either of them; tis like two replevins brought at the same time for the same taking, &c. the defendant shall answer neither. Mor 804. Pyr v. Coke.

Three covenantanted jointly and severally with two feverally, this is a good covenant; but the three cannot join in an action of covenant. Trin. 17 Car, March. 103.

Cafe, &c. wherein the plaintiff declared, that in con- fideration her father would surrender a copyhold to the defendant, he promised to give his two daughters 20l. a piece, and the action was brought by one of them; after a verdict for the plaintiff, it was moved in arrest of judgment that the plaintiff had declared upon a joint promis made to two, and the action was brought by one, whereas the other ought to be joined; but adjudged, that the promise had divided interest, and by consequence the action is well brought by one of them. Style 61st. Thomo's cafe. See 2 Vin. Abr. 38.75.
Joint action. See Joiner in action.

Joint and several. An interest cannot be granted jointly and severally, or to persons, who are joint and several, or makes a lease for years, to two jointly and severally, those words (severally) are void, and they are joint tenants. 5 Rep. 19. Misch. 29 & 30 Eliz. Slingsby's cafe.

A power or authority may be joint and several. 5 Rep. 19. Misch. 29.

Joint words of parties shall, by construction of law, be taken respectively and severally. 5 Rep. 7. b. (d) Misch. 31 & 32 Eliz. B. R. Jurists Wynsamb's cafe.

When it appears by the count, that the several coventancies have, or to have, several interests or effects, as to their several parts, particularly, as to such, of vom quilibet erum, these words make the covenant several, in respect of their several interests. 5 Rep. 19. Misch. 29 & 30 Eliz. Slingsby's cafe.

There is a difference between a power given to two, and an interest given to two, a lease for years is made to two, & quilibet erum, this is a joint lease, and the words (quilibet erum) are void; this is to maintain quiet and avoid contention. So of an obligation made to two quilibet erum, or a grant of the next avoidance to two quilibet erum. But a power to fell, lett, or make livery to two common, is void, if it be not joint. Capite ditiamur erit conju. klich. 296, 263, 1. 63.

And a grant of the next avoidance to two & quilibet erum, to present A. to the said church, is good; for the avoidance is avoided by reimbidding both to A. 266. p. 61. See also 268, 269.

Joint execution. See Creditor.

Joint fines. If a whole is to be joined, a fine may be said, and it will be good for the necessity of it; but in other cases, fines for offences are to be severally imposed on each particular offender, and not jointly upon all of them. 1 Rep. Rep. 33. 11 Rep. 42. Dyer 1. 53.

Joint inditments. May be sometimes had: If ofices of several persons arise from a joint criminal a&;; without any regard to any particular personal default or defect of either of the defendants; as the joint keeping a gaming house; or unlawful hunting, and carrying away deer; or maintenance, extortion, &c. an indictment or information may charge the defendants jointly.

Virt. 302. 2 Hawk. P. C. 240. When there are more than one defendants in an information, it may be exhibited a joint plea of Not guilty; but are to plead severally, that neither they nor two of them are guilty; 20 H. 6. 20. 2 Rel. Abr. 707.

Joint lives. A bond was made to a woman dam, to pay her so much yearly as long as the and the binder should live together, &c. afterwards the woman married, and debt being brought on this bond by husband and wife, the defendant pleaded, that he and the husband's wife did not live together; but it was added, that the money should be paid during their joint yes, so long as they were living at the same time, &c. Lucio. 555. And a perfon in consideration of receiving the profits of the wife's lands on marriage, during her joint lives, was to pay a sum of money yearly in full for the wife, though it was not paid every year during the. &c. It was held, that the payment shall be intended to continue every year also during their joint yes. 1 Lucio. 459. Lease for years to husband and wife, if they or any issue of their bodies should live so long as that has been adjudged to so long as either the husband's wife or any of their issue should live; and not only for so long as the husband and wife, &c. Should jointly live, Mar. 339.

Joint-tenants, (Joint tenentes, ou qui conjunctim tenentes, hab. Intronation, tit. Pernoon in heres, 3.) Are those that have joint title and are not by the title pro indivis, or without partition. Ca. on Litt. 1. c. 3. f. 177. These are distinguished from sole or several tenants, from parners, and from tenants in common; and ancienly they were called particeps, and not barteres: And here must jointly impede, and jointly be impeded by others, which properly is common between them and co- parceners; but joint-tenants have a fole quality of survivourship, which co-parceners have not; or for if there be two or three joint-tenants, and one hath issue, and dies, then he or those joint-tenants that survive, shall have the whole by survivourship. Cenoll. edit. 1777.

Where a feestifon is made to two or more, and their heirs, or a lease is made to them for term of their lives, they are joint-tenants; for being made for a bare perpetuation of the title, they shall jointly hold per mile et per rate, and shall jointly impede, which property is common between them and co-parceners; but joint-tenants have a fole quality of survivourship, which neither co-parceners nor tenants in common have, Lit. let. 277.

Tenants in common are those that come to the land by several titles, or by one title and several rights; as if there be three joint-tenants, and one alien his part, the other two are joint-tenants of their parts that remain, and hold them in common with the alien; so if joint-tenants make several feestifions or gifts in tail, or leases for life, the foees, ducens or leaffes are tenants in common, Lit. sefl. 292. Co. Lit. 190. a.

And as the effential difference between joint-tenants and tenants in common is, that joint-tenants have the lands by one joint title, and in one right, and tenants in common have the lands by several titles, or by one title and by several rights; this is one of the cases, why may be said, that joint-tenants have one joint freehold, and tenants in common have several freeholds, though this property is common to them both, viz. that their occupation is individuate, and neither of them knoweth his part in several. Co. Lit. 190. a.

Hence it appears, that the wife of a joint-tenant cannot be endowed; as if lands are given to two men and their heirs; or the heirs of their two bodies, and one of them dies, his wife shall not be endowed, but it shall go to the survivor, who then is in from the first feuor or donor, and may plead it as an original feestifon or gift to himself, and fo is paramount her title of dowry, which is not complete till her husband's death: and one book says, it was the ancient course in mortgages to make the estates to two, in order to prevent the mortgagee's wife of dower, Co. Lit. 30. a. 31. b. 37. &. 3 Co. 27. Bre. tit. Dower 4. 84. Co. Eas. 503. Perk. deel. 374.

But the wife of a tenant in common shall be endowed; for there is no survivourship takes place, but each moiety defends to the respective heirs of the respective tenant in common, and in such case the dower shall be assigned in common too, for the cannot have it otherwise than her husband had, Lit. sec. 44, 45. Co. Lit. 34. b. 37. &.

Also if there be two joint-tenants, and one relieves the other in this, he shall be a fee without the word heirs, because if refers to the whole fee, which they jointly took, and are possesse of by force of the first conveyance; but the tenants in common cannot release to each other for a release afoope the party to have the thing in demand; but tenants in common have several distinct freeholds, which they cannot transfer otherwise than as persons who are feol feied. Co. Lit. 9. 200. b.

If lands be given to A. and B. and the heirs of A. B. who is only joint-tenant for life, cannot forsurdien his estate to A. for to make it freehold with him per mile et per stat. 29 H. 6. 51. 2 Rel. Abr. 896.

If land be given jointly to two, upon condition that they shall not alien, and one of them releaf the other, it is no breach of the condition. Wibb. 3. Reym. 413.

If there be two joint-tenants of land holden by heriot service, and one dies, the other shall not pay heriot service; for there is no charge of the tenant, the survivor continuing tenant of the whole land. Owen 152. Butler and Archer.

And although tenants in common have several freeholds, yet one tenant in common cannot disfife the other, no more the husband than the individual diffant, as turning him out, and hindering him to enter, but it shall be held as a breach of the profits is not enough. 1 Selc. 392, Reading's case.
1. Who may be joint-tenants or tenants in common.

2. Of what things there may be a joint-tenancy or tenancy in common; and of the right of survivorship, and of what things shall survive.

3. At what time the right of survivorship it is to take place; and what disposition or conveyance will work a survivorship, and defeat the right of survivor.

4. Of survivorship in compulsion of laws; and of the wit of partition.

5. How joint-tenants and tenants in common are to live and be fed, of summons, and survivorship and the remedies they have against each other.

1. Who may be joint-tenants or tenants in common.

An alien and subject may be joint-tenant, &c. unless the temporal estate, therefore if an alien and subject born purchase lands to their heirs, the survivorship shall take place till office found; but the office found intitles the king, and seversthe joint-tenancy. Co. Lit. 180. 6.

Bodies politic or corporate cannot be joint-tenants with men; others, neither can a corporation, whether sole or aggregate, be joint-tenant with a natural person; and therefore if land be given to two bishops, or abbots, or parsons, and their successors, they are tenants in common at first, and have no joint estate for life; for they take in their politic capacities in eight of their churches or other benefices, as joint-tenants, or if lands be given to a layman and a parson, and to the heirs of one, and successor of the other, they are tenants in common; for the fee, vests in them in several capacities. Co. Lit. 189. 6. 190. a. Mar. 222. 2 Samb. 3. 9.

But if a lease for years or other personal thing be given to a layman and a bishop, &c. they are not tenants in common, but joint-tenants, for, as no chattels personal can go in succession, they must both take in their natural capacities. Co. Lit. 190. a.

Diffidors may be joint-tenants, and upon the death of one of them the survivor shall have the whole; for the right, such as it was, continued jointly in them. 21 Ed. 3. 50. b. 1 Rol. Abr. 87.

Infants may be joint-tenants, and if there be two infants joint-tenants, who alien in fee, and one of them dies, the survivor shall have the whole; for notwithstanding the alienation the joint-tenancy is not severed, by reason of the possibility of defeating it by writ dam fas in astrotem. 21 Ed. 3. 5. c. 2 Rol. Abr. 57.

Baron and feme may be joint-tenants; but herein it is to be observed, that husband and wife, being considered but as one person in law, if an estate be made to husband and wife, and a third person and their heirs, the husband and wife take but one moiety, the third person the other. Lit. 302. 291.

Also baron and feme being one person in law, there can be no moieties between them of an estate given to them jointly during coverture; and therefore if lands be given to husband and wife, and their heirs, the husband cannot during the wife's life dispose of any part of it, but he the whole must go to the survivor of them. Co. Lit. 187. a.

But if an estate be made to a man and a woman, and their heirs, before marriage, and after they marry, the husband and wife have moieties between them. Co. Lit. 187. b.

And as there can be no moieties between husband and wife of an estate given to them during their marriage, it hath been held, that if the husband be attainted and executed, the wife shall by her petition regain all such lands, conveyed jointly to her and her husband. Co. Lit. 187.

So if the lord enter on the husband being his vassal, and having made such purchase, the wife surviving shall recover the whole. Co. Lit. 187.

It is said, that if a deed of feofomint or grant of a reversion be made to them whilf folc, and then they inter-
JOI

the survivor of them, and the baron grants the term, and dies, this will not bar the wife surviving; because the wife had but a possibility, and no interrell. 10 Co. 51. Gai. 139. 4 Lem. 185. Hotman 17. 2 Rol. Abr. 43. Poph. 5. Grat. En. 841. Co. Lit. 129. 3 Rul. Abr. 344.

If the baron be indebted to the King, and purches lands for years to him and his wife, and dies, this land shall be put in execution for the said debts, because the baron had power to dispose of the said term. 5 Co. Lit. 17. 1 Rol. Abr. 35, 344. This is made a quare.

If a rent-charge be granted to a man and a woman for years, who afterwards intermarry, and after arraiges incur, and after the baron dies, the feame shall have the residue of the rent, and also the arraiges in a writ of annuity, because they participate of the nature of the principal debt.

If there be baron and feeme joint-tenants for life, and the baron fows the land, and dies before severance, his executor fhall have the emblems, and not the feme; and it is said, there is no diversity between this and where the baron is feised in right of the feme. 1 Rol. Abr. 727. 3 Co. Lit. 55. 1 Nib 149. S. C.

2. Of what things there may be a joint-tenancy or tenancy in common; and of the right of survivorship, and what things shall survive.

There may be a joint-tenancy not only of lands and tenements, but also of chattels personal, as well as real, such as leaves for years, a horfe, &c. for where two come to thfe by joint gift or purchase, they fhall survive, and not go to the executors of the party deceased. Co. Lit. 181, b. 2 Rol. Abr. 57.

But an exception is to be made of two joint merchants; for the wares, merchandizes, debts or duties that they have as joint merchants or partners shall not survive, but fhall go to the executors of the deceafed; and this per legem mercatorum, which is part of the laws of this realm, for the advancement and continuance of trade and commerce; which being pro bono publico, the rule is, that 'Jus a Scribendi inter mercatores pro beneficio commercii lucem non habet. Co. Lit. 182. a.

But tho' there is no survivorship between merchants, yet if there are two joint merchants, or two who are jointly podifefled of goods in the way of trade, who caufally leave them, and afterwards one of them dies, the survivor alone may, it feems, bring trove for them; for the action must necessarily survive, though the interrell doth not, otherwise there would be a failure of justice; because the survivor and the executor of him who is dead cannot in the ſeim, for that their rights are of feveral natures, and there must be feveral judgments; but it is being held clearly, that if this was any plea, it must have been in abatement, for which reafon the books fays the principal point was not determined. Carp. 170. Kemp v. Andrews. 1 Steev. 188. Comb. 474. 3 Lev. 204. 8 G.

Also there may be tenants in common of chattels real or personal, intire or feveral, as leaves for years, wards, horfes, &c. as when any of thofe who were joint-tenants of them grant over their interrell to a stranger, the grantee and the other are tenants in common. Co. Lit. 199. a. 3 Co. Lit. 1720. b. 4 Co. Lit. 1710.

Also if there be two tenants in common of a feignory, and a ward fable, they are tenants in common of the wardship, as well of the body as land; and fo if it is the land leftehen to them, they fhall be tenants in common thereof. Co. Lit. 199. a.

If a corrodory be granted to two men and their heirs, in this cafe, because the corody is uncertain, and cannot befeved, it fhall amount to a feignory, to each of them one corody; for the perons be feveral, and the corody is personal. Co. Lit. 199. a.

If two take a leafe jointly of a farm, the leafe shall survive; but if of the lands, the property of the lands shall not survive, neither shall a ftole fuccefl in a joint undertaking in the way of trade survive; and there-fore it is laid not to be necessary in articles of copartnership to provide against it. 1 Vern. 217.

The jus accessorendi, or right of survivorship, takes place only between joint-tenants; as where lands are given to two men and their heirs, the furvivour fhall have the whole; for being limited to them and their heirs, the feefor or donor hath thereby transferred the absolute property to them; but how the word heirs came to signify the heirs of one of them, so as to exclude the heirs of him who died first, is not easy to be determined, and can be accounted for no otherwise than that both joint-tenants being limited to the whole during their respective lives, the furvivour having continued longer in possession was therefore presumed to have done more service to the feud, and upon that account was allowed to transmit it to his heirs; also, fays my Lord Chief Juf- ticiary Hol, the Common law does not have to multiply tenures. Co. Lit. 181. 3 Salk. 392.

So if lands be given to two men for life or years, they are joint-tenants, and the furvivour fhall hold the whole for his life, or according to the number of years limited in the conveyance. Co. Lit. 181. b.

But if a man leteeth lands to A. and B. during the life of A. if B. die, A. fhall have all by survivorship; but if A. die, B. fhall have nothing. Co. Lit. 181. b, 3.

A naked trust or authority cannot survive; but a trust coupled with an interrell fhall survive together with it. Co. Lit. 181. b. but for this, see ETTR.

If a leafe be granted to A. and B. for their lives, and the life of the longest living of them together, and they make partition, and then A. dies, the leffer fhall enter into his part; for B. has no title to it, because the right of survivorship was left by the partition, which destroyed the joint-tenancy; nor will the words to the longest living be of any use to B., because they were void at first, being no more than the law implied in the joint effect. Co. Lit. 191. a. 2 Rol. Abr. 150. 3

Two joint-tenants of a rent-charge or rent-service, and one of them dies, the furvivour fhall recover all the arrears which incurred and became due in the lifetime of his companion. 33 H. 6. 20. b. 15 Ed. 3. Aff. 18. 3 Rol. Abr. 86.

Two joint-tenants fow their land with corn, and one of them dies, the corn fown fhall go to the furvivour, and the moiety fhall not be to the executor of the perfon defeafed; for they are fuppofed to carry on the cultivation of the foid by a joint flock. 2 Rol. Abr. 86. 1 Rol. Abr. 727.

But if husband and wife are joint-tenants, and the husband fows the land with corn, and dies, the crop fhall go to the executors of the husband as it feems; for this land is not cultivated by a joint flock, but is totally the corn of the husband, and the property of the perfon, and not to be left by committing it to the joint possession, no more than if it had been fown in the land of the wife only. 1 Rol. Abr. 727.

So if there be two tenants in common, and one of them fow the land, and die, his executors fhall have the corn; because they have different interrells, and are fuppofed to cultivate by different flocks, and not by a joint one. Perk. feb. 523.

3. At what time the right of survivorship is to take place; and what disposifition or conveyance will work a feverance, and defeat the right of survivorship.

This right is to take place immediately upon the death of the joint-tenant, whether it be a natural or civil death; as if there be two joint-tenants, and one of them enters into fequestration, the furvivour fhall have the whole. Co. Lit. 181. b.

Also it is laid down as a rule, that there fhall be no right of survivorship, unless the thing be in jointure at the instant of the death of him who firft dies; nihil de confessu fiat nihil in re quando jus accessorit habit. Co. Lit. 188. b.

Therefore

Vol. II. N°. 96.
Therefore if there be two joint-tenants of a rent, and one of them die, the tenant of the land, this is a feve-
nance of the jointure for a time; for the moiety of the rent is suspened by unity of possession, and therefore
cannot stand in jointure with the other moiety in poffes-
sion, so that if during such suspension one joint-tenant
dies, there can be no survivorship.
Two tenants of a lease for years, one of them taking husband and dieth, yet the term shall fur-
vive; for though all chattels real are given to the hus-
band, if be survive, yet the survivor between the joint-
tenants is the elder title, and after the marriage the
rente continued sole poffe{ion; for the term is inrolled, ye{t, the
rente shall have it, and not the executors of the husband;
but otherwise it is of personal goods. Co. Lit. 185. a.

Although joint-tenants are feied per miss & per tant, yet
to divers purposes each of them hath a right to a moiety;
as to enfeoff, give, or demife, or to forfeit or lose by
default in a pra{eps; and therefore where there are two or
more joint-tenants, and they all join in a feoffment,
each of them in judgment of law gives but his part. Co.
Lit. 186. a.

If one joint-tenant has died, and the moiety, and
dies before the deed is inrolled, yet the deed being after-
wards inrolled shall work by seve{iance of rents, and sup-
port in relation the inte{est of the burdens. Co. Lit.
186. b.

But if one joint-tenant bargains and sells his moiety, and
dies before the inrolle{ent of the other, his part shall fur-
vive; for the freehold not being out of him, the jointure
remains; and the other afterwards the deed is inrolled, yet
only a moiety shall pass; for the inrollement by relation
cannot make the grant of any better effect than it would have
been if it had taken effect immediately. Co. Jec. 53.
Co. Lit. 186. 1 Boul. 3.

If a recovery be had against a joint-tenant, who dieth
before execution, the survivor shall not avoid this re-
cover; because that the right of the moiety is bound by
it. Co. Lit. 185.

If one joint-tenant agree to alien, and does it not,
but dies, this will not fetver the joint-tenancy, nor bind
the survivor. 2 Vern. 65. That such an agreement does
not bind the law. Co. Lit. 184. b. 185. 1 Boul. 3.

Two joint-tenants of a church leafe, one wheresoever
being taken fick in a journey, to fave the jointure and
provide for his wife fends for the fchoolmafter of the
town, (who was the only perfon he could get to ceme
at him,) and acquainted him with his intentions, and
defired him to prepare an in{trument for that purpofe;
the fchoolmafter made a kind of deed of gift of the leafe
from the fick man to the wife, which he executed, and
dieth; and this being to the wife, and void in law, the
would have made it good in equity, but was difmisfed,
being voluntary and without confederation. Plead.
Class. 124. 603. 405. 507. 4 Boul. 3.

The proper conveyance by one joint-tenant to another,
and what will moft effectually fave the joint-tenancy, is
a relafe; but one joint-tenant cannot enfoff his com-
pa{nion, because they are both already feied per miss & per
tant; and this manner of conveyance paffing by livery,
cannot operate so as to give him what he already has;
but tenants in common cannot relafe to each other; for
a relafe fuppofeth the party to have the thing in demand,
but tenants in common have ferveral diftin{t freholds, which
one cannot transfer to the other without the fo-
193. a. 200. b. 2 Boul. 3.

But tho' a relafe be the proper conveyance from one
joint-tenant to another, yet if the jury find that the one
joint-tenant did grant or convey to another, this amounts
to a relafe; for they have found the fnb{tantial part, the
court is to apply the words according to the opera-
tion they have in law; but every fich conveyance must
be pleaded as a relafe. 1 Friz. 78. 1 Sid. 452. 2
Saund. 96. 2 Keb. 641. Raym. 107. 3 S. Clefsor v.
Wiltin. 4 Mod. 151. S. P.

If there be two joint-tenants for life, and one is
a femen covert, and the barren and feme levys a finer to the
other joint-tenant, the other joint-tenant and his thereby grant tenu{es & quieted in
the land for the life of the wife, upon the death of the
other joint-tenant the lefser may enter, for the finer in-
curred by way of relafe, and then the other joint-tenant
must have claimed the whole from the firft feoffment,
could not have had the whole but for his own life. 2
and fee 6 Co. 78. b. S. P.

An agreement between joint-tenants of an advowson,
that they should be tenants in common, and that each of
them should prefer, amounts to a relafe and release.
Carb. 505. 1 Salt. 42. S. C.

If there be two joint-tenants of a rent, one may
relafe to the other; but if the rent be behind, the
other cannot relafe his intereft in the arrearages to the
other. I Lam. 167.

One joint-tenant or tenant in common may let his
part for years or at will to his companion; for this only
gives him a right to the rents of the lands during
life; for he had but a right to the moiety thereof, and he may
contract with his companion for that purpofe, as well as
he may with any other. Carb. 186. a. Owen 102.

A proper conveyance between joint-tenants of a
freedum must be by deed, because by the notoriety of
in{tirut they take it jointly; and to alter that, a mas-
ter of feemality is required, which is a deed; but ten-
ure in common may make a partition without deed, becaufe
that is only a feting out by metes and bounds, according
to the inftru{ment, which gave each of them diffcult
possession, and which was by love and confiance.

Regularely every disposition by one joint-tenant to
his companion must be an immediate disposition; for the
surviving joint-tenant claiming the whole by the origins
in{tirut, the whole must defend to him, unless his
companion hath disjuncted him of it from him in his life-
time Co. Lit. 188. 1 Roll. All. 848.

But if two joint-tenants are in fee, and one lets his
moiety to J. S. for years, to begin after his death, his
is good, and shall bind the other, if he su{ervives, becaufe
this is a pre{ent disjunctio{n, and binds the land from the
time of the lease made, for that he cannot after it avoid it
in Co. Lit. 187. 1 R. All. 848.

But a devise for years in fuch manner by one joint
tenant will not bind the other su{erviving, because it
is no pre{ent disjunctio{n, nor binding on the devise{tor himself in{much as he may revoke or cancel his will, and be
destroy that devise. Lit. Jec. 289. 2 Roll. All. 848.

Also if there be two joint-tenants of lands, and one
of them devises away that which belongs to him, and dies
this is a void devise, and the devisee takes nothing,
becaufe the devisee does not take effect till after the death
of the devise{tor, and then the surviving joint-tenant take
the whole by a prior title, ex. from the firft feoffment
but in this case if the devise{tor lives, or if the joint-
tenant, then the devise is good for the whole by su{ervi-
ship; and then the words of the will are sufficient to car-
the whole effate; besides, at the time of making the
 devise, tho' he was not sole tenant, yet he was feied pe-
miss & per tant, and it is impossible to fix upon any par-
cular part which he meant to devife, becaufe he could no
then call one part of the land more his own than the
other, and the moft genuine construction seems to give
the whole land, since he was feied per tant of it at the
time of the devise. Lit. Jec. 287. Perk. 500
Gra. 23. 1 Mees. 1776. pl. 1074.

If there are two joint-tenants, and one of them
pre{fereds his moiety to the use of his half, and did
then the su{ervivor is preferred, having made his will
this is a feverance of the jointure; for being prefended
relates to the time of the first su{server. Co. Lit. 59.
1 Roll. All. 501.
If two joint-tenants for life are, and one of them makes a lease for years of his moiety, either to begin pre ponderantly, or after his death, and dies, this lease is good and binding against the survivor; the reason whereof is, that notwithstanding the lease for years, the joint-tenants have the freehold still continued, and in that case they have a mutual interest in each other's life, so that the estate in the whole, or any part, is not to determine or revert to the lessor till both are dead; for the life of the one, as well as of the other, was at first made the means of continuance, and in that case it could only hold as joint-tenants or tenants in common, by writ de partitionibus facienda, in that case to be devised in the King our Sovereign Lord's court of Chancery, in like manner and form as coparceners by the common laws of this realm have been, and are compelled to do, and the same writ to be purveyed at the Common Law.

Provided, That every of the joint-tenants or tenants in common, and their heirs, after such partition made, shall and may have aid of the other, or of their heirs, to the intent to derraign the warranty paramount, and to have on the rate as is usual between coparceners after partition made by the order of the Common Law.

Before these flates the writ of partition was confined to coparceners; also it lay against the alience of a co parcer, for a coparcener cannot by her alienation devest the right of her fitter to divide the estate, nor can the devisee of the future estate or part which he had no such writ of partition, because such alience took an undivided moiety; nor was the alience under the reasons on which the law had founded such right of division, which was that the inheritance might be separable after marriage into different families; and for the same reasons the tenants by the moiety, though not joint, and neither by the gift of law, could not have this writ, though it lay against him by the surviving coparceners. Co. Lit. 175. a. 167. a. Dyer 98. b.

But now by force of these flates, the alience of one parcer may have a writ of partition against the other person, because they are tenants in common. Co. Lit. 175. a.

So tenant by curtesy shall have a writ of partition upon the flate 32 H. 8. cap. 32. for though he is neither joint-tenant, nor tenant in common, yet being in equal division to his deceased, he thereby had no such writ of partition, because such alience took an undivided moiety; nor was the alience under the reasons on which the law had founded such right of division, which was that the inheritance might be separable after marriage into different families; and for the same reasons the tenants by the moiety, though not joint, and neither by the gift of law, could not have this writ, though it lay against him by the surviving coparceners. Co. Lit. 175. a.

But if three coparceners are, and a stranger purchaser the part of one of them, he cannot join with either of the two coparceners in a writ of partition, either at Common Law, or by force of the flate; for the words of the preamble to the writ of partition, "of the land so held or may know their several parts, &c." and cannot by the laws of this realm make partition without their mutual assents": Now in this case one of them, viz. the parcer may have a writ of partition at Common Law, and therefore cannot come within the preamble and intent of the act, and cannot join with him in the suit of a writ of partition brought upon it. 1 And. 30. 72. Co. Lit. 175. b. Kelv. 208. Dyer 128. Bend. 42. pl. 76.

It hath been holden, that a general writ by joint-te nants, or tenants in common grounded on this flate, and concluding contra fornam flatus, is sufficient, without ou restic the cause particularly, so as to bring it within the flate; for the framing of the writ is left to the clerks in Chancery, and must be according to the form which they have devised. Co. Eliz. 742. 743. and vide Co. Eliz. 759. 2 Lat. 1018. 3 Lem. 231.

In this writ of partition may be directed of the view of frank-pledge, together with a manor; for though it be not, or be not personal, so the profits thereof may be divided, or it may be divided thus; that the one shall have it at one time, and the other at another; or both together; for the moiety it may well be entirely allotted to one, and the land in reciproc-ence to another. Co. Eliz. 759. Sir George Aislar and Brason v. Onslow.

In this action there are two judgments; the first is, quod parsis fuerit inter partes praedictas de tenementis praedita, com partem. And upon this there goes out a judi- cial writ to the sheriff to make partition, which recites, first the writ of partition and judgment, and then commands the sheriff, together with twelve men of the seisin, &c. to go in person to the tenements to be di-
vited, and there in the presence of the parties, (if they appear on summons to be made) by the oaths of these twelve men, to make an equal and fair partition, and allot to each party their full and just share, and then return the inquisition respecting the partition, and what the several moieties of the sheriff, and the jurors, whose names are likewise to be returned. Bust. 245. Lit. self. 248. Co. Lit. 167.

When the inquisition is thus returned, upon motion made to the court, the second judgment is given in this manner: *Ad escomptum judicis, per eundem *quod paritatem *fere et habilitis in perpetuum tenentes. Co. Lit. 169.

In a writ of partition, if the judgment be given *quod paritatis statu, and thereupon a writ is directed to the sheriff to make partition, no writ of error lies hereupon, for the judgment is not complete till the sheriff's return. A judgment on a writ of partition, if hereupon, *et quod partitione, &c. for before that the plaintiff may be nonuit, or he may, upon the return of the sheriff, suggest to the court that the partition is not equal, and so have a new partition, and may also release before the last judgment. 1 Rol. Abr. 750. Lord Berkeley and Counties of Warwick. *Gra. Eict. 835. *Moor 643. *Ney 71. S. C. adjudged *Gras. Jac. 324. 2 *Boul. 104. like cause adjudged, and vide 2 *Rol. Rep. 125. 2 *Boul. 119.

If the writ be brought by one joint-tenant against several, and there happens to be error in the execution of it, and there be several defendants relieved by error on the writ, the plaintiff shall not bar the others; for each having a distinct interest shall not be prejudiced by the release of his companion. *Gras. Eict. 65.

A. and B. tenants in common in a manor, A. purchases several freeholds that lay so mixed with the demesne lands of the manor, that they could hardly be distinguished from them; B. brings a writ of partition of the manor only; and it was adjudged, that partition should be made, and a writ awarded accordingly; upon the execution of which writ A. comes to the sheriff and inquest, and informs them with the purchase of the freeholds, that are not parcel of the manor, and bids them take care how they make partition of all the lands within such a compact, lest they offer violence to their confidences; but does not shew them the freeholds distinctly, nor the limits of the manor, which obliged the sheriff to adjourn to a certain day, on which one of the inquests and after time thereupon return a writ of 40s. with an account of the difficulties they met with. *Et ulterius prestet brevissimae temporis breve illo exquisi non perit. It was held, that A. ought to have shewn the bounds of the several freeholds that he purchased, or the number of the acres; but if no light or evident mark where any other party to the inquest, and they make partition de tanto quantum praesumit et dignoscitur praefepimoniis, it is good; for they are under an obligation to execute the commands of the court at peril. *Dyer 265. pl. 5. *Dallot's Sheriff 265.

If after the awarding of the judicial writ, and before the return of it, the defendant dies, yet the partition is good, and the writ shall not abate, because before the death of the defendant judgment was given that partition should be made; and though upon the return of the judicial writ there is another judgment given, yet that is given in confirmation of the first judgment; it seems likewise, that upon the return of the judicial writ no exception can be taken to it; therefore it is not material whether the defendant be dead or alive, since he can have no advantage by any plea on the return of the writ. *Daliffon 59.

The proofs in this writ are summons, attachment and discovery. *M. *P. N. B. 62. *Bust. 245.

A. and B. were joint-tenants for years. B. sufers C. to occupy his moiety with him, and A. brings a writ of partition against B. and C. supposing that B. had granted a moiety of his part to C. *C. *Bews, that he would go to law with B. upon the writ abated; whether A. might have another writ of partition against B. and C. by *Journay accounts was the question; and resolved, that he might; for the possession of C. was good colour, for bringing the writ of partition, and A. could not take notice what cffate C. had. *C. Jac. 218. *Bedfolk v. Clark.

By the 1st. 8 & 9 W'. 3. *cop. 31. intended, An act for giving a power of obtaining a judgment in coparcenary, joint-tenancy and tenancy in common, by which proceedings are omitted, and whereas the proceedings upon writs of partition between coparceners by the Common law or custom, joint-tenants and tenants in common are found by experience to be tedious, chargeable, and oftentimes inefficacious, by reason of the difficulty of discovering the persons and estates of the tenants of the manors, meannings, lands, tenements and hereditaments to be divided, and the defective or dilatory executing and return of the processes of summons, attachment and distresses, and other impediments in making and establishing of partitions, by reason whereof the parties or a part of them, or the parts of their lands, and their particular hereditaments are greatly oppressed and prejudiced, and the premises are frequently wasted and destroyed, or lie uncultivated and unmanured, so that the profits of the farm are totally or in a great measure lost; for remedy whereof it is enacted, That after procels of *pore or attachment returned upon a writ of partition, affidavit being made by any credible person of due notice given of the said writ of partition to the tenant or tenants to the action, and a copy thereof left with the occupier, or tenant or tenants, or, if they cannot be found, to the wife, fons or daughter, (being of the age of 21 years or upwards,) of the tenant or tenants, and to the tenants of the actual possession by virtue of any eftate of freehold or for term for years, or uncertain interest, or at will, of the manors, lands, tenements or hereditaments whereof the partition is demanded, (unless the said tenant in actual possession be demandant in the action,) at least forty day before the day of return of the said *pore or attachment, if the tenant or tenants to such writ, or any of them, or the true tenant to the meannings, lands, tenements and hereditaments as aforesaid, shall not in such case, within fifteen days after return of such writ of *pore or attachment, cause an appearance to be entered in such court where such writ of *pore or attachment shall be made; then in default of such appearance, the deman- vant having entered his declaration, the court may proceed to examine the demandant's title, and quantity of his part and purport, and accordingly as they shall find his right, part and purport to be, they shall for his costs make partition, whereby such proportion, part and purport may be set out severally; which writ being executed after eight days notice given to the occupier, or tenant or tenants of the premises, and returned, and thereupon final judgment entered, the face shall be good, and can elude or prevent the proceeding of the defendants on whatever right or title they have, or may at any time claim to have in any of the manors, meannings, lands, tenements and hereditaments mentioned in the said judgment and writ of partition, although all persons concerned are not named in any of the proceedings, nor the title of the tenants truly set forth.

Provided always, That if such tenant or person concern'd, or either of them, against whom or their right or title, such judgment by default is given, shall within the space of one year after the final judgment enter'd or in case of infancy, coverture, non *fama memoriae, absence out of the kingdom, within one year after their death, or their return, or the determination of the disability, apply themselves to the court by motion where such judgment is entered, and shall give a good and probable reason for such partition, or that the demandant hath no title to so much as he hath recovered; then in such case the court shall for their costs make partition as aforesaid or such other order as shall be just and convenient, and shall proceed by due course of law, as no such judgment had been given; and if the court, upon hearing thereof, shall adjudge for the final demand then the said final judgment shall stand confirmed and be of good effect as aforesaid, whatever judgment any such person as aforesaid or his assigns or the persons, if any, to whom or for whom such person as aforesaid or his assigns shall be or may be adjudged to belong or belong, may or may not be admitted; and if the writ or any order or process shall be or be made by any person, whom or for whom such writ or process shall belong, or its assignment, to be void, or disallowed, or shall be otherwise than for the use of such person, whom or for whom such writ or process shall belong, or its assignment, the court shall seal their judgments in every case so proceeding of due course of law, as no such judgment had been given; and if the court, upon hearing thereof, shall adjudge for the final demand then the said final judgment shall stand confirmed and be of good effect as aforesaid, whatever judgment any such person as aforesaid or his assigns or the persons, if any, to whom or for whom such person as aforesaid or his assigns shall be or may be adjudged to belong or belong, may or may not be admitted; and if the writ or any order or process shall be or be made by any person, whom or for whom such writ or process shall belong, or its assignment, to be void, or disallowed, or shall be otherwise than for the use of such person, whom or for whom such writ or process shall belong, or its assignment, the court shall seal their judgments in every case so proceeding.
to pay costs; or if within such time or times aforesaid the tenants or persons concerned, admitting the demandant's title, parts and purparts, shall fly to the court any inequality in the partition, the court may grant a new partition made in presence of all parties concerned, payable in the course of four years (if they will appear), notwithstanding the return and filing upon record the former, which said second partition returned and filed shall be good and firm for ever against all persons whatsoever, except as before excepted.

And it is further enacted, That no such statement shall be admitted to receive in any suit for partition, nor shall the same be abated by reason of the death of any tenant.

And it is further enacted, That when the high sheriff by reason of distress, infancy, or any other hinderance, cannot conveniently be present at the business of the under-sheriff, in presence of two justices of the peace of the county where the lands, tenements or hereditaments, or any part or purpart thereof, are sold, the demandant or tenants for such part set out severally to the respective landlords or owners thereof by and under the same conditions, rents, covenants and reservations where they are or shall be so divided; and the landlords and owners of the several parts and purparts so divided and allotted as aforesaid, shall warrant and make good unto their respective tenants the said several parts severally after such partition, as they are or were bound to do by any copy, leases, or grants of their respective parts before any partition made; and in case any demandant be tenant in actual possession to the tenant in the action for his part and proportion, or any part or purpart thereof, the said tenant or tenants, or his or their respective conveyances, to be divided by virtue of a writ of partition as aforesaid, for any term of life, lives or years, or uncertain interest, the said tenant shall stand and be poised of the said purparts and proportion for the like term, and under the same conditions and covenants when it is set out severally in pursuance of this, or any other act, statute, or law to that purpose.

And it is further enacted, That the respective sheriffs, their under-sheriffs and deputies, and in case of sickness or disability in the high sheriff, all justices of the peace, within their respective divisions, shall give due attendance and assist the sheriff in his said business; and where it shall be impossible for him to perform the same, or shall be unable to come to the court upon oath, and there allowed of, or otherwise liable every of them to pay unto the demandant such costs and damages as shall be awarded by the court, not exceeding five pounds, for which the demandant or plaintiff may bring his action in any of his Majesty's courts of record at Hildingfer, Before no affinns, protection, privilege or wager of law shall be allowed, nor any more than one imparlance; and in case the demandant doth not agree to pay to the sheriffs or under-sheriffs, justices, and jurors such fees as they shall respectively demand for their pains and attendance in the execution of the forementioned business, then the court shall award what each person shall receive, having respect to the distance of the place from their respective habitations, and the time they must necessarily spend about the same, for which they may severally bring their actions.

4. &c. cap. 18. It is enacted, 4 That any coventurers, or joint-tenants or tenants in common be fled of any aetue of inheritance in the advoxion of any church or vicarage, or other ecclesiastical promotion, and a partition is or shall be made between them to prevent by turas, that thereupon every one shall be taken and adjudged by the judgment of his or her separate parts of the advoxion to present in his or her name, if there be two, and they make such partition, each shall be said to be seised, the one of the one moiety to present in the first turn, the other of the other moiety to present in the second turn, in like manner if there be three, four or more, every one shall be said to be seised of his or her part, and to present in his or her turn."

5. How joint-tenants and tenants in common are to sue and be sued of summens and journours, and the remedies they have against each other.

Joint-tenants being seised per mix & per ten, and deriving by one and the same title, must jointly implead and be jointly impleaded with others.


So the one joint-tenant may disfrain for rent, yet he cannot bring an action of debt, nor avow for rent arrear without making himself bailiff to his companions, that they may be privy to the suit, and be intitled to their share or portion thereof in the under-sheriff, in presence of two justices of the peace of the county where the lands, tenements or hereditaments, or any part or purpart thereof, are sold, the demandant or tenants for such part set out severally to the respective landlords or owners thereof by and under the same conditions, rents, covenants and reservations where they are or shall be so divided; and the landlords and owners of the several parts and purparts so divided and allotted as aforesaid, shall warrant and make good unto their respective tenants the said several parts severally after such partition, as they are or were bound to do by any copy, leases, or grants of their respective parts before any partition made; and in case any demandant be tenant in actual possession to the tenant in the action for his part and proportion, or any part or purpart thereof, the said tenant or tenants, or his or their respective conveyances, to be divided by virtue of a writ of partition as aforesaid, for any term of life, lives or years, or uncertain interest, the said tenant shall stand and be poised of the said purparts and proportion for the like term, and under the same conditions and covenants when it is set out severally in pursuance of this, or any other act, statute, or law to that purpose.

And it is further enacted, That the respective sheriffs, their under-sheriffs and deputies, and in case of sickness or disability in the high sheriff, all justices of the peace, within their respective divisions, shall give due attendance and assist the sheriff in his said business; and where it shall be impossible for him to perform the same, or shall be unable to come to the court upon oath, and there allowed of, or otherwise liable every of them to pay unto the demandant such costs and damages as shall be awarded by the court, not exceeding five pounds, for which the demandant or plaintiff may bring his action in any of his Majesty's courts of record at Hildingfer, Before no affinns, protection, privilege or wager of law shall be allowed, nor any more than one imparlance; and in case the demandant doth not agree to pay to the sheriffs or under-sheriffs, justices, and jurors such fees as they shall respectively demand for their pains and attendance in the execution of the forementioned business, then the court shall award what each person shall receive, having respect to the distance of the place from their respective habitations, and the time they must necessarily spend about the same, for which they may severally bring their actions.
So if there be two tenants in common of a mansion, and they make a bailiff thereof, and one of them die, the survivor shall have an actIon of account, for the adtion given unto them for the arrearages upon the account was joint, Ca. Lit. 198. a.

So if two tenants in common sow their land, and a stranger catch the corn with his cattle, tho' that tenant and the heir of the tenant for them the trees is joint, and shall survive. Ca. Lit. 198. a.

Tenants in common may join or confer in debt or co

venant for rent; but if they fever, the demand must be de una mediata of the whole rent, and not of a certain sum, which amounts to a moiety. Carib. 269. Muddy and Gooi. 10. and Lovelace. But in an avowry they ought to sever. Ca. Lit. 198. b.

And as in treasfus tenants in common shall join, so they shall for a nuisance done to their land, for it is personal, and concerns the profits of the land; but for foring of false deeds they shall sever, for that concerns the inheritance of the land; and if the nuisance be continued after the death of one of the tenants in common, his devisee shall join in action with the survivor, for the continuance thereof is as the new-crediting of such a nuisance.

A. makes a lease, in which the lessee covenants with the leffer, 'tis to remain; leffer grants him a recovery by a forfeiture, to several persons, and leesse affinns to J. S. in an action of covenant by the grantee of the reversion for no repairing; the question was, If in two common of a reversion could join in bringing an action of covenant against the assignee; and it was held, that they could and ought to join in this case, being a moening personal action, according to Libertys rule, which was held to be general, without any relation to any privity of contract; and that the covenant being indivisible, the wrong and damages could not be distributed because un

Mach. 15 Crit. 2. Ritchen and Knight v. Buckley.

Two-tenants and tenants in common are to join in quare impetis, the first, because they are jointly seised, and claim by a joint title; the latter out of necessity, because the thing is intire. Ca. Lit. 197. b. 2 Mod. 23, 63. Comp. Incumb. 253. and wide fup. 7 Ann. cap. 18.

If joint-tenants or tenants in common refuse to set out their titles, the action must be brought against them both; but if one of them only occupy the land, the action is to be brought against him; or if one joint-tenant or tenant in common sets out the titles, and the other takes them away, the action must be brought against the wrong-doer.


The action is to be made to R. and G. rendering rent, and C. affinns his moiety to D. and after the rent is cleared, the leffer may bring an action of debt for the rent against B. and D. for the reversion remains intire. Palm. 283.

If two joint-tenants bring treasfus, and pending the action one of them dies, the writ shall not abate; for there brought against them, for in the latter case the action is both joint and several. Ca. Jat. 19. 4 Mod. 249, S. P.

Also where a quare impetis is brought by two joint-tenants, and pending the action one of them dies, the writ shall not abate; and this out of necessity, left the six months should elapse, and thereby the action be lost, Ca. Jat. 19.

If one joint-tenant refuses to join in action, he may be summoned and severed; but herein it is to be ob served, that if the person severed dies the writ abates, because the furvivor then goes for the whole, which he cannot do on that writ, where on the monuments and several for a moiety before the writ cannot have a double effect, to wit, for a moiety in case of summons and severance, and for the whole in case of furvivorship; and the law is the same if such joint-tenants proceed without summons and severance, for since both by the writ might by possibility recover their moiecties, they shall have for the whole in case of furvivorship, because the words and effect of the writ at the time of its first purchasing was that each might recover his moiety, and therefore a new writ must be purchased to enable one to proceed for the whole. Ca. Lit. 188.

But in personal and mixt actions where there is summons and severance, and yet after such summons and severance the plaintiff goes on for the whole, there if one of them dies, yet the writ shall not abate, because they go on for the whole after summons and severance, and if they were to have a new writ, it would only go to the court authority to go on for the whole. Ca. Lit. 197.

So if two joint-tenants bring a writ of ward, and they are summoned and severed, and the severed person dies, the writ shall not abate, because after such severance the writ is to proceed for the whole; and so he dies in this case, after the death of his comanion. Ca. Lit.

So in quare impetis by two joint-tenants, and one is summoned and severed, and the severed person dies, the writ shall not abate, because the advowson is an intire thing; and he proceeded for the whole after the severance, and so he may after the death, Ca. Lit. 197. b. Drye 275.

If two joint-tenants bring an affize, and the one is severed, if it be found that the other had goods taken upon the land, he shall recover solely damage for them. 11 H. 4. 17. 1 Rad. Adr. 571.

If one joint-tenant is to have a bill of sale, and he in his plea ought to join in action, and one alone brings the action, the defendant ought to plead the tenancy in common in abatement, which is a defence the law allows him, that he may not be twice charged; but if he plead in chief, and it be found against him, the plaintiff shall have judgment, because he loses his own bill. Carib. 486. Judgment of tenancy by his right of the action. Mor. 466. Gra. Lit. 554. Slt. 12. 1 Salt. 4. 32. 1 Mod. 102. 2 Lev. 113. Carib. 63.

If joint-tenancy be pleaded by one or deed in abate

ment of the defendant's action, he cannot take a gene
rall averment that the tenant is sole, for it is that were directly to contradict him, and set him aside by a mas

ter of less force and solemnity than they are; but he may confede the joint-tenant which the tenant pleads after the fine levied, but that the joint-tenant not name released to the tenant before the writ brought, or the both the connexes enfeoffed one who enfeoffed the to

nant; but at this day, if the tenant had been enfeoffed by deed, and had pleaded joint-tenancy to abate the de

mandant's writ, the demandant might have averred ge

erally, that the tenant is sole, for the statute 3 Ed. 4. de conjunitim seftissi extends to joint-tenanc

y deed, though not by fine; but by the Common law the tenant in abatement is allowed that plea, where the te

nant claimed under a deed, no more than when he claimed under a fine; but if the tenant claims by feoff

ment in pozi, and pleads that in abatement of the de

mandant's action, the demandant may aver sole tenancy because the seoffment is to be proved with vero pro parte where credit is not more regarded by the court than the demandant's. 2 Leil. 523, 534.

By the Common law joint-tenants and tenants in common had no remedy against each other, where one alone received the whole profits of the estate, for he could not be charged as bailiff or receiver to his compa

nions, unless he actually made him so; but now the 4 Ed. 5 Ann. cap. 16. it is provided, That they and their executors and administrators may have an account against the other as bailiffs, for receiving more than their pro

portion, and against their executors and administrators Ca. Lit. 172. a. 186. a. 200. b. 3 Lew. 218. So if two had a ward in common, and one took all the pro

fit.

But if one joint-tenant or tenant in common has ejected or withheld the possession from his companion such joint-tenant or tenant in common so ejected might have maintained an ejectiwm fimul against such ejector.

Ca. Lit. 199. b.

In ejecting, a joint tenant or tenant in common may of

fend against the statutes against forcible entries, either by the forcible ejecting, or forcibly holding out his comanion.
It having been determined that at Common law a woman could not be endowed of an use, and most lands before the 27 Hen. 8. being put in use, so that there was no confidence to be had in the dower at the Common law: this obliged the wife, or her friends, either before or after the marriage, to procure the husband to take the legal estate, and for that purpose either to settle it to the use of him and his wife for life, or in take some other way which considerers over he pleased: and this seems to have been the original of jointures. 3 Bac. Abr. 221. See Dowry, Curtice of England.

But this method was an effectual security to the wife, yet was no title to the husband, or his heirs, in barring her of dower before the 27 Hen. 8. for by the Common law a woman could not be barred of her dower by any affliction or assurance to her of other lands whereby she was not dowerable, (except in the case of dower ad extra terrae, or ex affectu patriarum, which were allowed to be dowers to jointures of themselves, and were a good bar of any other dower,) if such affliction, or assurance was made by the husband before marriage or after, or by the heir after his death; and tho' they were expressly said to be in full bar and recompence of her dower, yet might the receiver her dower notwithstanding. The having a right to the same by the third part of all her husband's lands, vested and fixed in her immediately upon the marriage and the husband's feisin thereof; and this right, like all others, could not be transferred or extinguished but by a release thereof; and if no such release were made, it might, as to such as were given by the husband, or the husband's heirs, for want of any proper means to destroy it; and if it still existed, her remarriage was open to the same entry into possession; and of this there can be no doubt as to any estate or purchase procured by the husband to be made to his wife after marriage, in lieu and satisfaction of her dower, for she is not at this day bound in such case; and if it were made before marriage, it was at Common law no bar, for two reasons; 1. Because at the time of marriage, she had no title, and therefore an estate made to her then could be no bar to a right which accrued to her after. 2. Because immediately upon the marriage the right first vested in her, and could not be extinguished or barred by a release thereof; so if such affliction or assurance were from the heir in pais, this was no bar neither; but if it were by indenture or fine, then it should seem an essopoll to her to demand any other dower, because her title to dower was then complete and certain; and the has by this acceptance concluded herself to demand same. 4 Co. 1. Ferrers's case. Dyer qr 1. Co. Lit. 34 b. 36 b. Br. lit. Dowry 97. 2 Bracel. 132. 4 Co. 5.

1. Of jointure becoming a bar of dower by stat. 27 Hen. 8. and the rules to be observed in making a good jointure, and such a one as will be an effectual bar of dower.

2. How far the acts of a jointure, or her husband's acts may defeat her of this prebless; and how far she is intitled to the aid and assistance of a court of equity.

The maxims of the Common law, that no right could be barred before it accrued; and that a right or title to a freehold could not be barred by acceptance of a collateral satisfaction, and the reasons forefoold allowing the wife to claim her dower, and also the benefit of such settlement as was made in her, which being contrary to justice. Co. Lit. 36 b.

By the stat. 27 H. 8. cap. 1. sect. 6, it is enabled, "That whereas divers persons have purchased, or have eftates made and conveyed of and in divers lands, tenements and hereditaments unto them and their wives, and to the heirs of the husband, or to those heirs of the wife, and to the heirs of their bodies begotten, or to the husband and to the wife for term of their lives, or for term of the life of the said wife, or where any such eftate or purchase of any lands, tenements or hereditaments hath

nine; for though the entry of such a tenant be lawful per warrior & per ten, so that he cannot in any case be punished in an action of trespass at the Common law; yet the lawfulness of his entry no way excuses the violence, or lessens the injury done to his companion, and consequently the legal redress of the trespass is a moiety of a party at law. 1 Co. 234. 1 Pae. 490.

But though joint-tenants and tenants in common being actually ejected, had these remedies at Common law, yet such remedies were only extended to things real; and there was no remedy where a horfe, hawk, &c. were ejected by one joint-tenant or tenant in common, but by refusing it again when a proper opportunity offered. Lit. sect. 373.

If there be two tenants in common of a manor to which wifey and stray belong, and a stray doth happen, they are tenants in common of the same; and if the one doth take the stray, the other hath no remedy by action but to take him again; but if by prescription the one shall have the first beast happening as a stray, and the other the second, there an action lieth, if the one takes that which pertains to the other. Co. Lit. 200 a.

If there be two tenants in common of a park or dower-house, and one of them destroys all the deer, or takes all the old doves, and defraffs the flight; or that one shall have a wood, turbary, &c. and the other land and mere-foines in common, and one of them carry them away; or if they have a folding in common, and one disturb the other to erect hurdles, in all these cases trespass pure et armis lies, Co. Lit. 200 a. b. If two feiual owners of house freed from a river in common, and one of them corrupt it, the other shall have an action on the case. Co. Lit. 200 b.

If one be willing to repair a house or mill which he holds in common, or jointly with another, he may have a writ De dima riparanda against him. Co. Lit. 200 a.

If land be given to two for life, and to the heirs of one of them, and tenant for life do waffle, he that hath the fee, cannot have an action of waffle on the statute of Gascoigne, but he may have one on Wylm. 2 cap. 22. which enacts, That if there be two tenants in common of a manor, and one do waffle, the other shall have a writ of waffle, and the wassle shall have election before judgment, either to have his part certain assigned to him by the oath of twelve men, (and then the place wassled shall be assigned for part thereof,) or to grant that he will take no more for the future than he shall approve; and this act by construction has been held to extend to tenements in fee, but not to parcellers, because they might have the writ De partimina facienda at Common law. Co. Lit. 200 b. 2 shefl. 403.

For more learning on this subject, see 3 Bac. Abr. and 14 Vin. Abr. Also of joint-tenants in common.

Jointure. (Jointure) Is a covenant whereby the husband or some other friend in his behalf, affueth unto his wife, in respect of marriage, lands or tenements for term of life, or otherwise. Wolf. Symbol. part. 2. lib. 2. tit. Covenants. sect. 128. 27 Hen. 8. cap. 10. It is so called, either because granted various jountures in matrimonio, or because the land in joint-marriage is given jointly to the husband and wife, and after to the heirs of their bodies, whereby the husband and wife are made joint-tenants during the coverture. Co. lib. 3. Butler and Baker's case, 27. See Frank-marriage. Jointure is also used as the abstrait of joint-tenants. Co. lib. 3. sect. 3. Marquis of Winchester's case. Jointure is also by Bractan and Fleta used for joining of one bargain to another. Fleta. lib. 2. cap. 60. and therefore jointure in the first figuruation may be so called, in respect that it is a bargain of livelihood for the wife, addicted to the condition of coverture. Cowell.

Jointure, Is a competent livelihood of freehold for the wife of lands, &c. to take effect presently in possession or profit after the death of the husband, for the life of the wife at least, if the husband be not the cause of the determination or forfeiture thereof. Co. Lit. 36 b. 4 Co. 2 a. 4
JOI

hath been or hereafter shall be made to any husband and to his wife in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behalf of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then in every such case, every woman marrying having such jointure made, or hereafter to be made, shall not claim, nor have title to any dowry of the residue of the lands, tenements or hereditaments, that at any time were her said husband's, by whom she hath any such jointure; nor shall demand nor claim her dowry of and against them that have the lands and inheritances of her husband; but if the woman have not such jointure, then she shall be admitted and enabled to purvey, have, and demand her dowry by writ of dower, after the due course and order of the Common law of this realm; this act or any law or provision made to the contrary thereof notwithstanding.

Sec. 7. Provided, "That if any such woman be lawfully espoused or evidenced from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, actum, or by discontinuance of her husband, then every such woman shall be endeavored of as much of the residue of her husband's tenements or hereditaments whereof she was before dwelleth, as the same lands and tenements so evicted and espoused will amount or extend unto and into.

Sec. 8. Provided also, "That if any wife have, or hereafter shall have, any manors, lands, tenements or hereditaments unto her given or attorn'd after marriage for term of her life or otherwise, in jointure, except the same assurance be to her made by act of parliament, and the wife after that time to receive the same for her husband in whole the said jointure was made or attorn'd unto her; that then the same wife so overliving shall and may at her liberty at the death of her said husband refuse to have and take the lands and tenements to her given, appointed, or attorn'd during the coverture, for herself and her husband, in jointure, except the same assurance be to her made by act of parliament as is aforesaid, and thereupon to have, and take, demand, and take her dower by writ of dower or otherwise, according to the Common law, of all in such lands, tenements and hereditaments, as her husband was and good faled of any estate of inheritance at any time during the coverture; any thing, &c."

To make a good jointure within this statute, the following things are to be regarded:

1. The estate must take effect immediately upon the death of the husband. Therefore if an estate be made to the husband, for the remainder to J. S. for life, remainder to the wife for her jointure, this is no good jointure, for it is not within the words or intent of the statute; for the statute is designed, as a wife's dower for dowager, but that which came in the same place, and is of the same use to the wife, and though J. S. dies during the life of the husband, yet this is not good; for every interregnum not equivalent to dower being not within the statute, is a void limitation to deprive the wife of her dower. 4 Co. 3. Hutton 51.

2. If an estate be made to the wife of A. for life, the remainder to the wife for life, this is not good, though A. dies, living the husband. 4 Co. 2. Hob. 151.

3. So if an estate be made to the husband for life, remainder to J. S. for years, the remainder to the wife for her jointure, this is not good, though the years are expired in the life-time of the husband. Hutton 51. Ward 32.

But if an estate be made to the husband for life, then remainder to the wife for the life of the husband, to support contingent remainder, remainder to the wife for life, this is a good jointure, though not within the express words of the statute, for it is within the equity and design of it. 4 Co. 3.

4. If a man makes a jointure to the wife of himself for life, and remainder to the son and his wife, and the heirs of the body of the son, this is no good jointure, though the wife hath an immediate frehold; for to be within the cases of the statute whereby dower is barred, the wife must have a sole property after the death of her husband, Winch 32.

A feoffment in fee in the use of the feeoffee for life, remainder to the use of his second son for life, remainder to the use of his third son; if either the second son dies, the remainder to the heir of the son; the father dies, the son marries, and dies; the wife is not by this fetlement barred of her dower; for this at the time of the creation was no certain provision for the wife's life, for the son might have married and died in the life of the father. 1 Sid. 3. 4. pin Brown.

A jointure limited to take effect immediately on the death of the husband shall take effect as well on a civil as a natural death; therefore if the husband enters into reliction, is banished, or abjures the realm, the wife shall have her jointure. Co. Lit. 133. 3 Mozley 185. 1 Hul. Rep. 407. 2 Vern. 104.

The estate must be for term of the wife's life or a greater estate. Therefore if an estate be made to the wife for the life of others, it is no good jointure; for if the survives such a marriage, as the may, then it would be no competent provision during her life, as every jointure within the statute ought to be. Co. Lit. 36 6. 4 Co. 3. 33. Bridgman.

If an estate be limited to the wife upon condition, her acceptance of such a conditional jointure makes it good; for the estate supports the wife well enough, and it is in her power to continue it during her life; therefore an estate limited to the wife's jointure is a good jointure; for it cannot determine but by her will. 4 Co. 3. a. 33.

3. The estate must be made to herself and to others in trust for her. This rule, my Lord Coke says, is so necessary to be observed, that though the wife should attend to a jointure made in trust for her, yet it would not be good; for if the statute only bars the dower when by it the provision (which was formerly an ufe) is executed in her. Co. Lit. 36 b.

But as the intention of the statute was to secure the wife a competent provision, and also to exclude her from claiming dower, and likewise her settlement, it seems that a provision or fetlement on the wife's behalf by whom it is affected, if it answers the intention of the statute, will be enforced in a court of equity.

4. The estate must be in satisfaction of her whole dower. The reason hereof is, that if it be in satisfaction of part only, it is uncertain for what part it is in satisfaction of her dower, and therefore void in the whole. Co. Lit. 36 8.

If an estate be made to the wife in satisfaction of part of her dower before marriage, and after marriage other lands are conveyed to her after marriage, the shall have dower of all the lands of her husband, notwithstanding the settlement is in satisfaction of part. 4 Co. 5.

5. An estate must be expressed to be in satisfaction of her dower; and how for a collateral recompense shall be a bar of dower or jointure. My Lord Coke says, that it must be expressed or averred to be in satisfaction of her dower's but averre, for this does not deem requisite, either within the words or intention of the statute. Co. Lit. 36 b. 33.

Therefore where an assurance was made to a woman to the interest it should be for her jointure, but it was not so expressed in the deed, the opinion of the court was, that it might be averred that it was for a jointure, and that such assurance was not transferable, Owen 33, and there said, that it had been so likewise ruled between the Queen and Dame Brancum. 10 Co. 33.

But that an estate to a wife for life cannot be averred to be in satisfaction of a dower or jointure, unless it be expressed to be so in the will, or there can be no averment contrary to the will, and consequently there can be no averment...
be no averment contrary to the consideration implied in every devise, which is the kind of the tesoror. Cre. Eq. 36, 0. 9, s. c. it was, though and but it was, that her right to dower cannot be barred by a collateral reversion, since such collateral reversion is no proper conveyance of such right. Man. pl. 103.

A man devised his lands to his wife till his daughter come to age, and after to M. in tail, remainder over in fee; and devises further, that M. should pay after her age of nineteen years to his wife 12 l. per annum in recompence of her dower, and if the failed in payment, that then his wife should have the land for her life; the wife before her daughter came to nineteen brought her writ of dower, and recovered a third part; and after the daughter came to nineteen, and for non-payment of the 12 l. the mother entered; and the question was, if her entry were lawful; and argued that it was, and that by bringing of her writ of dower she had not waved the benefit to have the fee simple hereditary, or to make a gift of it, but her title accrued after, for non-payment of the 12 l. But it was adjudged, that she having recovered a third part in dower, she should have the rent by the will; for it is against the intention of the will that she should have both, and the acceptance of one is a waiver of the other. Cre. Eq. 128. Gapping v. Herdson.

One felled in fee of lands held in foage, and of other lands in tail held in capite, devises by will in writing the third part of all his lands to his wife in recompence of her dower, and dies; the enters into the third part of the fee-simple lands without bringing her writ of dower, and applies the maintenance of the wife to the support of the 8. of jointures; which flows that she took this by the devise, as a jointure within that statute, and that taking by the devise she could have no more than the devisee had power to dispose of, which was only his fee-simple lands; and she by entering into a third part thereof the husband's intention to have it as a jointure, (for otherwise she could not enter till assignment by the heir or screenshot;) but in this case the being barred only by reason of the statute, as the book says; it appears, that before that statute she would not have been barred of her dower by such devise. Dyer 220. 4 Co. 4.

An act of London, who had a great portion in the chamber of London, the husband dies before taking it out, but makes his will, and devises this money to her wife, provided that she should not claim her dower; and yet after his death she brought her writ of dower, and thereupon a bill was brought in Chancery to have her realte her dower, or renounce the devise, and for an injunction in the mean time, but could not prevail; the money belonging to her in her own right by the custom, for want of the husband's letting the property thereof; and tho' he had, yet it was admitted it would have been no bar of dower, being totally collateral. This case was heard in Chancery. The court ruled that the coffee house had forfeited the money by suing for dower. 2 Vent. 340. and 1 Chin. Chapps 181. Phineas's cafe.

On this distinction it has been often ruled in Chancery, that if lands, money, goods, &c. are devised to a woman, without laying in lieu or satisfaction of dower, they must be delivered to her, and cannot be considered as a bounty, and implies a consideration in itself, but if it be laid in lieu or recompence of dower, there the wife cannot have both, but may wave which the pleader. 2 Chin. Co. 24. 2 Vern. 365. Priced. Chin. 153.

A devise legacies to his wife out of his personal estate, and devised to her part of his real estate during her widowhood, and devised the residue of his estate to trustees for twenty-one years, for payment of debts and legacies, and the remainder of the whole estate he devised to the plaintiff, (who was his godson, and of his name, but a remote relation,) for life, and to his first and other sons in tail; and my Lord Chancellor Somers decreed, that though it was not devised to be in lieu and satisfaction of dower, yet as it may be plainly collected to be so intended, (he having made a disposition of his whole estate,) and as a collateral satisfaction, may be a good bar to dower in equity, though not at law; that the first either take her dower, and wave the devise, or accept the devise, and wave the dower; but this decree was reversed by Wright, Lord Keeper, and the decree of reversal affirmed in parliament. 2 Vent. 365. Lawrence v. Lawrne. Adv. Eq. 218-9, S. C. and vide 1 Vern. 463.

J. S. Infeftment of the wife belonging to the manor of Whitechurch, in which manner there is the following cufion, viz. that the first wife of every tenant should have her free bench in all the lands whereof her husband was ever feised during the coverture; the second wife a moiety, and the third a third part so long as she kept her husband above ground. J. S. in consideration of a marriage and marriage portion, covenants with trustees that within two months after the marriage he would settle all his lands to the following uses, viz. As to part of the lands, to the uses of himself and his wife for their lives, remaining to the first wife, &c. in tail male; and as to the remaining lands, to the use of himself for life, remaining to his first wife, &c. with a proviso, that the lands so settled on the wife should be in lieu of her curtail estate; and one of the points in this case was, whether this jointure not being made expressly in lieu of her dower, but only laid in the proviso, and the being an infant at the time of making the articles, and not a party to them, would be excluded from claiming her free bench; and it was held, that the should be obliged to abide by her jointure; and the cove of Vaste and Langdon was cited, where a sum of money was settled upon a woman before marriage for her provision and that therefore the Master of the Rolls was of opinion the husband should have both that and her dower; but the Chancellor reversed the decree; and confined her to her fettlement. Mich. 6 Geo. 2. Jordan v. Savage. 3 Ber. Ab. 226.

6. The estate must be made during the coverture. This is the very words of the act of parliament require, and therefore if a jointure be made to the wife during the coverture in satisfaction of dower, the may waive it after her husband's death; but if the enters and agrees therein, the is concluded; for though a woman is not bound by any act when she is not at her own disposal, yet if she agrees to it as made at liberty, it is her own act, and she cannot avoid it. Cre. Lit. 164.

If a jointure be made to the wife before coverture, and the husband and wife alien by fine, the wife shall not afterwards be endowed of any lands of her husband's; for since the quitned her dower when she was at her own disposal, she can claim nothing but the jointure; and that she has passed away by the fine levied; but if the jointure was made during the coverture, and then the relinquished it by fine, yet the shall have her dower of the other lands; for the acceptance of a jointure during the coverture is no bar of her dower, and the pawning of it by fine cannot be construed as acceptance of property in them, since they are capable of being disposed of, but to bar her dower in those lands. Cre. Lit. 36. Bull. 163.

The husband after marriage settled lands to the use of himself and wife in tail, for her jointure, and during the coverture part of the lands were evicted, and the husband died, and the wife entered into possession of the lands, and upon a reference out of the court of wards to the two Chief Justices, it was resolved, that she should have a recompense for the part evicted. Mar 717. pl. 1002.

A feignory was granted to the husband and wife, and their heirs, the tenant attorns, the husband dies, and the feignory forgiven to the wife, and leaving the wife and a son in tail of dower, in bar of which the heir pleads acceptance of homage from the tenant; and this was held a good bar; for though the might have dispaired to such effect during 4
the coverture, yet by the acceptance of homage the husband cannot be prohibited her; and this estate differs from the estate by the heir in paius and her acceptance; because if he gives her a wrong estate, and she accepts thereof, this is no bar of her rightful estate; but here the having two titles, either as a purchaser to have the whole, or as a wife to have the third part, her acceptance of the other being done by her own free will, because she cannot have both out of the same land. 3 Leon. 272. 3 Co. 27.

If lands are given to husband and wife, and the heirs of the husband, who dies, the wife may disaffire to this estate made during the coverture, and then it will be an estate to the husband and his heirs as heirs, and to the wife have her share. But if this estate be made to the husband and wife for the life of the husband, remainder to the right heir of the husband, it should seem she cannot in this case disaffire, because the estate upon the husband's death is determined and gone, but this by this contrivance all women may be delated of their dower as to estates purchased after the marriage. 4 Black. 352-3. 3 Co. 27.

If an estate be made to the wife for her jointure during the coverture, the remainder to J. S. in fee, and the wife waves this jointure, J. S. shall have the remainder; for here was a particular estate at the time of creating the remainder, so that it has the circumstances of a remainder, being the residue of a particular estate then in being; and since the particular estate was defeasible by an act that could not hurt the remainder, the remainder upon such defeasement of the particular estate comes in being. 2 Bl. & Bl. 29.

A covenant to stand seised to the use of himself in tail, the remainder to his wife for life, the remainder to B. in tail, and then he makes a feoffment in fee to the use of himself and this wife for their lives, as a jointure, the remainder to C. and dies without issue, the wife is remitted; for where a later and defeasible, a former and indefeasible, in the same person, there must be a remitter. 3 Co. Lit. 348. a.

But in this case the wife hath two titles, both waivable by her, the first indefeasible by any third person, the second defeasible by a third person; for upon her claiming by the second title the waves the first, and consequently the remainder in B. commences, and he shall have his action, and therefore must be in her former title, to save the contention and trouble of the action. 2 Co. Lit. 348. a.

But if an estate be made to the husband in tail, the remainder to the wife for life, the remainder to the right heirs of the husband, the husband afterwards makes a feoffment in fee to the use of the husband and wife for their lives, the remainder to the right heirs of the husband, the husband dies without issue; the wife may claim by which the pleas, and is not remitted unless annul, because there are not two titles, the one indefeasible and the other defeasible by a third person, but both equally firm; for the right heirs of the husband upon the waves of the first estate by the wife can claim nothing in the land contrary to the feoffment of his ancestor, and therefore that estate which the wife claims is indefeasible; and no stranger is prejudged by being put to his action. 2 Co. Lit. 357. Dyer 351.

But if the makes no election, the shall be supposed to be in of his elder estate, because every one is presumed to choose what is most for his benefit. 2 Red. Abr. 422.

If the heir has an old right before the coverture, and afterwards takes a jointure of the same lands, the shall be remitted. Crou. 340.

An estate vested to the husband for life, remainder to him, except such of the lands as the husband should devise; this exception is repugnant to the grant, because the settlement might be avoided by the husband devolving the whole. Hob. 72.

2. How for the all of a jointress or her husband's all may defeat her of this provision; and how for he is intitled to the jointure, there is a court of equity. It has been already observed, that if a man makes a jointure on his wife before or after marriage, and they both join in a fine, that he is so far bound thereby, that if the jointure was made before marriage the is barred to claim dower in any other lands of the husband's; but if the jointure was made during coverture, the may claim dower in the other lands. Co. Lit. 56. Dyer 358.

But if a wife joins with her husband in a bargain and sale of the land by deed indented and inrolled, yet it shall be so far to the husband's prejudice as if the wife cannot be examined by any court without writ, and there is no writ allowed in this case. 2 Lees. 673. Hob. 234. But if a seme covert joins with her husband in levying a fine to raie a sum of money by way of mortgage, this shall bind her; yet in this case the doth not absolutely depart with her estate for life, but there results a trust to her husband, which will be sufficient to reintail her in the jointure. 3 Co. Can. 162.

If tenant in tail of a trust makes a mortgage, or acknowledges a judgment or statute, and then levies a fine, and settles a jointure, the jointreis shall hold it subject to, the mortgage or judgment, in the same manner as if the mortgagor or confuor had been tenant in tail of the jointure, and after the mortgage or judgment had levied a fine, and made a jointure, because the subsequent declaration of the use of the fine is merely the act of the tenant in tail, and he cannot by any act of his own make a subsequent conveyance take place of a precedent, and the tenant in tail has a right under the statute so as tenant in tail got by the recovery or fine, and that fine was subject to all the charges he had lain upon it. 1 Chan. Co. 119. 120.

If a man before marriage articles to settle a jointure on his intended wife, and the marriage is consummated, and the husband dies before any settlement made, an execution of the articles will be decreed in equity. 2 Vent. 343.

So where A. gave a voluntary bond after marriage, to make a jointure to his wife, and he made a jointure accordingly, and then the wife delivered up the bond, and the jointure being evicted, the court held that it should not be evicted, for the personal estate and the lands were not sold, and there were no creditors affected by it; for the delivery of the bond by a seme covert could no way bind her. 1 Vern. 257. Beard and Nashel.

So if a jointreis brings her bill to have an account on the real and personal estate of her late husband, and to have a satisfaction thereupon, for a defeat of value of her jointure lands, which the had covenanted to be and to continue of such value, and the defendant insists that this is a covenant which founds only in damages, and properly determinable at law; th'o' it be admitted that a court of equity cannot regularly affect damages, yet it is proper for the court to say, if there were no such action as a court of equity, the personal estate and the lands would be valued at the value of the defect of the lands, and report it to the court, which may decree such defect to be made good, or send it to be tried 'at law upon a quantum demanunt.' 4 Vent. 15.

If there be a jointreis, and a covenant that her jointure shall be of such a yearly value, and it falls short, that the estate be not without impeachement of wafe, yet the man commit waste so far as to make up the defect of the jointure. 1 Abr. Eq. 241-2.

J. S. made a settlement on his eldest son for life, with remainder to his first and other sons in tail, remainder to one of them to appoint any of the lands not exceeding 100l. per annum to any wife he should afterwards marry, for a jointure, (the father being under an apprehension that he was then married to a woman which the father dislik'd, and had not intention his son should provide for;) the father died, and the son married that very woman, (th'o' there was strong presumptive proof the complaint was made that the lands were not of that value, nor request to make it up, and died; upon issue upon a bill brought by the widow to have the jointure made up 100l. My Lord Keeper said, that a provison for
ps

Ips

ire

while or children was not to be considered as a voluntary covenant, and therefore decreed the deficiency to be supplied by the circumstances mentioned in the last, and her neglect in not requiring it during coverture; for the laches of a feme covert cannot be imputed to her. 


If a bill is brought by an heir at law, or any other person, against a widow or jointure, the juryman is under pretence that his ancestor was only tenant for life, &c. and he seeks for a discovery of deeds and writings, whereby he would avoid the title of theointure, he shall never have such a discovery, unless he lays his bill submits to confirm her title, and then he shall, in the absence of form, be estopped from acting in some made after marriage. See 15 Vin. Abr. tit. Tithecraft and jointure.

Journal. A diary or day-book. Journals of parliament are not records, but only remembrances: And are neither of necessity, nor have been of long continuance. See Hals Rep. fol. 109.

Journeys. Choppers. Were registrators of yarn mentioned in flat 8 Hen. 8. c. 5, whence the first part of the word a derives, is somewhat obscure: but choppers are to this time known to be changers; as to chop and change is a familiar phrase. Counsell, edit. 1677. See Chorography, flat 140. 1702. B. G. 2. 17. 5. 7. It is recorded that an execution by journey was the husband's work. See 18 Vin. Hil. 15. 11. 26. 15. 11. c. 5. Journeysmen are not to be restrained by marriage from setting up their trade. See Apprenace, Servants.

Journeys accompt. (Dictum computare) Is a term in the law, to be thus understood: If a writ is abated without the default of the plaintiff or defendant, but merely by default of the clerk, either for false Latis, variance, or other just cause, or by default of the defendant, as for want of a good summons; in all these cases the plaintiff may purchase a new writ, which if it be purchased by journeys accoutns, that is, within as little time as possible after the beginning of the first writ, and (as the space of fifteen days has been held a convenient time for the purchase of it) then this second writ shall be as a continuance of the first. But where the first writ abated by the default of the defendant himself, as by mislaking the name of the tenant or of the vail; or where it abated for non-tenure of his whole, as it ought; because the first writ was brought without any manner of cause; in all these cases the plaintiff may have a new writ by journey accounts. This writ must be brought in the same court where the first writ was, and of the same quantity in that writ contained: It must be between these who are parties to the first; as where one of the plaintiffs or defendants dies; but in no case where there is but one plaintiff. Nor will it lie, except where the first writ was adhered and returned on record. See Co. Rep. 6. fol. 9. Speaker's cafe, and 14 Vin. Abr. tit. Journeys accounts.

Ito. In fact. By flat. 13 Eliz. 12. The church is made void for not reading the articles; adjuged that there needs no deprivation; but it becomes void prematurely, by the death of the bishop, as is shown in 1559. It. 41 Eliz. B. R. 2. Lister v. Brent and Rainibone. Upon an indiction for speaking against the book of Common Prayer, Kerker j. doubted, whether the justices of oyer and terminer may give judgment of deprivation, though the statute says, that the offender shall be deprived of his free. Also it does not appear, whether the defendant be curate of the parish where he refused to say Divine services; and if he be not, then he is not punishable by the statute. Goldh. 162. 2605. Hill. 43 Eliz. Horsch's cafe.

The flat. 5 Ed. 6. 4. says, that he that strikes in churchyard, shall be excommunicated by his free, yet it is that it be intended to after a sentence declaratory, or conviction; otherwise there can be no abolition. Caw. E. 319. Hill. 43 ed. B. R. 2. Sivam v. Fruelde, S. P. Avg. Co. avg. 460. cites B. 18 Eliz. 275. He does not hand excommunicated until he be thereof convicted at law, and

this transmitted to the ordinary, tho' it takes away the necessity of any sentence of excommunication. Vent. 145. 23 Car. 2. B. R. 1571. Dyer v. Left.

Truth, its stricts how repaired, and minister provided for, 13 El. c. 24.

Act ad l即将, To go at large, to escape, to be set at liberty. Counsell, edit. 1727.

Thenceby was an act of parliament (called Poyning's law) made in Ireland in 10 H. 7, it was enacted, that all flutes made in England before that time should be of no force and be put in use in the realm of Ireland, Cr. Lit. 144. 8.

Acts of parliament made in England since the act of 10 H. 7, do not extend them in Ireland, but all acts made in England before 10 H. 7, to bind them in Ireland by the said act made in Ireland. 10 H. 7. cap. 22. 12 Rep. 111. Hill. 10. 20.

Lord Coke in 2 Inst. 2, says, that by this law, but there cites it as made 11 H. 7. Magna Charta extends into Ireland. 4 Inst. 341, recites the statute more fully, and says, that acts of parliament made in England before that time, whereas in Ireland is not particularly named or generally included, extend not thence; for though it be governed by the same law; yet it is a distinct realm or kingdom, and hath parliaments there. S. P. Arg. Car. 171. 2. 23 H. 8. 1717. 4 & 5. 7. Rep. 23. in Calvin's case. Est. 165. 14. In Acts of parliament Ireland shall not be bound without express words, though the nature and reason of the act extends to Ireland. Shin. 210. 21. B. 6. M. B. R. in case of Phillips v. Bery. Thou in Ireland has its own parliaments, yet it is not absolute, &c. juris; for if it were, England has no power over it, and it would be as free after conquest and subjection by England as before. And that it is a conquered kingdom is not doubted, but admitted in Calvin's case several times, &c. Tauch. 292. Hill. 22 & 22 Car. 3. B. c. for Fawkes Cal. v. Runn. And ibid. 300, says, It is a dominion belonging to the crown of England. And ibid. 301. That its having a parliament is gratia regis, subject to the parliament of England. It is to be considered as a provincial government, subordinate to, but not part of the realm of England. Mich. 11. Ge. 2. in case of Ottway v. Remy. And by flat. 5 Geo. 1. cap. 5. sect. 1. The kingdom of Ireland ought to be subordinate to and dependent upon the imperial crown of Great Britain, as being inseparably united thereto. And the King's Majesty, with the consent of the lords and commons of Great Britain in Parliament have, hath power to make laws to bind the people of Ireland.


Ireland is beyond sea as to the statute of limitations, Arg. Hill. 2 Id. & M. Shaw. 157. says it was ruled to. Bond executed in England for a debt in Ireland shall carry out English interest. Mich. 1700. 2 Vern. 395. Lord Wansford v. Sir John Champman.

A writ of error was brought upon a judgment given in Ireland. It was argued, that a day ought to be given by rule of court to the plaintiff, to assign his errors, or else to non suit him; for the defendant could have no sol. j. into Ireland. Vent. 53. Hill. 22 & 22 Car. 2. B. R. Ann.

In error of a judgment in B. R. in Ireland, it was suggested that the plaintiff was in execution on the judgment in Ireland. The court seemed to be of opinion, that a bono corpus might be first thither to remove him, as writs mandatory had been awarded to Calais, and now to Jermyn, Guernsey, &c. Vent. 357. Mich. 32 Car. 2. B. R. Ann.

If a writ of error be brought of a judgment in Ireland, and judgment affirmed in B. R. here, no copies can be in any county of England; because the cause of action arises in Ireland, and there the venue is laid; and therefore the original copies ought to issue in Ireland, but no copies could issue out of B. R. in Ireland, and therefore not
IRE

not here; neither an original not issuant. But the method is to issue out a writ, recting all the proceedings heretofore. J. of B. R. in Ireland, and where there execution shall be issued for all; for though the judgment be affirmed here, yet the law supposes the party contumacious in Ireland; for the colloquy are but accessory to the judgment, and such mandatory writ determines the writ of error here, and refutes the causa in Ireland; per Holt C. J. 12 Mich. 235. Mich. 10 H. 3. Cont v. Litch.

As to the profits of lands in Ireland, a bill here is good, the person being in England; for they are in the personalty, but as to partition of lands, which is in the real to be no case, these is, for a commissio cannot be awarded in Ireland. And a bill for partition is in the nature of a writ of partition at the Common law, which lieth not in England for lands in Ireland. Hill, 27 & 28 Car. 2. per Lord Chanc. 2 Chan. Caius 214. Cartwright v. Patter.


Chancery in England will relieve against fraudulent conveyances gained of lands in Ireland, when the defendant is in England. Mich. 1682. Fern. 75. Earl of Airlafi v. Mafiamp. Bill as to land in Ireland, the title wherefore was under the act of settlement there, was exhibited against the defendant here on his coming to England, and a nonsuit regus granted, and he was put to an account for the same made for those lands in Ireland, and when he departed to Ireland without answering, he was set for over by a special order of the King, and made to answer the complaint, and to abide the justice of this court. Per Ord. Fern. 1682. Fern. 77. cited in the case of Earl of Airlafi v. Mafiamp, as the case of Archer v. Preston.


A man may be set over to Ireland to be tried for a crime there committed, notwithstanding the clause in the habus corpus act. Gibb. 111. Mich. 3 Geo. 1, B. R. The King v. Kimber.

Justices of peace in England may commit a person offending against the Irish law, in order to his being set over. Stran. 828.


A writ of error in B. R. here, of a judgment given in B. R. in Ireland, is a proper form to have the action there. Cra. 7, 534. Fash. 17 fac. B. R. The Bishop of Oxfords cafe.

A writ of error was brought to reverse a judgment given in Ireland, and was an error in fact, assigned, and tried in the county next Ireland. The court ruled the omits to be well awarded. Vent. 59. Hall. 21 & 22 Car. 4. B. R.

Judges in England are proper expostors of the Irish laws. Per Jeffries C. alliased with judge. Fern. 422. Mich. 1686. Earl of Killade v. Sir Maurice Esufface. An action of debt was brought in the county of C. B. in Ireland, against an administrator, upon a judgment in the court of B. R. in England. The defendant pleaded in bar a judgment had against the interlace, in an action of debt upon bond in the court of Exchequer in Ireland, and upon demurrer, there judgment for the defendant in C. B. and affirmed in B. R., upon a writ of error in the court of B. R. in England, the principal question was, whether debt lies in Ireland upon a judgment obtained in B. R. in England, and all the court inclined strongly that it does not lie; that Ireland is to be considered as a foreign nation, and upon such a subordinate party, so, not part of the realm of England; that acts of parliament made here, extend not to Ireland, unless particularly named; much less judgments obtained in the courts here; nor is it possible they should, because we have no officers to carry them into execution there; for tho' mandatory writs issue the same, the officers of the court of, Ireland, remedy do not, as appears in Vaugh. 290. Befides debt on a judgment is a less action, and must be brought in the same county where the judgment was obtained; a fieri, not in a different kingdom. Accordingly the court were of opinion to affirm the judgment; but the case stood over for another argument. Mich. 11 Geo. 2. Osnow v. Ramph. In Easaier term following the plaintiff in error declining to speak to it again, judgment was affirmed, nifo, &c.

Partners shall all do homage in Ireland, 14 H. 3. The King's officers shall not purchase lands there, Ord. pro Stat. Hibern. 17 Ed. 1. c. 1.

Purveyance restrained there without nolens, Ord. pro Stb. Hibern. 17 Ed. 1. c. 2.

Fees of a bill of grace, Ord. pro Stb. Hib. 17 Ed. 1. c. 4.

Merchants shall carry their goods there freely without anarchy, Ord. pro Stb. Hib. 17 Ed. 1. c. 5.

The marshals's fee for a prisoner, Ord. pro Stb. Hib. 15 Ed. 1. c. 5.

Pardon shall not be granted there without the King's command, Ord. pro Stb. Hib. 17 Ed. 1. c. 6.

Proceeds shall be under the Great seal or the Exchequer seal, Ord. pro Stb. Hib. 17 Ed. 1. c. 7.

Alizes of wool dye as shall not be adjudged but in the case of the Ord. pro Stb. Sub. 17 Ed. 1. c. 8.

The staple places there, and the customs of those commodities, 37 Ed. 3. 3. B. c. 2.

Liberties granted to the church and people of Ireland, 31 Ed. 3. 3. B. 4. c. 1, &c.

Banns of the land to be diffusely in council, &c. 31 Ed. 3. 3. B. 4. c. 2.

The King's ministrars shall put away all private counsellors of their own, 31 Ed. 3. 3. B. 4. c. 3.

Inquisitions to be made of felonies, 31 Ed. 3. 3. B. 4. c. 5.

No general pardon to be granted but in parliament, 31 Ed. 3. 3. B. 4. c. 5.

Prelates, &c. to certify the state of Ireland truly, 31 Ed. 3. 3. B. 4. c. 7.

Ministers, &c. shall not give maintenance, 31 Ed. 3. 3. B. 4. c. 10.

Exchequer not to hear common pleas, 31 Ed. 3. 3. B. 4. c. 11.

Suggestion against officers to be under the English seal, 31 Ed. 3. 3. B. 4. c. 12.

The justices of Ireland in every county shall inquire once a year of debts paid to the sheriffs, 31 Ed. 3. 3. B. 4. c. 13.

Change in the Exchequer, 31 Ed. 3. 3. B. 4. c. 15.

None to be imprisoned unduly, 31 Ed. 3. 3. B. 4. c. 16.

Annual inquiry of the behaviour of officers, 31 Ed. 3. 3. B. 4. c. 17.

The King's subjeds in Ireland shall use the same laws with the English, 31 Ed. 3. 3. B. 4. c. 18.

Misternomakers of clerk of the market how punished, 31 Ed. 3. 3. B. 4. c. 19.

Merchants may repair thither with their merchandise, 31 Ed. 3. 3. B. 17.

English who have lands there may carry and re-carry their goods, 34 Ed. 3. 3. B. 18.

Irib to live on their benefits, 1 H. 5. c. 8.

Certain Irish forbid to continue in England, 1 H. 5. c. 8.

Irifume
Duties on importation of iron, &c. 2 W. & M. seft. 2. c. 4. sect. 14, &c.
Iron (except gun metal) and copper from English carn, may be exported, 5 W. & M. c. 17.
Bar iron may be imported from Ireland, 7 & 8 W. 3. c. 20. sect. 17.
No drawback of customs on exporting foreign wrought iron, 2 & 3 Ann. c. 9. sect. 12.
No drawback on iron or steel imported and afterwards exported to the plantations, 9 Ann. c. 6. sect. 5.
Trade with Spain in unwrought iron permitted, 9 Ann. c. 21. sect. 63.
Pig iron may be imported from the plantations free, 23 Geo. 2. c. 29.
Bar iron from the plantations may be imported to Lond., 23 Geo. 2. c. 29. or to any port, 30 Geo. 2. c. 16.
Iron works charged with the land-tax, 4 Geo. 3. c. 2. sect. 4.
Iron wire. See Wire.
Iron, In libels, makes them as properly libels as what is expressed in direct terms. Hal. 215. 1 Hawk. 193. 104.
Irregularity, (Irregularities) Disorder. In the Canon law it is taken for any impediment, which hinders a man from taking holy orders; as if he be bare bone, notoriously defamed of any notable crime, maimed, or much deformed, or has consented to procure another's death, and the like.
Irrepressible, or Irrepressible. That neither may be proved or set at large upon others, as The diftreis shall be irrepressible. 13 Ed. 1. cap. 2. See Difficults.
Irving, A duty of excise granted to that town, 9 Geo. 2. c. 27.
Irwel. (River). See Rivers.
Ireland. Composition fish to be taken as usual of subjects travelling into Ireland, 5 El. 4. c. 5. sect. 5. Fishing vessels not to proceed on their voyage to Woffington and Ireland, till the 10th of March yearly, 15 Car. 2. c. 16.
Irlandaff, (Gluten psefium.) A kind of fish-glue or fish-gum brought from Ireland, and those parts, and used in medicines, and by some in the adulterating of wines, but for that prohibited by a statute made 12 Car. 2. cap. 25.
Isle of Cly. See Cly.
Isle of Man. See Man.
Isle of Wight. See Wight.
Isth. (From the French i6fier, i emeore.) It hath divers applications in the Common law; sometimes being used for the children begotten between a man and his wife; sometimes for profit growing from amerciments or fines; and sometimes for profits of lands or tenements. 10 El. 2. 13 Ed. 1. cap. 39. Sometimes for that point of matter depending in suit, whereupon the parties join, and put their cause to the trial of the jury: And yet in all thefe it hath but one signification, which is an effect of a cause preceding, as the children are the effect of the marriage between the parents; the profits growing to the King or lord, from the punishment of any man's offence, is the effect of his transgression; the point referred to the trial of twelve men, is the effect of pleading or procels. Ilsue in this signification is either general or special; general ilsue feemeth to be that whereby it is referred to the jury, to bring in their verdict, whether the defendants have done any such thing, as the plaintiff layeth to his charge. For example; If it be an offence against any statute, and the defendant plead Not guilty; this being put to the jury, is called the general ilsue. And if a man complain of a private wrong, which the defendant demeth, and pleads no wrong nor dishonour; and this being put to the jury, it is likewise the general ilsue. Kitchin, fol. 225. See Dufit, and Student, fol. 158. The special ilsue then must be that, where special matter being alleged by the defendant for his defence, both parties join thereupon, and go either to a demurrer, if it be quotidius juria, or to trial by the jury, if it be quotius factis, 4 Hen. 8. 3. 18 Eliz. c. 12. Covell.
1. Where the words issue, or heirs of the body, in a will give an estate by purchase or definite.
2. Where the words issue, or heirs of the body, in a deed give an estate by purchase or definite; and where the same words are only a description of the person.
3. In what cases the general issue may be pleaded.

A. devised in fee of Black-ace, Green-ace, and White-ace, has issue a son and two daughters, and devises Black-ace to the ton and his heirs, Green-ace to the eldest daughter and her heirs, and White-ace to the youngest daughter and her heirs. It is said, as his child died without issue of his body, then the other surviving shall have *totam illam partem,* &c., between them equally to be divided. A dies, the eldest daughter dies leaving issue, and then the son dies without issue. The words *totam illam partem* give only an estate for life. And *per Grady J.* Tho' it was objected, that such estate for life in the surviving youngest sister is defeated by descent of the son, as to now the estate limited by the will is void; it may be answered, that tho' now upon the matter it be void, yet ab initio it was not so; for it became void by matter of later time, viz. by descent of the fee-simple; for if one of the daughters had died without issue in the life time, her moiety as her land back to the son and the other sister, there is no coparcenary; for the son has all the fee, and the moiety of the estate is executed, and the other moiety exspectant, and the sister has a moiety for life, and then the devise not void. And *per Shute J.* If both daughters had survived the son, they should have *fee in Black-ace,* but not by the will, but by descent in coparcenary. 2 Les. 129. Mich. 29 Eliz. B. R. How-kins's case.

B. devises a term to *A.* for life, and after to the issue of *A.* and for want of issue of *A.* to *B.* was adjudged a good remainder to *B.* in B. R. lately, but revered in *Cam. Statute,* and a difference taken between such limitation to children, and to the issue; *per Lord Keeper.* 2 Clun. Cafes 212. Mich. 27 Cas. 2. in the case of Warman v. Seymour, cited as the case of *Piers v. Reresby.*

A. devises a term to his wife, and after her death to *A.* for life, and after to the issue of *A.* and for want of issue of *A.* to *B.* was adjudged a good remainder to *B.* in B. R. lately, but revered in *Cam. Statute,* and a difference taken between such limitation to children, and to the issue; *per Lord Keeper.* 2 Clun. Cafes 212. Mich. 27 Cas. 2. in the case of Warman v. Seymour, cited as the case of *Piers v. Reresby.*

A. devises a term to his wife, and after her death to *A.* for life, and after to the issue of *A.* and for want of issue of *A.* to *B.* was adjudged a good remainder to *B.* in B. R. lately, but revered in *Cam. Statute,* and a difference taken between such limitation to children, and to the issue; *per Lord Keeper.* 2 Clun. Cafes 212. Mich. 27 Cas. 2. in the case of Warman v. Seymour, cited as the case of *Piers v. Reresby.*

B. devises lands to his second son and his heirs for ever, and for want of such heirs, then to the right heirs of *A.* A. died, the second son died without issue, living the eldest son adjudged, that the second son has the estate fail, and no more, because the words (and for want of such heirs) are void in point of limitation, and import no more than want of issue; because the second son could never die without heirs fo long as his brothers, or any heirs of his father were living. Therefore the heir at law in this case shall take by defeat, and not by the will. 1 Salter 323. Trin. 12 W. 3. B. R. Nottingham v. *Tennison.*

C. and *B.* in trust for *C.* for life, with power to make leaves, and after *C.'s* decease in trust for the heirs male of the body of *C.* Cooper Ch. decreed only an estate for life to be conveyed to *C.* and to his heir *E.* sons in tail male. But *Harcourt K.* reverfed that decree, and decreed an estate-tail; though he had not endeavored the effect. In these articles founded on the agreement of parties, the husband in such case might be only tenant for life; but in a will you must take the words as you find them. Pach. 1711. 2 Fern. 670. Baisv v. Coleman.

2. Where the words issue, or heirs of the body, in a deed give an estate by purchase or definite; and where the same words are only a description of the person.

Where the heir takes any thing which might have been vested in the ancestor, he shall be by defeat. *Arg. 1 Rep. 98. Pach. 21 Eliz.* in Shelly's case.

The word heir does not serve for a name of purchase if he be not legal heir, nor the word issue. The word son or daughter is more strictly extended. So in *A.* the estate is purchased and will, though they are bartsafers. *Jenk. 203.* pl. 27.

An use of a term for years to husband and wife, and after to their issue, they then having none, is all one, as if limited to them and the heirs of their bodies, and the issue takes nothing as a purchaser; *per Lord Keeper.* 2 Clun. Cafes 212. Mich. 27 Cas. 2. in the case of Warman v. Seymour, cited as the case of *Piers v. Reresby.*

A. posessed of a term for 2000 years, in consideration of marriage, &c., with *M.* demised to trustees for 1700 years part of the 2000 years, out of which 1700 years, a term of 99 years was particularly limited to *A.* for life, and the remaining part of the 1700 years was declared to be for a proportion of *A.* and *M.* and their children, if *A.* and *M.* or any of their issue should die in their lives, remaining to the heirs of the body of *A.* on *M.* they both died, leaving issue three daughters, *B. C.* and *D.* and got an assignment of the whole term, and took administration to *A.* B. brought her bill. And the question was, if the child should have a third part with *C.* and *D.* And though it was insuficient for them, that the trust of the whole term vested in *A.* and was executed in him, and that the children, though heirs of his body, could not take in this case; yet the Master of the Rolls conceived, that in regard, a particular term of 99 years was taken out of the 1700, and particularly limited to *A.* that the trust of the whole term, as to the 1700 years was not executed to *A.* and cited the case of *Oakes v. Chafford,* and *Thebrume v. Campnon,* and the case of Warman v. Seymour, where, by advice of judges, an alienation being to one for life; and then to her issue, it was held, that the issue took by purchase, and issue was not taken to be a word of limitation to vest the whole term in the mother. And yet in legal understand ing, issue is a word of limitation, and not of purchase; and therefore conceived that though in the principal case, the word (heirs) is not properly a word of purchase, yet there being a particular estate for life, during a particular term, decreed *A.* the limitation to the heirs of his body after his death, on a marriage, and carry it to all the children equally; and the rather, because it was declared in the deed, that after *A.'s* death, the trustees should execute estates to the person and personas respectively, that should be interested, according to their respective shares therein, which the wed, that the children should stand to the other shares. 2 Fern. 23. Pach. 1637. Word v. Bradley.

A. posessed of a term for years, settles it in trust for marriage for himself for life, remainder to his wife for life, remainder to the heirs of the body of the wife by the husband; *A.* dies, leaving *B.* a son; *per Somers C.* Wed. 1791. Noy. 168. gent govern this case. There the like limitation was adjudged as words of purchase, and not of limitation, and that on view of that precedent, his lordship had lately declared accordingly in a like case, and said,
Or by persons acting under the acts for recovering small debts, 14 Geo. 2. c. 10. sect. 6. 22 Geo. 2. c. 47. sect. 17. 23 Geo. 2. c. 27. f. 33. 25 Geo. 2. c. 6. sect. 5.

Or the act concerning the Ruffia company, 14 Geo. 2. c. 36. sect. 5.

Or for wages, 17 Geo. 2. c. 5. sect. 34.

Or for repairing pavements, &c. 17 Geo. 2. c. 29. f. 37. sect. 2.

Or the duty on housls, &c. 20 Geo. 2. c. 3. sect. 60. 22 Geo. 2. c. 37. sect. 2.

Or by persons discharged by general pardon, 20 Geo. 2. c. 40. sect. 12.

Or those acting under the act concerning Indies, 21 Geo. 2. c. 30. f. 18.

Or the act concerning the African company, 23 Geo. 2. c. 31. f. 38. 25 Geo. 2. c. 40. sect. 25.

By persons acting under the act of regulating the navigation of the Thames, 24 Geo. 2. c. 8. sect. 24.

Or stamp duty, 29 Geo. 2. c. 12. sect. 28. 29 Geo. 2. c. 13. f. 11. 30 Geo. 2. c. 19. sect. 74. 32 Geo. 2. c. 35. sect. 23.

Or the act concerningjuries, 29 Geo. 2. c. 19. f. 4.

Or the act for appointing Justices in Westminster, 29 Geo. 2. c. 25. sect. 19.

Or under the act for preventing the stealing iron, &c. 29 Geo. 2. c. 30. sect. 10.

Or concerning bridges, 29 Geo. 2. c. 40. sect. 43.

31 Geo. 2. c. 20. f. 8.

Or Militia act, 30 Geo. 2. c. 25. sect. 72. & sequent.

Or for holding corn market at Westminster, 31 Geo. 2. c. 35. sect. 30.

Or the act preventing, 31 Geo. 2. c. 39. sect. 49.

Or the act concerning hay, 31 Geo. 2. c. 40. f. 19.

Or the act laying duty on offices, &c. 31 Geo. 2. c. 22. sect. 31.

Or concerning ballastage, &c. 32 Geo. 2. c. 16. f. 29.

Or concerning Turkey company, 32 Geo. 2. c. 34. sect. 14.

Difficulties on Scotch acts. Are for neglects and defaults, by amercement and fine to the King, levied out of the fines and profits of their lands; and double or triple fines may be laid on a theft for not returning writs, &c. and they may be taken off before effraeted into the Exchequer by rule of court, on good reason shewn. 2 Litt. Air. 89. Fines must be levied on jurors for non-appearane; though on reasonable excuse proved by two witnesses, the justices may discharge the fines. Stat. 35 H. 8. c. 6. side 1 & 1467.

The thief to be amerced if he answers not sufficiente,

St. Wulf. 1. Ed. 1. c. 45.

Fines to be delivered in the wardrofe, &c. 1bid.

What things are fines to be disfrained, St. Wulf. 2. 13 Ed. 1. c. 39.

Fines shall not be levied till they are efraeted, St. de Fiz. de Fiz. 27. Ed. 1. f. 1. c. 2.

Where fines lev. shall be discharged, 1 Jac. 1. c. 26. sect. 11. &c.

See Felon. Jurees.

Itinerant, (itinerarii,) Travelling, or taking a journey. Those were anciently called justices itinerant, who were fent with a commission into divers counties to hear such caufes especially as were termed pleas of the Crown, and the journeys themselves were called iters. See Judges in eye.

Judities, Was first instituted by Boniface 8th in the year 1300, who granted a plenary indulgence and remission of sins to all those who should visit the churches of St. Peter and St. Paul, at Rome in that year, and stay there fifteen days; and this he ordered to be observed once in every hundred years, which Clement 6th reduced to fifty years in the year 1350, and to be held upon the day of the circumference of our Saviour. Urban the 4th, in the year 1388, reduced it to every 23 years, that being the age of our Saviour. And that every age might partake of this benefit, Sixtus 6th, anno 1475, reduced it to every twenty-five years.

One of our Kings, viz. Edward 2. caufed his birthday to be observed in the nature of a jubilee, when he was fifty years old, and not before or after: And this he did by releasing prisoners; by pardoning offences, and discharging good men, making good laws, and granting many privileges to the people. And because when a jubilee was first instituted, it was ordered to be observed every hundred years; therefore

Jubilates, Signified afterwards a man one hundred years old, and likewise a poftillon's prescription for the protection of a poftilion in his journey, &c. de jubilato, &c. Et f. jubi certa jubilato maxime, finit viva-teram manu in aternum. Du Fiere.

Judaism, (Judaismus,) The custom, religion, or rites of the Jews: Allo the income heretofore accruing to the King from the Jews; for we find in several charters, judaismus, munus Anglie. Allo the place or ftreed where the Jews lived, as in Hifor. Owen. fol. 152. And Jus us Judaismus for the Old Testament. The word was often used by way of exception in old deeds; as Sciant, quod ego Rogerus de Morice dedi Williamo Harding pro tribus marcis argentis, unam cruciam tobo, de me & barbtisas meis fui & hereditatis, &c. quae fumam, quanquam vell quandamque dilutam cruciam daret, vendere, legere, invadere, vel aliquo modo effeurosus vulneret, in quacunque flato futuri, liber, quiete, integra, bene & in pace, excepta religion & Judaismo, &c. fine dato. The statute of Judaismus was made 3 Ed. 1. at which parliament the King had the hundred granted him pro expiatione Judæarum.

Judasismus was anciently used for mortgage. Pro hae autem donatione dedenter mihi dixit & canoni fac res per spec. ad acquitandam terram pridem deditus de Judaismus, in quas fuit impignorata per R. fratem meum, &c. Ex Magno Kot. Pipe, de anno 9 Ed. 2.

Judaizans are used for the manson or dwelling-place of the Jews in any town; as Wigmans excep & intravis, & Judaismo eurit. Rihanger, pag. 668 And it sometimes signifies uffery: us, Emptos fuit grani & damus obligata in magni debitis in Judaismo. Mon. I. tom. p. 834. See Jud.

Judges, (st. Juste, Lat. iudicis,) A person who is in very importance, who doth determine any cause or quifition, real or personal. Jofeph. The commiffions of the judges are bounded with this express limitation, Facio quod ad iurisprudentia pertinent sedegnum legem & confuetudinem Angliae. The judge at his creation takes an oath, that he shall indifferently minifter justice to all othermen that shall come before him, and that he shall not forbear to do, though the King by his letters, or by express word of mouth, should command the contrary. Et it is a maxim in the law, quos non debet de iudeo in proprio coitu. King Henry the Fourth, when his eldest son for the Prince was by the Lord Chief Jusice for some great misdemeanours, committed to prison, thanked God, that he had a son of that obedienc, and judge fo impartial, and of such undoubted courage: Thifory is well known, and may be read at large both in Stowe and Daniel, in vita H. 5. Fortunio in his book de Laudibus Legum Angliae 53. Speaketh of a judge, com- plaining of a judgment given against a gentleman who was accused by her own woman, without any other proof, for murdering her husband, was thereupon concerned and burnt: The man, who accused her being within a year convicted for the same offence, confess that his misfreh was altogether innocent of that very fact. But this judge (as the fame author adds) Supet fagre quinque saepe in vita sua animam ejus facit postergum. In 7 H. 4. the King demanded Cofaigne justice, if he law one in his presence kill’d, &c. and another (which was not culpable) should be indicted of this before him, what he would do in this cafe? Which he answered, that he ought to render the judge against him, and to relate the matter fully to the King to procure him a pardon; for there he cannot acquit him at
and give judgment according to his private knowledge. But where they have a judicial knowledge, there they may and ought to give judgment according to that. See the like doctrine approved by Lord Thurlow, in his dissenting opinion. 

1. In what cases persons may be judges in their own cause.

1. In what cases persons may be judges in their own cause. If a fine be levied to a judge of Bank, he himself cannot take the conuance; for he cannot be his own judge. 8 H. 6. 21. Br. Patents, pl. 15. cites S. C. per Martin.
If a fine be levied by a judge in Bank, his name shall not be in the fine. 11 H. 6. 49. b.
So, if a fine be levied to a judge of Bank, his name shall not be in the fine; because he shall not be judge in his own cause. 11 H. 6. 49. b.
If a judge of Bank be sued in Bank, he cannot record it; it shall be recorded by the other judges. 11 H. 6. 49. b.
So if a judge of Bank fines there, he cannot record it, but it shall be recorded by the other judges. 11 H. 6. 49. b.
If the chief justice of Bank be to fine a writ there, the writ shall not be in his name, but in the name of the several judges. 1185. 12 H. 8. v. Mayor, et. of London. — It an action be sued in Bank against all the judges there; in such cause for necessity they shall be their own judges.
8 H. 6. 19. b.
No man may judge in his own cause. 8 H. 6. 19. b.
12. for it is a manifest Extradition that a man can be agent and patient in the same thing, and what Lord Coke says in Dr. Benham's case is far from any extravagancy; for it is a very reasonable and true saying, that if an act of parliament should ordain, that the same person should be judge and party, or, as it is the same thing, judge in his own cause, would be a void act of parliament; per Hale Ch. J. 12 Mod. 687.
This is a ground in the feudal law also, as appears in the Prelections of Wm. van Trenck, cap. 17. f. 401.
If the Lord Chancellor makes a decree to frangiers in a thing which concerns himself in interest, and for himself, it is void, because he cannot be a judge in his own cause.
H. 11 f. 3. in Chancery, between Sir John Egerton, and the Lord Darby and Kelly, ruled by the Lord Chancellor, Coke and Dyeridge. 
2 Rel. Arg. 93.
If one of the judges of B. or B. R. brings action in his own court, and there recovers, this is a good judgment, because he is judge of his own cause; and by himself, but not by him alone.
H. 4 f. 4a. B. R. per curiam, in the baysies of Neufcastle's cafe. Ibid.
So, if one of the coroners brings his action, and after the coroner give judgment upon the outlawry, it is not erroneous. H. 4 f. 4a. B. R. in the said case, per curiam.
If a man brings an action before the mayor, bailies, and fward of a will, and after the mayor is removed, and the plaintiff is made mayor, and after he there recovers, this judgment is not erroneous; for the judgment is given by the court, and not by him alone. H. 4 f. 4a. B. R. per curiam, the bailiffs of Neufcastle's cafe. Ibid.
This case is law, but not for the reasons here given. 12 Mod. 687.
If A. sue in the court of mayor and bailiffs, A. is made mayor, and it is not said in the record, that he was made mayor, or it do not appear in the record that he was made mayor, there, if the defendant apprehends, he may be proved. If the defendant be proved, the mayor be not sole plaintiff, but sole judge; for the court was held before the plaintiff, who was the mayor, and the
tion complaints of delays of judgments or grievances
done to them; and they shall have power to cause to
this end, to be appointed at Westminster, or elsewhere, the,
terror of records, and the grievances of such judgments delayed,
and to cause the judges to come before them to hear
the reasons of such delays; and the chancellor, treasurer,
the judges of the one Bench and of the other, and
of the King's counsell, such as they shall think conve-
ient, shall proceed to judgment; and the terror of the
terror of records, and the grievances of such judgments delayed,
be remanded before the judges before whom the plea did defend;
and they shall give judgment according to the same record;
and in case the difficulty be so great that it may not well
determined without ailent of parliament, the said terror
shall be brought by the said prelate, ears and barons,
intest to parliament, and there shall be a final acc-
taken what judgment ought to be given; and by
advice of the said prelate, ears and barons, be it ordined
to increase the number of the officers when need shall
be, and to diminish in the same manner.

Stat. 4 H. 4, cap. 29. After judgment given in the
court of the King, the parties and their heirs shall
be there in peace until the judgment to be undone by ar-
taint or error, as hath been used.

Stat. 20 Car. 2, cap. 3. fol. 14. Any judge or officer
of his Majesty's courts at Westminster, that shall sign any
judgments, shall without fee set down the day of the
month and year upon the paper-books, docket or record
which they shall sign; which day and month, &c.
shall be also entered upon the margin of the same record.

Sect. 15. Such judgments, as against purchasers for
valuable consideration of lands, shall in consideration of
law be judgments only from such time as they shall be
signed, and shall not relate to the first day of the term.

Stat. 4 & 5 Will. & Mar. cap. 20. fol. 2. The clerk of
the exoffign of the Common Pleas, every clerk of
the doggets of the King's Bench, and the master
of the office of pleas in the Exchequer, shall in every Election
term put into an alphabetical doggett by the defendant
names a particular of all judgments for debt, by confes-
sion, non est inventun or notis dictus, entered in the said
respective courts of the term of Hillary preceding, which
shall contain the names of the plaintiff, the names of
the defendants, their places of abode, title, trade or
profession (if any such be in the record) and the debt, dis-
charges and costs recovered; and in what county, city or
parish the suit was laid, and the number-roll; and in every clerk of
the judgments, and every other clerk of the Common Pleas and King's Bench, shall bring to the clerks of
the doggets notes of the judgments by them
entered in the said term of St. Hillary, upon verdicle
writs of inquiry, demurrer, and every other judgment
for debt or damages as aforesaid; and the clerk of
the judgments, and every other clerk of the Exchequer, shall
bring to the master of the office of pleas the like notes of
all judgments by them entered in the said term as aforesaid;
and the respective officers and clerks of the said
judgments shall likewise before the last day of every Michaelmas
term make the like doggett, containing all such judg-
ments of debt as shall then and there be, and shall
likewise before the last day of every Hilary
term make the like doggett, containing all such judg-
ments of the term of St. Michael then last past; and it
such doggotts shall be kept in books in parchment in the
two respective offices, to be searched by all persons, paying
the same toll as is due for the term's search for judgments against
any one person 4d.; and upon pain that every clerk before mentioned shall for every term in which he
shall neglect his duty in the premises forfeit 100 l. to the
moiety the party aggrieved, and the other moiety
him who shall sue for the same in any of their majesty's
courts at Westminster.

Sect. 2. No judgment, nor doggett as aforesaid, the
affect any lands as to purchasers or mortgagees, or
any preference against heirs, executors or administrators
in their administration.

Sect. 4. There shall be paid by the plaintiff in the
ev't of the said judgments to be entered, over and above the
fees now due, 4 d.
2. When judgments are to be signed and entered.

Four days after the plaintiff's attorney doth bring the process into the court, if the rule for judgment is out, he may send to the court of the place, that the court of the place, Mich. 22 Car. B. R. except the defendant do not then, or before, move some thing to the court in arrest and stay of judgment; but no judgment upon a verdict ought to be entered until a rule given, and such rule out. 2 L. P. R. 95.

If a verdict be given after the term, although by adjournment, no judgment can be given upon that verdict, until the next term following, for such proceedings cannot be in the vacation time, for the judgment is the act of the court, and if the term is not broken, and there is a return of the process at the day in bank, no warrantable judgment can be given. 2 L. P. R. 111.

After verdict it was moved in arrest of judgment, that there was a mis-trial which was afterwards held well enough; but before the court had delivered their opinion of the plaintiff's death; it was prayed notwithstanding, that judgment might be entered, there being no default in the plaintiffs, but the delay by act of the court, and that it was within the statute of Car. 2. that the death of the party before verdict and judgment should not abate the action, and that it was in the discretion of the court, whether to take notice of the death in this action, for the demand of the plaintiff has no day in court to plead, there being no continuances entered after the return of the process, and cited 1 Es. 187, Missy's cafe, and Mr. q. and the court were of opinion, that judgment ought to be entered, and there being no continuances, it may be entered as if immediately upon the return of the process. Yet. 90. Trin. 22 Car. B. R.


A judgment to bind the goods, may be signed after the defendant's death, notwithstanding the statute of frauds and perjuries; because that statute was made only to help purchasers. 2 L. P. R. 117. cites Pabo. 2 Jas. 2. 2. B. Freckleton v. Moore.

In an action on the cafe brought against the sheriff or a return of nulla bona upon a fieri facias; although judgment was signed after the telle of the writ of fieri facias, and both the judgment and fieri facias were of Hilary term, but the judgment not signed until March afterwards, yet it was held good; and the court declared, that they would not make any use of the day of signing of the judgment, but only to relieve parcharis as the statute intended. 2 L. P. R. 118. cites Hill. 2. 3 Jas. 1. Stampy v. Kinley.

If the plaintiff will not bring his process into the court söventh and eighth days of the course, the defendant may have time to speak in arrest of judgment, the court will not stay the judgment until the plaintiff shall move for judgment; which he cannot do without bringing his process into court, and giving notice thereof to the defendant's attorney, and he may think himself for this trouble and charge or not bringing in of his process as he ought to have done. He may not bring in like law it is in case of a writ of inquiry. 2 L. P. R. 115.

Upon a writ of inquiry, either on demurrer or judgment by default executed the last day of the term, the plaintiff may enter judgment the 5th day after, and not after. 1 Salk. 399. Trin. 5 W. & M. Clerk v. Rowland.

After rule entered, judgment shall be signed on the 8th day after inclusively in Hilary and Trinity term. 12 Med. 40. Pabo. 5 W. & M. Annu.

Indictment for a misdemeanour, was tried three days before the end of the term, and judgment entered the same term, so that defendant had not four days to move in arrest of judgment. The question was, whether this entry was regular, and whether it should not have been signed till the term following; and per Hil. Ch. J. If there are four days and more between the trial and the entry of judgment, defendant not to be entered within the four days; if the difference be less than four days, the term and the party is tried within two or three days before the end of the term, the judgment shall be entered that term, tho' there are not four days to move in arrest of judgment; and so he said it was settled in the case of Knox v. Lennox. Upon conference between Serreys Ch. J. and Sir William Jephson Attorney General, contrary to the report of Sir Samuel Afyery. 1 Salk. 77. Pabo. 117. 3. B. R. Annu.

By the ancient rules of the court, the judgments of one term ought to be entered on the roll before the efton day of the next term; and the late act of parliament for docketting of judgments was only in imitation of the ancient course in aid of; per Hilt Ch. J. 6 Med. 184. Trin. 3. Ann. B. R. in the case of Herring v. Corder.

The plaintiff, by a special injunction out of Chancery, was restrained from signing judgment near 12 months after rule given to plead; he may, after such injunction dissolved, file a new petition without giving a new rule to plead. Notes of Gages in C. B. 156. Mich. 6 Gen. 2. theobum v. Jachem.

Tho' no appearance be actually entered, yet if defendant's attorney undertakes to appear, it is sufficient to support the judgment. Notes of Gages in C. B. 156. Mich. 6 Gen. 2. theobum v. Jachem.

If defendant demandsoyer of an indenture, which is given, the defendant has the same time to plead after declaration is verified by the oyer as he had at the time of oyer demanded, and therefore judgment being signed the next day after oyer given, and the oyer having been annulled after 12 days before the rule for pleading was out, the judgment was yet good. Notes of Gages in C. B. 156. Mich. 6 Gen. 2. theobum v. Jachem.

The capias was returnable the 27th of October last, and judgment signed November 7th following; it was moved to set aside the judgment as signed the 12th day after the return of the writ, which was one day too soon, the defendant having, by the late act of parliament, eight days to appear after the return of the writ, and by the practice of the court, four days afterwards to plead, and the court made a rule to sue caufe; thereupon it was shewed for cause, that the declaration was left in the office de bono off, (petition to the rule of court made in Middleman term 3 Gen. 2.) on the third day of the term, and that day served upon defendant, and a rule to plead given the same day; and on the 7th of November, defendant not having appeared, plaintiff, upon the usual affidavit, entered an appearance for him; and afterwards, the same day, signed judgment, which the court held to be regular, and discharged the former rule. Notes in C. B. 167. Hill. 7 Geo. 2. Charlton v. Hankey and another.

The writ was returnable tres Mich. and an appearance entered by the plaintiff. The declaration was left in the office November the 6th, and rule to plead then given; notice of the declaration filed was served upon the defendant November 11th, defendant moved left term to set aside the judgment, and obtained a rule to sue caufe, which was made absolute upon hearing counsel on both sides. The declaration not being delivered de bono off, was only well delivered from the time of the notice; and before that time no plea was entered. Notes in C. B. 172. Hill. 8 Geo. 2. Grey v. Saunders.

After rule to plead expired, defendant obtained, and served a judge's summons for time to plead. Plaintiff's attorney, notwithstanding the summons, signed judgment; defendant moved to set aside the judgment, and on pleading the cause, held the judgment to be regular. A summons for time, after rule to plead expired, is not a supersedeas or stay of proceedings. The judge was imposed upon; he would not have granted the summons,
Judgment was given in debt upon a bond against an executor in C. B. and upon error brought in B. R. errors were assigned; and because, upon the record it did not appear that the monies are yet payable, rule was given to refer the judgment, nls, &c., and the counsel of the defendant in error said, he could not maintain the judgment, and therefore prayed the reversal of it for his client's execution; who intended to bring a new action, by which it was reversed absolutely. 2 Saund. 106, 108. Pajch. 22 Car. 2. Holilipp v. Ortony.

A femme covert who lived by herself, and acted as a feme foie, gave a warrant of attorney to confess a judgment, &c., and afterwards moved to set aside the judgment; the court would not relieve her, but put her to her writ of error. 1 Salt. 400. Mich. 10 V. 3. B. R. Anst.'

Upon payment of costs, the court will set aside a judgment, tho' it be regularly entered, if the plaintiff hath not lost a trial; and fo is the common course in C. B. 1 Salt. 402. Mich. 3 Ann. B. R. Sylf'd v. Lea.

Stat. 5 Geo. c. 13, enacts, That where a verdict shall be given in any action in any court of record in England or Wales, the judgment shall not be final for any defect in form or substance in any part of the proceedings. 

Baynes moved to set aside the judgment, upon an affidavit of a demand of over of the bond on the 29th of May, (being the same day wherein a plea was demanded) and of the service of Mr. Justice Parkes's summons the same day of oyer, and time to plead. Darrell for plaintiff opposes the motion, and produced an affidavit that oyer was not demanded, nor summons served till after the rule to plead; and the court refused to make any rule. Notes in C. B. 161. Trin. 6 & 7 Geo. 2. Farrance v. Brignall.

A motion was made against judgment for plaintiff upon the issue of null & vacuo. The case was, Plaintiff had mistak'en commoration in his declaration; defendant had pleaded in abatement, and annexed affidavit of the truth of this plea; plaintiff brought a new action, and the defendant pleaded the former action depending; upon which plaintiff of his own head, without leave of the court entered a nil cognitum per breve. The officers were asked their opinions, who all agreed it to be the custom and practice; and the court allowed it. But when another question arose, whether the plaintiff could have made such an entry, in case the false plea had not been in abate- ment, and defendant had pleaded nulla mens abatement; but Coke thought it might be in all cases; the court said, it was impossible to be so, and held it confined to abatements. Notes in C. B. 185, 189. Pajch. 11 Geo. 2. Ofonne v. Holdcuck.

The defendant's attorney left a note at the house of the plaintiff's attorney, of double remittance in this manner, viz. I plead nil debit, yours, &c., and the plaintiff's attorney without making notice to the defendant's attorney, that he expected a plea in form, signed judgment; and upon a motion to set the judgment aside, it was held to be regular, and the note aforesaid to be no plea. Pleas delivered to attorneys must be drawn up in the same manner as to be left in the office. Notes in C. B. 156. Mich. 6 Geo. 2. Martyn, qui tam v. Skinner.

It was moved to set file a judgment signed for want of a plea, upon an affidavit of the delivery of a plea to the plaintiff's attorney in due time, which was a plea of an outlawry against the plaintiff in B. R. pleaded in bar, and moved for a remitter, and assailed the same as a peremptory summons, and that the plaintiff, therefore, was infil'ted, that the outlawry not being pleaded fab pecte fi Gilli, plaintiff was not bound to accept it, and therefore might regularly sign judgment, and cited 1 Salt. 217. Carewbe 220. They ordered it to be moved again; and when the motion came on the second time it was moved a rule, but before it was taken it was found the defendant's attorney differed it from the cafe quoted on the other side, and quoted Coke's Inst. 128. 1 Lutw. 40. 2 Med. 267. Atkins & Bayk. It was replied, that Lord Ch. J. Holt's words in Carewb and Saffold, go both to pleas in bar and abatement, where the outlawry is in another court, 4th Wiltph's Cases. Carewbe 213. 2 Vent. 282, quoted (are of) pleas in bar, not dilatory; plaintiff cannot take upon him to judge of the plea in bar; he shou'd apply to the court or demur; rule made to set aside the judgment. Notes in C. B. 160. Trin. 6 & 7 Geo. 2. Panter v. Coppin.

A rule to plead was given in Trinity term last; and defendant obtained time by Mr. Justice Reeves's order to plead 'till the first day of this term; and for want of a plea the plaintiff signed judgment of this term, with out giving a new rule to plead; which the court held to be regular, the rule to plead, given last term, being en- larged by the judges order to the first day of this term. Notes in C. B. 165. Mich. 7 Geo. 2. Anst v. Panter.

The writ was returnable the first return of this term, whereunto defendant appeared by his attorney, and plaintiff in Tervibre, gave a rule to plead, and, after demanding a plea, signed judgment for want thereof in four days; defendant moved to set aside the judgment; and the quizzon before the court was, whether in this case the defendant should have four or eight days to plead. And the court held, that pursuant to the rule of court made in Michaelmas term, third of his present Majestie, in all cafes upon writs returnable the first or second return of any term, if the plaintiff doth not declare in London or Middlesex, or the defendant lives about 20 miles from London, the defendant hath eight days time to plead; but therefore set aside the judgment. Notes in C. B. 165. Mich. 7 Geo. 2. Lasonby v. Bradley.

Defendant pleaded a tender, but brought no money into court; he gave a rule to reply, and for want of a replication signed a non praes; plaintiff looked upon the plea as a non praes; money not being brought into the signed judgment after the non praes obtained, and now moved to set aside the non praes. The defendant moved to set aside the judgment, infiting that the plaintiff could not regularly sign judgment 'till the non praes was set aside; and of that opinion was Sir George Coke, but the two other prothonatories reported the prudler contrary; and the court was of opinion, that the non praes not being rightly obtained, plaintiff might proceed in the same manner, as he might have done in case of
For theft bote, 3 Infl. p. 218.
Bribing witnesses to fliff their evidence, 2 Hawk. P. C. p. 445.
For other offences of the like nature against the first principles of natural justice and common benefit, 2 Hawk. P. C. p. 445.
In appeal when the defendant joining battle is vanquished in the field, 3 Infl. p. 112.
In arrest in civil cases therefor, 3 Infl. p. 222.
Of a corrupt judge, 3 Infl. p. 224.
Pillory, tumble and trebutchet, 3 Infl. p. 219.
Where the court may award transportation, or to the house of correction, 2 Hawk. P. C. p. 446.
In what cases the defendant must be in court when judgment given, 2 Hawk. P. C. p. 446.
Judgment or Trial by the holy crosses, Was a trial in ecclesiastical causes, in use long since among the Saxons. See Cresiff's Church History, fol. 960.
Judgments in criminal cases, Are of two kinds, 1. Such as are fixed and flated, and always the fame for the fame species of crimes; 2. Such as are defective and variable, according to the different circumstances of each cafe. 2 Hawk. P. C. p. 444.
In high treason relating to the coin, 2 Hawk. P. C. p. 444.
In petit treason, 3 Infl. p. 211. 2 Hawk. P. C. p. 443.
Against a woman for high treason or petit treason, 3 Infl. p. 211. 2 Hawk. P. C. p. 443.
Against a man or woman for felony, 3 Infl. p. 211. 2 Hawk. P. C. p. 444.
In misprision of petit treason, 1 Infl. p. 375.
For drawing a ward on a judge, or striking a person in the presence of the King's higher courts, 3 Infl. p. 218. 2 Hawk. P. C. p. 445.
For striking and drawing blood in the King's palace, 3 Infl. p. 218. 2 Hawk. P. C. p. 445.
For [injury to the King's person, 1 Hawk. P. C. p. 57. 2 Hawk. P. C. p. 445.
For refusing a prisoner from any of the King's higher courts, 1 Hawk. P. C. p. 57.
For making an affray in the palace yard near the said courts, 1 Hawk. P. C. p. 57.
For forgery on the statutes, 1 Hawk. P. C. p. 184.
For perjury on the statute, 1 Hawk. P. C. p. 177.
For conspiracy at the suit of the King, 3 Infl. p. 222. 2 Hawk. P. C. p. 445.
Upon pleading a rel ease to an appeal, and in other cases of the like nature, 2 Hawk. P. C. p. 445.
Of the death of a man that offered to rob, &c. 2 Hawk. P. C. p. 220.
Contempores against the King's courts, 1 Hawk. P. C. p. 57.

Vol. II. No. 97.
the jurisdiction from the prince's laws, which was void when the native laws of the country were in force. See Sir Ed-ward Coke's Institutes, his 4th Part, the Civilian di-

vide jurisdictiomen into Imperium & judiciadom, & imperium in merum & mixtum. Cawell. See Court, Jurisdiction.

Juris utrum, is a writ which lies for the incumbent, whose predecessor hath alienated his lands and tenements. The divers uses whereof fee in Fin. Nat. Breu. fol. 48.

By lat. 14 Ed. 3. c. 17. Parliams, vicars and wardens of chapels, shall have their writs of juris utrum of tenements annexed or given perpetually in alms to vicarages or chantries, and may be recovered by other writs in their case as parsons of churches or prebends.

Jurnal, The journal or diary of accounts in a religious house. — It was required to be kept in the bishop's chancellor, as a proof of the account of the monastic house. 130, 343, 1730, 232, 245. Ed. 3. 122, 1727.

Juro, (Jurato,) One of those twenty-four to twelve men, by whom the juries are sworn and impanelled. 1727, 16 Ed. 1. 157. See Jurato, Juror, Juror, Jurato.

Juror, (Jurato,) One of those twenty-four to twelve men, by whom the juries are sworn and impanelled. They were sworn and impanelled in the nature of aldermen, for government of their several corporations; And the name is taken from the French, where (among others) there are Major & Jurati Suffragies, &. See Chappin Daman, Fran. ib. 3. tit. 20. fol. 11, pag. 530. So ferfby hath a bailiff and twelve jurats, or sworn officebearers, to govern the place. Comm. Romany. Marbury is incorporate of one bailiff, 24 jurats, and the commonalty thereof, by charter, dated 23 Feb. 1 Ed. 4. See Hyst. of Imbarkation and Droving, fol. 34. b. Jurats are also sometimes taken for jurats, as in 13 Ed. 1. c. 26.

Jurisdiction, (Jurisdiction,) is authority or power given which a man hath to do justice in causes of complaint made before him; of which there are two kinds: The one which a man hath by reason of his fee, and by virtue thereof doeth right in all plaints concerning the land of his fee: the other is a jurisdiction given by the prince to a bailiff. With jurisdiction de or, we have in the Choy-
mary of Normandy, cap. 2, which is not unapt for the practice of our commonwealth; for by him whom they call a bailiff, we may understand all that have commissary from the prince to give judgment in any case. See Sir Ed-ward Coke's Institutes, his 4th Part, the Civilian di-

jurisdiction from the prince's laws, which was void when the native laws of the country were in force. See Sir Ed-ward Coke's Institutes, his 4th Part, the Civilian di-

vide jurisdictiomen into Imperium & judiciadom, & imperium in merum & mixtum. Cawell. See Court, Jurisdiction.

Juris utrum, is a writ which lies for the incumbent, whose predecessor hath alienated his lands and tenements. The divers uses whereof fee in Fin. Nat. Breu. fol. 48.

By lat. 14 Ed. 3. c. 17. Parliams, vicars and wardens of chapels, shall have their writs of juris utrum of tenements annexed or given perpetually in alms to vicarages or chantries, and may be recovered by other writs in their case as parsons of churches or prebends.

Jurnal, The journal or diary of accounts in a religious house. — It was required to be kept in the bishop's chancellor, as a proof of the account of the monastic house. 130, 343, 1730, 232, 245. Ed. 3. 122, 1727.

Juro, (Jurato,) One of those twenty-four to twelve men, by whom the juries are sworn and impanelled. 1727, 16 Ed. 1. 157. See Jurato, Juror, Juror, Jurato.

Juror, (Jurato,) One of those twenty-four to twelve men, by whom the juries are sworn and impanelled. They were sworn and impanelled in the nature of aldermen, for government of their several corporations; And the name is taken from the French, where (among others) there are Major & Jurati Suffragies, &. See Chappin Daman, Fran. ib. 3. tit. 20. fol. 11, pag. 530. So ferfby hath a bailiff and twelve jurats, or sworn officebearers, to govern the place. Comm. Romany. Marbury is incorporate of one bailiff, 24 jurats, and the commonalty thereof, by charter, dated 23 Feb. 1 Ed. 4. See Hyst. of Imbarkation and Droving, fol. 34. b. Jurats are also sometimes taken for jurats, as in 13 Ed. 1. c. 26.

Jurisdiction, (Jurisdiction,) is authority or power given which a man hath to do justice in causes of complaint made before him; of which there are two kinds: The one which a man hath by reason of his fee, and by virtue thereof doeth right in all plaints concerning the land of his fee: the other is a jurisdiction given by the prince to a bailiff. With jurisdiction de or, we have in the Choy-
mary of Normandy, cap. 2, which is not unapt for the practice of our commonwealth; for by him whom they call a bailiff, we may understand all that have commissary from the prince to give judgment in any case. See Sir Ed-ward Coke's Institutes, his 4th Part, the Civilian di-


Likewise the authority of this trial, and its being peculiar to us, have been taken notice of, as matters which reflect honour on our constitution; for tho' there were ancienly severall other methods of trial, such as by battle, ordeals, &c. yet have they, from the inconveniences attending them, been laid aside; and this alone cultivated and improved, as the best method of investigating truth.

Salm, Giff. verbo jurata. Gian. lib. 2. cap. 7. 

1. Statutes concerning juries.

2. Who are exempted from serving on juries.

3. Of the several kinds of juries, and jury process; and manner of compelling a jury to appear.

4. By whom the jury process is to be executed, and the jury summoned; in what time such processes, and what number of jurors, are to be returned.

5. In what cases, and in what manner special juries are appointed.

6. For what misdemeanors jurors are punishable.


1. Statutes concerning juries.

Stat. Morleber. 52 Hen. 3. cap. 14. Concerning charters of exemption, and liberties, that the purchasers shall not be impounded as any affizes, jurists, and others, of their oaths to be required; that without them justice cannot be ministr'd, as in great affizes, perambulations, and in deeds where they are named for witnesses, or in attaints, and in other cases, they shall be compelled to swear, fasting to the same or another time their exemption.

Stat. Wm. I. 13 Edw. 1. cap. 38. In one affize no more shall be summoned than twenty-four, and old men above seventy years, and such as be sick at the time of the summons, or not dwelling in that country, shall not be put in juries or petty assizes: and if such affizes and juries be taken out of the shire, none shall pass in them, but those that are summoned for forty years, at least, except as such be witnesses in writing, or either shall this affize extend to great affizes; and if the thirff or bailiffs offend in any point of this statute, and thereupon be convicted, damages shall be awarded to the parties grieved, and they shall nevertheless be amerced to the King; and jurists allied to take affizes shall have power to hear plaints as to the articles in this statute.

Stat. 21 Edw. 1. stat. 1. No thirff nor bailiff shall put, in any recognition that shall pass out of their proper bailiwicks any, except they have lands to the yearly value of an 100s. at least. And this statute shall not restrain the laft statute of 28 Edw. 1. cap. 38. so that within the county before jurisdictions of the King; nor be assigned to the taking of inquests or other recognizances, none shall be impounded except he have lands to the yearly value of 40s. and likewise flattering that before jurists errant, and also in cities, boroughs and other market-towns, it shall be done as it hath been accustomed.

Stat. 28 Edw. 1. stat. 3. cap. 9. No thirff nor bailiff shall impanel in juries too many persons, nor other wise than is ordained by the statute, and they shall put in the jury such as be next neighbours, most sufficient and least Falseful; and he that otherwise doth, and is attainted thereof, shall pay the plaintiff his damages double, and be grievously amerced to the King.

Stat. 33 Edw. 1. stat. 4. Of inquests to be taken wherein the King is party, notwithstanding it is alleged that the jurors or some of them, be not indifferent for the King, yet such inquests shall not remain untaken for that cause; but if they that sue for the King will challenge any of those jurors, they shall affiit a cause, and the truth of the challenge shall be inquired of.

Stat. 5 Edw. 3. cap. 10. If any juror in affizes, ju ries or inquests, take of the one party or the other, and be therewith attainted, he shall not be put in any affizes, jurists or inquests, and all others he shall be commanded to prison, and further rewarded as the King's will, and the jurists before whom such affizes, &c. shall pass, shall have power to inquire and determine according to this statute.
Stat. 23 Edw. 3. stat. 5. cap. 3. No inductor shall be put in inquest upon the deaversances of the indittees of felony or trespasses, if he be challenged for the same cause.

Stat. 34 Edw. 3. cap. 4. Panels shall be made of the next people not suspected nor procure; and the sheriffs, coroners and other ministers, which do against the same, shall have two hundred panels before the justices take the inquest, according to their trespases, as well against the King as against the party.

Stat. 34 Edw. 3. cap. 8. In every plea whereof the inquest or affifte doth pass, if any of the parties will sue against any of the jurors, that they have taken of him, or by him, for their verdict, he shall have his plaint by bill presently before the justices before whom they did swear, and if the juror plead to the country, the inquest shall be taken forthwith; and if any other than the party will sue for the King against the juror, it shall be heard; and if the jurors be attainted at the suit of other than the party, he that saith shall have half the fine; and the parties to the plea shall recover their damages by the taking of the inquest; and the juror so attainted shall have imprisonment one year, which shall not be pardoned; and if the party will sue by writ before other justices, he shall have the suit in the form aforesaid.

Stat. 38 Edw. 3. stat. 1. cap. 12. If any jurors do take any thing of the plaintiff or defendant to say their verdict, and thereof be attainted by the process contained in stat. 34 Edw. 3. cap. 8. be it at the suit of the party that will sue for himself or for the King, or at the suit of any other, every of the said jurors shall pay ten times as much as he hath taken; and he that will sue shall have the one half, and the King the other; and all imbracores to procure such inquest for gain shall be punished as the jurors; or if the juror or imbracore have not whereof to make gree, he shall have imprisonment for one year; and no justice or other minister shall in any manner of points of this article, but only at the suit of the party or of other.

Stat. 42 Edw. 3. cap. 11. No inquest but Affises and deaversances of gaols shall be taken by writ of nisi prius, nor in other manner, before that the names of all that shall pass in the inquests be returned in court; and the sheriffs shall array the panels in affises four days at least before the seffions of the justices; upon pain of 20l. and bailiffs of franchises shall make their answer to the sheriffs six days before the seffions, upon the same pain; and in all panels arrayed by the sheriffs or bailiffs shall be put the most substantial people and worthy of faith and not fuelled, and the justices contrary to them.

Stat. 7 Hen. 4. cap. 3. No indictment shall be made but by inquest of lawful people, returned by the sheriffs or bailiffs of franchises, without any denomination before-hand made according to law; and if any indictment be made to the contrary, the same shall be void.

Stat. 2 Hen. 5. stat. 2. cap. 3. No person shall pass in any inquest upon trial of the death of a man, nor between party and party in plea real or personal whereof the debt or damage amounts to forty marks, if he have not lands of the yearly value of 40l. to that it be challenged by the party.

Stat. 3 Hen. 5. cap. 4. Every juror that shall be imprisoned and returned within the county of Middlesex in the King's courts, at every fourth day of the return shall be demanded; and all persons imprisoned in those courts, that appear at the said day, their appearance shall be recorded; and every default, effuio and other delay of any plaintiff or defendant in any process be made; and all processes be made and allowed, as before this statute.

Stat. 1 Ric. 3. cap. 4. No bailiffs, nor other officers, shall return in any panel any person in any of the sheriffs' turn, but such as be of good fame, and having lands of freehold within the counties, to the yearly value of 20l. at half, or cophold, to the yearly value of 15s. 8d. and if any bailiff or other officer return any person contrary to this statute, be shall lose for every person so returned 40l. and the sheriff other 40l. the one half to the King, and the other half to the party that will sue by action of debt, &c. and every indictment before any sheriffs in his turn otherwise taken shall be void.

Stat. 1 1 Hen. 7. cap. 21. 1. No person shall be impanelled in any jury in London, except he be of lands in the said city, or shall have sworn a loyalty oath, or shall have been, before the justices take the inquest, according to their trespases, as well against the King as against the party.

Stat. 1 1 Hen. 7. cap. 21. 2. Every person shall be impanelled in any jury in the said city for lands or tenements, or action personal wherein the debt or damages amount to forty marks, except be he in lands and goods to the value of a hundred marks, and the fame cause of challenge shall be admitted as a principal challenge, that the party or parties do appear in any jury before any of the judges of the said city, making default at first summons, shall lose in fines 12d. and at the second default 2s. and so to every such default the fines to be doubled; and all such fines lost in the mayor's court shall be levied to the use of the mayor and commonalty; and all such fines lost in the sheriffs courts shall be levied to the use of the sheriffs toward their fees. 

See the rest of this act in Attaint.

Stat. 3 Hen. 8. cap. 12. All panels returned, which be not at the suit of any party, that shall be made by every sheriff and their ministers afore any justices of gaol-delivery, or justices of peace in their several jurisdictions, in inquiring the names of persons of any panel, or being summoned to and taking out of names, by the discretion of the justices; and the same justices shall command every sheriff and their ministers to put other persons in the panel by their discretion; and if any sheriff or other minister do not return the panels so reformed, such sheriff or minister shall forfeit, if it be one half to the King, and the other half to him that will sue by the action of debt, &c. and the King's pardon shall be no bar against the parties that shall sue for.

Stat. 4 Hen. 8. cap. 3. seq. 2. For all suits to be lost in the mayor's courts, according to stat. 11 Hen. 7. cap. 21. it shall be lawful to the mayor to disfrain; and in like manner, to be lawful to the sheriffs to disfrain for such fines lost in their courts.

Sect. 4. The sheriffs of London shall have power to return in panels or arrays of all actions in the courts of King's Bench and Common Pleas, or Exchequer, persons being citizens, having goods to the value of 100 marks, to try the issues joined in such actions, as other persons having lands of the yearly value of 40s.

Sect. 5. The sheriffs of the said city shall return upon the first directs upon every of the jurors 20d. and upon the second directs of nisi prius, 40s. and upon every directs after that the double, till a full jury appear; and the sheriffs that shall return the same shall forfeit the sum of 10l. to the half of the King, and the other half to the party that shall sue.

Stat. 5 Hen. 8. cap. 5. sect. 3. The afo 4 Hen. 8. cap. 3. shall be expounded, that the sheriffs shall be bound to return at every first directs of nisi prius, to be had at St. Edwinsters upon every of the jurors, 20d. and upon the second directs of nisi prius, 40s. and upon every directs of nisi prius after that the double, till a full jury appear; and no sheriff shall forfeit by force of the said statute for any return, except only upon writs of directs before justices of nisi prius within the said city; and upon all other procresses awarded out of the said courts or Exchequer, to be lawful to the sheriffs to make their returns as they were wont to do.

Stat. 23 Hen. 8. cap. 13. sect. 1. Every person being the King's natural subject, who do enjoy the liberty of any city, borough or town corporate, where he dwelleth, being worth in goods to the value of 40l. shall be granted and permitted to appear in any panel, and gaol-delivery for the liberty of such cities, &c. albeit they have no freehold.

Sect. 2. Provided that this act do not extend to any knight or esquire dwelling in any such city, &c.

Stat. 35 Hen. 8. cap. 6. sect. 2. In every case when such persons, or any persons whatsoever, shall be joined in the King's courts at Westminster, ought by law to descend 40l. by the loss of freedom, the writs aforesaid.
Upon no facias shall be in this form: Rex, &c. Praecipimus, &c. good and not be excluded, libera et leges ha-
dem, &c. B. quarum quilibet habeat quadraginta
terrarum, tenementorum vel redditum per annum ad minus,
sub quas rei veritas multo fieri poterit. Et qui nec, &c.
And where it is not requisite that the persons shall dis-
pe 40, by the year of freehold, the writs of venire
shall be to the county of the person, and upon every writ
that have the said clause, quaeum quilibet, &c., and upon every writ that have the
shall not return any person unless he may dispe 40, by the year
of freehold, out of ancient demeine, within the county;
and also shall return in every such panel the hundred,
where the venue lies; upon pain to forfeit for every person
that cannot dispe 40, by the year, 201, and for every hundred
omitted in such return, 301, and in every writ wherein
the clause quaeum quilibet, &c., shall be omitted, the	
sheriff shall not return any person unless he may dispe some
lands or tenements of freehold, out of ancient demeine,
within the county, and also shall return in every such
panel the hundred, if there be so many, upon like pain.
Sect. 4. Upon every first writ of habeas corpus or
disfringens with a nisi prius, delivered of record, the
sheriff shall return in issues upon every person impanelled at
the court joined or joined to, excepted to the persons,
plaintiff or defendant shall have authority to command
the sheriff to name to many other able pers of the
county then present as shall make up a full jury, which
persons shall be added to the former panel.
Sect. 7. The parties shall have their challenge to the
first writ asfo added as they had been impanelled upon the
venire.
Sect. 9. In case such persons as the sheriff shall name
asfofealbe present and do not appear, or do willfully
withdraw themselves, the justices shall set such fine upon
such jurors as they shall think good, to be levied as fines
by jurors.
Sect. 10. Where any jury shall be made full by the
command of the justices, such persons as were returned
1 the panel that shall make default shall lose issues as tho'
he jury had remained for default of jurors.
Sect. 11. Upon a reasonable excuse for the default of
such persons as are not party to the habeas corpus or
nisi prius, in the day of their appearance, by the oaths of two wit-
tesses, the justices shall have authority to discharge such
jurors of such forfeit of issues; and the sheriff be	
within discharged of the issues.
Sect. 12. If the affire or nisi prius be discontinued for
the coming of the justices, or any other occasion, other
han by default of jurors, the sheriffs shall discharge
of all issues, and the sheriff shall be likewise discharged of
the penalties for the non-returning of such issues.
Sect. 13. If upon any such habeas corpus or disfringens
with a nisi prius, issues be returned upon any hundred,
where the same hundred, and justices make this clause,
shall not be lawfully summoned, the sheriff or minifter shall
do double so much as the issues returned upon such hun-
dred or jurors shall amount unto; the moiety of all
which forfeitures, other than the issues to be returned
upon the jurors, shall be to the King, and the other half
to him that will sue for the same; saving to all persons
such right as they should have to such fines.
Sect. 14. This act shall not extend to any city or
town corporate, or to any sheriff or ministers in the
same, but that they may return such persons as they have
acquaintedly done so, to do that return like issues as
are in this act.
Made perpetual, 2 Edw. 6. cap. 32.
nisi prius, before whom any trial shall be made
by virtue of any writ of habeas corpus or disfringens with
Vol. II. N. 98.

a nisi prius (where the jury is like to remain for default
of jurors) &c., upon request made for the
King, or by the party that follows the case well for the
King as for himself upon any penal stature, or his at-
torney, to command the sheriff to name so many able
pers of the county then present, and to add the names
to the former panel as shall make a full jury.
Sect. 5. Every person or the ad 35 Ann. 8. cap. 6.
do be taken to give the same advantage to the King,
and all such persons as shall pursue any action, &c., for
the King and the party, as the plaintiff in any other
action might have.

Stat. 13 Eliz. cap. 9, sect. 1. Where the plaintiff or
demandant may be joined to the justices, or the
nisi prius in England, or to the justices of or from the
affires, of the twelve thires of Wales and the counties
palatines of Lancaster, Chelfet and Durham, a tales de cir-
cumplanthis, in all such cases the tenants, awors, awow-
ant and defendants (if the plaintiffs or demandants shall
forbear to pray the same) may upon their request have
by the fame justices the tales unto them granted in like
manner as the plaintiff or demandant may.

Sect. 2. In all popular actions in the Queen's courts of
record upon penal laws, wherein any person shall sue as
well for the Queen as himself, the defendants shall be
allowed to appear at the same courts of quarter sessions.
Sect. 27 Eliz. cap. 6, sect. 1. Where jurors returned
for trial of any suits in the courts of King's Bench,
Common Pleas or Exchequer, or before justices of
affire, by the laws now in force ought to have freehold of
the yearly value of 401, in every such case the jurors shall
have all of them as much to the yearly value of 401
at leat; and the writs of venire facias shall be in this form:
Rex, &c. Praecipimus, &c. quod venire facias coram, &c.
qui deoim librarn et legales harnes de vicino de B. quarum
quilibet habeat quatuor libras terrae, tenementorum vel redditum
per annum ad minus, per quas rei veritas multo fieri poterit.
And upon such writ the sheriff shall not return any person unless he may dispe 41.
in the year of freehold, out of ancient demeine,
within the county; upon pain to forfeit for every person
201.

Sect. 2. Upon every first writ of habeas corpus or
disfringens with a nisi prius delivered of record, the
sheriff shall return in issues upon every person impanelled at
leat, and at the second writ, 301, and the third writ,
and upon every writ further to double the issues,
until a full jury be sworn; upon pain to forfeit for every
return contrary to the form afofead, 31.

Sect. 3. If any sheriff or other minister return any
person in any jury, wherein he shall for default of ap-
pearance lose any issues, where in truth such person shall
not be summoned, the same sheriff, &c., shall forfeit to
the person so returned double the value of the issues lost.

Sect. 4. If any sheriff, under-sheriff, &c., or bailiff of
franchises, shall take any money or other profit, or any
agreement to have any profit for the not returning of
any person to be sworn as juror for the trial of any issue
joined before any justices, every sheriff, &c., to offending
shall forfeit 5l, the one moiety to the Queen, and the
other moiety to such person as shall sue for the same in
any court of record at law.

Sect. 5. Upon the trial of any issue in any personal
action, no challenge for the hundred shall be admitted if
two hundreds appear.

Sect. 6. All other challenges principal, or for other
daft, shall be admitted as if this act had never been.

Sect. 7. This act shall not extend to any juries or if-
fues to be returned in the city or town corporate, or
other place privileged to hold plea, or in the twelve
thires of Wales.

Stat. 27 Eliz. cap. 7, sect. 2. No sheriff or other
person shall return any juror dwelling out of any library,
without the said jurisdiction of that library at the
time of the return, or within one year next before, or
some other addition by which the party may be known;
nor any juror within any library, with other addition
than such as shall be delivered to him by the bailiff of
4 N of the
the liberty; nor any bailiff of liberty shall return any juror, or deliver to the sheriff the names of any persons to be returned, without the addition of the place of abode, &c., and no extract of issues against any juror shall be delivered sans issue; and in the original panel or tales wherein such juror shall be returned; and no under-sheriff, bailiff or other person, shall levy any issues of any other persons than of such as by the said effectus is of right charged with the said issues; upon pain that every clerk that shall write or deliver any such issues, or any letter relating to any process; contrary to this act, shall forfeit to the Queen five marks, and to the party grievely five marks.

Sect. 3. Justices of eyre and terminer, justices of assize and justices of peace, as well within liberties as without, shall have power to hear and determine the offences aforesaid.

Made perpetually, 39 Eliz. cap. 18. sect. 32.

Stat. 4. Will. & Mar. cap. 24. sect. 15. All jurors (other than strangers upon trials per medietatem linguae) to be returned for trials of issues joined in the courts of King's Bench, Common Pleas or Exchequer, or before justices of assize or nisi prius, eyre and terminer, gaol-delivery or quarter-fees in any county of England, shall have within the county 10l. by the year of freehold or copyhold, or ancient demeane, or in rents, in fee-simple, fee-tail or for life; and in every county of Wales every such juror shall have 6l. by the year as aforesaid; and if any of the issues referred to be returned, or any such issue be discharged upon the said challenge, or upon his own oath; and no jurymen's issues shall be favored but by order of court, for some reasonable cause proved upon oath; and all issues shall be duly effrayed and levied; and the writ of works of fines for intrangling of jurors in cases aforesaid in England shall be after this form: Rex &c. Praecipuat, &c. vadat vendre foar termam, &c. dedan amis liberis & legatis hominum de vicinato de A. autoris quilibet habet decem libras terre, tenementorum seu redditionem per annum ad minus per quas, &c., & qui nec, &c. and the writs for returning of jurors in Wales, shall be in the same manner, altering only the word decem for six; and the sheriff shall not return any person, unless he have 10l. or 6l. respectively, by the year, at least, in the county; upon pain to forfeit for every person 5l. to their Majesties.

Sect. 16. No sheriff or bailiff of liberty shall return any person to have been summed, unless such person shall have been duly summoned six days before the day of appearance, nor shall take money or reward to excise any juror; upon pain to forfeit 10l. to their Majesties.

Sect. 17. Saving to all cities, boroughs and towns corporate, their ancient usage of returning jurors, no sheriff or bailiff shall be lawful to return any person upon the tales in England, who shall have within the county 5l. by the year, and not otherwise.

Sect. 18. It shall be lawful to return any person upon the tales in Wales, who shall have within the county 3l. by the year.

Sect. 19. No fee shall be taken by any sheriff, clerk of assizes or other person, upon account of any tales returned; upon pain of 10l. one moiety to the procuretor, and the other moiety to their Majesties, to be recovered by action of debt, &c.

Sect. 21. No writ to non pestis in assist & juratis shall be granted, unless upon oath made that the suggestions are true.

Sect. 22. So much of this act, as relates to the returning of jurors, shall be in force for three years, &c.

Continued by 7 Will. 3. cap. 32. together with that act, for 7 years from the first of May 1696, and to the end of the next session of parliament; and afterwards continued along with this act, by 7 Will. 3. cap. 32.

Stat. 7 Will. 3. cap. 32. sect. 1. If any plaintiff or demandant in any cause in the courts at Westminster, which shall be at issue, shall sue forth a written facit, upon which any baileys corpora or dirigentes with a nisi prius shall issue, in order to the trial of such issue at the assizes, and such plaintiff, &c. shall not proceed to trial at the first assizes; in all such cases (other than where vews by jurors shall be directed) the plaintiff, &c. whenever he shall think fit to try the issue, shall use forth a new venire in this form: Shall de novo venire facias coram &c. et delebatur libra de vicinato de A. et qui fuerit facias coram &c. et delebatur libera de vicinato de A. quam visquit libret decem librat terre, tenementorum vel redditionem per annum ad minus per quas, &c. et qui nec, &c. which writ being returned and filed, a baileys corpora or dirigentes with a nisi prius shall issue thereupon (for which the ancient fees shall be taken, as in case of nisi prius baileys corpores or dirigentes; upon which the plaintiff, &c. may proceed to trial, as if the matter were against facias coram, &c. and to be tried before venire facias having been filed, and so tates quotes; and if any defendant or tenant, in any action in the said courts, shall be minded to bring to trial any issue, when by the course of the court he may do the same by facias, such defendant, shall issue a new venire facias and proceed the same by baileys corpora or dirigentes, with a nisi prius, as though there had not been any former venire ensued or returned, and so tates quotes.

Sect. 3. In every writ of baileys corpora or dirigentes, with a nisi prius, where a full jury shall not appear, or where the jury alone is to be returned; for any such writs, the sheriff shall upon the awarding the tates, return freetholders or copyholders of the county, who shall be returned upon some other panel to serve at the same assizes, and not others, if so many of the other panels be present; and either of the parties shall have his writ of procuration for the said sheriff, or copyholder, as the sheriff shall return upon the tates, being above, shall be called, and not appear; or shall willingly withdraw himself, the judge of assizes shall then sit upon such person.

Sect. 4. The sheriffs may be the better informed of persons to be returned for trials of issues joined in the courts of Chancery, King's Bench, Common Pleas or Exchequer, or to serve upon jurys at assizes, elections of eyre and terminer, general gaol-delivery and feessions of the peace; all constables, tithingmen and headboroughs, shall yearly, at the quarter-fees, in the week after St. Michael, upon the first day of the feessions, or upon the first day that the feession shall be held by adjournment at any particular division, return a list of the names and places of abode of all persons within the places for which they serve, qualified to serve upon such jury, with their adoptions, between the age of one and twenty years and seventy years, to the justices; which justices, or two of them, shall cause to be made an impression of the list, by the clerks of the peace to the sheriffs, on or before the first of January, and cause the lists to be entered by the clerk of the peace, among the records of the feessions; and no sheriff shall impanel any persons to try issues joined in the said courts, or to serve at any assizes, elections of eyre and terminer, gaol-delivery or feessions of the peace, that shall not be named in the list; and any constable, tithingman or headborough, failing to make the return aforesaid, shall forfeit 5l. to his Majesty.

Sect. 5. Every summoner of any person qualified to the offices of sheriff, under-sheriff, chief officer or deputy, shall be made by the sheriff, his officer or deputy, six days before the giving of notice to every person so summoned, the warrant under the seal of the office; and in case any juror be absent from his habituation, notice of such summonses shall be given, by leaving a note in writing under the hand of such officer, at the dwelling-house of such juror, with some person there present; and if the sheriff shall not return the juror to be present, he shall be liable for the costs incurred.

Sect. 6. The said return to the justices shall be a good excuse for the sheriff, for such summonses and returns; and if any action shall be brought against any sheriff for such return, the sheriff may plead the general issue; and if the plaintiff be non-suited, &c. the plaintiff or defendant shall have treble costs; and if the sheriff, his deputy or bailiff, shall summon any freetholder or copyholder otherwise than as aforesaid, or neglect their duty in the services required by this act, or excuse any person to favour or reward, or allow of any writ of non prosectio in assist & juratis, or other writ, to excuse any person for.
from the service of any jury, under the age of seventy years; such sheriff, &c., shall forfeit 20l. to be recovered by such party, or whom else shall sue for the same, in any of the courts at Westminster.

Sect. 7. Any sheriff shall be required to serve upon any of the assizes or general-delivery for the county of York, or at any feessions of the peace for any part thereof (the city of York and town of King'ston upon Hull excepted) above once in four years; and every sheriff of the said county shall keep a register, wherein the names of all who have served as jurors, with their additions and places of abode, and the times and places of such their services shall be alphabetically entered, which register shall be delivered over to the succeeding sheriff within ten days after he shall be sworn into his office, and every juror who shall serve at any of the said assizes, or seessions of the peace, or be a member of any of such registers, &c., repair to the sheriff to have his name entered in the same, whereby he shall have a certificate, upon request, gratis.

Sect. 8. Only one panel, consisting of forty-eight (each person having fourcore pounds land per annum) shall be returned to serve on the grand inquest, and no more than ten panels, consisting of twenty-four jurors each, shall be returned to serve for the trial of any circuit or petty cause, at any assizes for the county of York (except where special justices or registers are directed by rule of court) and at no one quarter-sefions of the peace for the said county, or within any of the ridings within the same, or in any place where there shall be held a baronial adjournment within the said county, shall be returned above the said number of jurors, to serve either upon the grand inquest or other service there.

Sect. 9. The inhabitants of the city of Westminster shall be exempted from serving in any jury at the sefions of the peace for Middlesex.

Sect. 10. The act 4 Will. & Mar. cap. 24, as to so much as doth relate to the returning of jurors, shall be of force, together with this act, for seven years, from the first of May 1696, and to the end of the next sefion of parliament.

Sect. 11. This act, or the said act, shall not give the jurors any longer time for the furnishing of jurors, to any jury, than the time now required for the same, as according to their own discretion, or as shall be directed; and as the same, he might have been before the said act.

Sect. 12. This act shall not extend to the city of London, nor to any county of any city or town, nor to any city or town corporate that have power by charter to hold a baronial sefion or any sefions of the peace.

Further continued by 1 Ann. cap. 12, for seven years, and to the end of the next sefion, and continued farther for 11 years, &c., to 10 Ann. cap. 14, and continued farther for 7 years, &c., to 9 Geo. 1. cap. 8, and referred to by 3 Geo. 2. cap. 25, which act of 3 Geo. 2. cap. 25, is made perpetual by 6 Geo. 2. cap. 37.

Stat. 9 Will. 2. 3. All juries of peace are required at their sefions next before the feast of St. Michael yearly, to issue precepts to the confables, requiring them to make such return of persons to serve upon jurors, as by the act 7 Will. 3. cap. 32. is directed.

Stat. 1 Ann. fs. 2. cap. 13, sect. 5. No person interested in such estate as will qualify him to serve on jurors of the yearly value of 150l. shall serve as juror at any of the said sefions of the peace, or be admitted to serve upon any jurors of the yearly value of 150l. or of greater value, shall be returned to serve upon any jury, at any sefions of the peace for any part of the county of York, upon the penalty of 20l. to be forfeited by any sheriff, or other officer making such return and summons, to be redeemed of any person, and lawful, for the same, in any of the courts of record at Westminster, by action of debt, &c.

Stat. 3 Ann. cap. 18. sect. 3. If any sheriff of the county of York shall, during the continuance of the said act 7 Will. 3. cap. 32. neglect to keep such register, as in the act is directed, or shall neglect to enter the names of the jurors in any appeal or quarter-sefion, as in the said act is directed, or shall neglect, within ten days after the succeeding sheriff shall be sworn into his office, to deliver over as well the registers that shall be made in the year wherein he shall have served sheriff, as also all such other registers as were prepared in the heretoforewick of any of his preceding sheriffs, at the same, and which were delivered over to him, shall the sheriff, &c., deliver such certificate gratis, as in the said act is mentioned; every such sheriff of the county of York shall forfeit 100l. one moiety to her Majesty, and the other moiety to such person as shall sue for the same, in any of her Majesty's courts at Westminster.

Sect. 4. If any such sheriff of the said county, his deputy or bailiff, during the continuance of the said act, shall knowingly summon or return any person to serve on any jury at the assizes or seessions of the peace, who shall within four years before such summons or return, have served on any jury at any sefions or within the county, and shall not, upon producing such certificate, discharge the summons or return, and thereof give notice to the party summoned, five days before such seessions or seessions of the peace; the said sheriff, &c., shall forfeit to the party summoned 20l. to be recovered as before-mentioned, with costs.

Sect. 5. The justices of peace for all counties within England or Wales, shall yearly during the continuance of the said act, at the quarter-sefions next after the 24th of June, issue their warrants to the head-confables of every hundred, lathe or wapentake, requiring them to issue their precepts to the tithingmen and headboroughs, requiring them to meet together with the head-confables, within fourteen days next after, at some usual place, where the confables, &c., shall prepare a list signed by them, of the names and places of abode of all the persons within the places for which they serve, qualified to serve on jurors, according to the said act 4 Will. & Mar. cap. 24, with their additions, between the ages of 21 years and 70 years, as by the said act 7 Will. 3. cap. 32. is directed; which list the confable, &c., yearly at the quarter-sefions in the week after St. Michael, upon the first day of the sefions, or upon the first day that the said list shall be held by adjournment at any particular place, shall return to the justice, and any head-confable failing to issue his precept to meet with the confables, &c., shall forfeit 10l. and any confable, &c., failing to meet the head-confable, and failing to prepare a list, and to return the same to the justices as aforesaid, shall forfeit 5l. and every such head-confable and tithingman for offending, shall be proceeded against as the justices shall think meet, for the misdeeds of eyer and terminor, or general goad-delivery, or seessions of the peace, and the justices of the peace, and the quarter-sefions, after the 24th of June yearly, shall cause the said falfd acts to be read in court.

Continued by 10 Ann. cap. 14, along with 7 Will. 3. cap. 32.

Stat. 10 Ann. cap. 14. sect. 5. The statute 7 Will. 3. cap. 32. shall be continued to extend, not only to any seessions of the peace to be held for any of the ridings within the county of York, but also to any seessions that shall be held by adjournment for any part of the said ridings.

Sect. 6. If any person interested in such estate as will qualify him to serve on jurors of the yearly value of 150l. shall serve as a juror at any of the said seessions or adjournments, he shall not thereby be exempted from serving as a juror or any of the seessions or the court of York.

Stat. 3 Geo. 2. cap. 35, sect. 7. The persons required by 7 & 8 Will. 3. cap. 32. and by a clause in 3 & 4 Ann. cap. 18, to give in, or who are by this act to make up, lists of the names of persons qualified to serve on jurors, shall (on request to any parish-officer, who shall have in his charge the list of the rates for the poor, or land-tax) have liberty to send such names, of such persons qualified dwelling within their precincts and shall yearly, twenty days at least before Michaelmas, upon two Sundays, fix upon the door of the church, within their precincts, a list of all such persons intended to be returned to the quarter-seessions, and leave a duplicate of such list with a churchwarden or overseer.
poor; and if any person not qualified shall find his name mentioned in such lift, and the person required to make such lift, shall refuse to omit him, the justices at their quarter-seessions, on satisfaction of the party complaining, or other proof, shall order his name to be struck out.

Sect. 2. If any person, required to give in or make up any such lift, shall wilfully omit any person whose name ought to be inserted, or neglect any who ought to be omitted, or fail to deliver any such lift, he shall, for every person so omitted or inserted, forfeit 20s. on conviction before one justice of the county, &c. where the offender shall dwell, on the confession of the offender, or proof by one witneses on oath; one half to the informer, the other half to the poor of the parish, &c. for which the lift is returned; and if such penalty shall not be paid within five days, it shall be levied by diffrets and sale of goods, by warrant from one justice; and the justices before whom such person shall be convicted shall certify the name to the next quarter-seessions, which shall direct the clerk of the peace to insert or strike out the name, and duplicates of the lift, when delivered to the justices and entered by the clerk of the peace, shall, during the sessions, or within ten days after, be transmitted by the clerk of the peace to the sheriff, and the sheriff shall take care that the names be entered alphabetically, with their additions and places of abode; and every clerk of the peace neglecting his duty, shall forfeit 20l. to such person who shall prosecute for the same, till the party be convicted upon an indictment at the quarter-seessions.

Sect. 3. If any sheriff or officer shall summon and return any persons to serve upon any jury before the justices of af sidel, nisi prius, or judges of the great sessions in Wales, or of the sessions for the counties palatine, whose name is not inserted in the duplicates transmitted to him by the clerk of the peace; or if any clerk of affide, judge's associate, or other officer, shall record the appearance of any person so summoned and returned, who did not really appear; then any judge of affide, nisi prius, &c. the sheriff, or any other officer, shall be fined for such omission, for every person so summoned and returned, and for every peron whose appearance shall be so falsely recorded, as the said judge shall think fit, not exceeding 10l. nor less than 40s.

Sect. 4. No perons shall be returned as jurors at any assizes, nisi prius, or judges of the great sessions in Wales, or of the sessions for the counties palatine, whose name is not inserted in the duplicates transmitted to him by the clerk of the peace; or if any clerk of affide, judge's associate, or other officer, shall record the appearance of any person so summoned and returned, who did not really appear; then any judge of affide, nisi prius, &c. the sheriff, or any other officer, shall be fined for such omission, for every person so summoned and returned, and for every person whose appearance shall be so falsely recorded, as the said judge shall think fit, not exceeding 10l. nor less than 40s.

Sect. 5. Every sheriff, &c. shall register the names of such persons, as shall be summoned and serve as jurors at any affide, &c. alphabetically, and the times of their services; and every person so summoned and serving shall, upon application to the sheriff, &c. have a certificate certified by his attendance on the sessions, which the sheriff, &c. is to give without fee; and the book shall be transmitted by the sheriff, &c. to his successor.

Sect. 6. No sheriff or other person shall take any reward, to excute any person from serving on juries; and no officer appointed to furnish juries, shall summon any person other than such name is specified in a mandate signed by the sheriff, &c. And if any sheriff or officer shall wilfully transgress in the said cases, any judge of affide, &c. may, on examination and proof of such offence, in a summary way, set a fine upon such officer, not exceeding 10l.

Sect. 7. If any sheriff, or other person shall take any reward, to execute any person from serving on juries; and no officer appointed to furnish juries, shall summon any person other than such name is specified in a mandate signed by the sheriff, &c. And if any sheriff or officer shall wilfully transgress in the said cases, any judge of affide, &c. may, on examination and proof of such offence, in a summary way, set a fine upon any person so offending, not exceeding 10l.

Sect. 8. Every sheriff, &c. shall certify the names of any convicts, felons, or heads of families, after they have completed the lifts for their precincts, according to 7 & 8 Will. 3. cap. 32. and 3 & 4 Ann. cap. 28. and this act, to subscribe the same in the presence of one justice for each county, &c. and at the same time to attach the truth of such lifts, upon oath, to the belief of their knowledge or belief; and the lists shall be delivered by the constables, &c. to the high constables, who are to deliver in such lifts to the quarter-seessions, attending upon the special receipt of such lifts from the constables, &c. and that no alteration hath been made since their receipt thereof.

Sect. 9. Every sheriff, &c. shall, upon the return of every venire facias (unless in causes intended to be tried at bar, or where a special jury shall be struck by the sheriff, &c. annex a panel of jurors, containing the names, additions and places of abode, of a competent number of jurors named in such lifts, the names of the same persons to be inserted in the panel annexed to every venire facias, for the trial of issues at the assizes; which number of jurors shall not be less than fifteen, without the direction of the judge appointed to go the circuit, or of one or both of them, by order under their hands; and the writs of habeas corpus or adjurations, subsequent to such venire, need not have inserted in the bodies of such writs the names of the persons contained in such panel; but it shall be sufficient to insert in such writs, corpus juris-s----rnam per varios in manulo haec brev anteannuntii nominatio, or words of like import, and to annex to such writs panels containing the names returned in the panel to the venire; and for making the said returns and panels, and annexing the same, no other fees shall be taken than what are not allowed.

Every sheriff or officer, to whom the return of jurors in the court of grand sessions in any county of Wales shall belong, shall, at least eight days before every grand sessions, summon a competent number of persons qualified out of every hundred and commune within such county, so as such number be not less than ten, or more than fifteen, without the direction of the judge of such sessions, by rule of court; and the officer shall return a lift, containing the names of the persons so summoned the first court of the second day of every grand sessions; and the persons so summoned, or a competent number of them, as the judges shall direct, and no other, shall be summoned in every grand sessions. And every venire, habeas corpus and adjurations, for the trial of causes in such grand sessions.

Sect. 10. Every sheriff or officer, to whom the return of the venire for the trial of caues before the justices of the sessions for the counties palatine of Cheshire, Lancashire, and Yorks, shall be delivered, shall, at least eight days before the return of the venire, summons a competent number of persons qualified, so as such number be not less than 48, nor more than 72, without the direction of the judges, and shall, eight days at least before such sessions, make a lift of the persons so summoned; and such lifts shall be hung up in the sheriff's office; and from such persons may be tried in such courts, at a fee of 10s. and no others, shall be summoned or serve on juries at the next sessions; and the sheriff is to return such lift on the first day of the sessions; and the persons so summoned, or a competent number of them, as the judges shall direct, and no other, shall be named in every panel to be annexed to every venire, habeas corpus and adjurations in such sessions.

Sect. 11. The name of each person summoned and impanneled, with his addition and place of abode, shall be written in distinct pieces of parchment or paper of equal size, and shall be delivered to the marshal of the judge, &c. by the under-sheriff, and shall, by the direction of the marshal, be rolled up in all the forms in which they are kept, and put into a box or glass; and when a cause is brought to be tried, some indifferent person shall in open court draw out twelve of the papers; and if any of the persons drawn shall not appear, or be challenged and set aside, then a further number, 'till twelve be drawn who shall appear, and if in any of the twelve persons so named, their names being marked in the panel, and they being found, shall be the jury to try the cause; and the names of the persons so found shall be kept apart in some other box, &c. 'till the jury have given in their verdict, and the same is recorded, or 'till the jury be discharged; and then the same names shall be rolled up again and returned to the former box, &c. and be stored.
J U R

Sect. 12. If a carce shall be brought on to be tried before the jury in any other cause shall have been brought in their verdict, or be discharged, the court may order 12 of the residue to be drawn as before, for trial of the cause.

Sect. 13. Every person whose name shall be drawn, and to whom shall not appear, being called three times, on oath made that such person had been summoned, shall forfeit for every default (unless some reasonable cause of abstinence be proved by oath to the satisfaction of the judge) such fine, not exceeding 5l. nor less than 40s., as the judge shall think reasonable.

Sect. 14. Where a view shall be allowed, six of the jurors or more (who shall be contented to sit on both sides; or if they cannot agree shall be named by the proper officer of the court; or, if need be, by a judge, or by the judge before whom the cause shall be brought on to trial) shall have the view, and shall be first sworn, or such of them as appear on the jury, before any drawing; and so many only shall be drawn to be added to the viewers as shall make up the number of twelve.

Sect. 15. His Majesty's courts of King's Bench, Common Pleas and Exchequer at Westminster, upon the motion in behalf of his Majesty, or of the motion of any accuser or defendant, or on the indictment or information for any misdemeanor, or information of the nature of a quo warranto in the King's Bench, or in an information in the Exchequer, or on motion of any plaintiff or defendant in any cause depending in the said courts, are required to order a jury to be sworn before the proper officer of the court in trial of any such cause, in such manner as special juries are usually struck in such courts upon trials at bar.

Sect. 16. The person who shall apply for such jury shall pay the fees for striking it, and shall have no allowance for the same on taxation of costs.

Sect. 17. Where a special jury shall be ordered by rule or order given in the county of a city or town, the sheriff shall be ordered by such rule to bring the books of persons qualified to serve on juries within the same, in like manner as the freeholders book hath been usually ordered to be brought in order to the striking of juries for trials at bar, and the jury shall be struck out of such books.

Sect. 18. Any person having land in his own right of not yearly value of 20l. over and above the reserved rent, being held by lease for the absolute term of 500 years or more, or for 99 years or any other term determinable on one or more lives, the name of every such person shall be taken on the panel, and such person may be summoned to serve as a juror, and such freeholder may be summoned to serve on juries as reholders may.

Sect. 19. The sheriffs of London shall not return any person to try any issue joined in any of his Majesty's courts of King's Bench, Common Pleas or Exchequer, or to try any cause arising in the city, in the election of the peace to be held for the city, who shall not be a house-keeper within the city, and have lands, or personal estate to the value of 100l. and the same cause alleged by way of challenge, and found, shall be admitted as a principal challenge; and the person challenged may be examined on oath of the truth of the matter.

Sect. 20. The sheriffs or other officers shall not return any person to serve on a jury for the trial of any capital offence, who would not be qualified to serve as a juror in civil causes; and the same matter shall be a principal challenge; and the person challenged may be examined on oath of the truth of the matter.

Sect. 21. This act shall be read once in every year at the quarter sessions to be held for every county or place within England and Wales next after the 24th of June.

Sect. 22. This act shall continue till the first of Sep-
tember next, 1835. Made perpetual by 6 Geo. 4. cap. 37, sect. 4. cap. 7. sect. 1. The clause of 3 Geo. 2. cap. 25, sect. 4. shall not extend to the county of Mid-

Sect. 2. No person shall be returned to serve as a juror at any trial in Middlesex since it has been returned at such

prius in the said county in the two terms or vacations next preceding, under such penalty upon the sheriffs, &c. as might have been inflicted for any offence against the said clause.

Sect. 3. All freeholders upon leases where the improved rents shall amount to 50l. per annum and above ground-rents, and all other reversionary, shall be liable to serve upon juries.

Sect. 4. Geo. 3. cap. 37. sect. 2. The justices of the se
cion or affils for the counties palatine of Chriftjer, Longleather and Durham, upon motion on behalf of his Majesty, or of any accuser or defendant in any indictment or information for any plaintiff or defendant may, in case they think fit, order a jury to be struck before the proper officer of each court, in such manner as special juries have been usually struck in the courts at Westminster upon trials at bar.

Sect. 24. Geo. 3. cap. 18. sect. 1. The party who shall by virtue of any act summon special juries, and who shall not apply for a special jury, shall not only pay the fees for striking such jury, but shall also pay all the expenses occasioned by the trial of the cause by such special jury, and shall not have any other allowance for the same upon taxation of costs, than such party would be intitled to have in case the cause had been tried by a common jury; unless the judge before whom the cause is tried immediately after the trial certify in open court under his hand upon the back of the record, that the cause was a cause proper to be tried by a special jury.

Sect. 2. No person who serves upon any jury appointed by the authority of the said acts, shall be regarded as being summoned to serve on any panel of jurors, for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge.

Sect. 25. Geo. 2. cap. 19. sect. 1. Every person duly impanelled and summoned to serve upon any jury for the trial of any cause to be tried in any court of record within the city of London, or in any other city or town corporate, liberties or franchises within England, who shall not appear and serve on such jury after being called three times, and on proof on oath of the person to make default, having been duly summoned shall forfeit for every such default, such fine not exceeding 40l. nor less than 20l. as the judge of the respective court shall think reasonable, and such default is made shall impeach, unless some just cause for such defaulters abide be made appear by oath or affidavit to the satisfaction of the judge.

Sect. 2. If any person on whom any fine is imposed in pursuance of this act, refuse to pay the same to the person authorized by the judge to receive the same, it shall be lawful for the judge who imposed such fine, by warrant under his hand and seal, to cause such fine to be levied by digestors and sale of the goods of the person on whom such fine was imposed, and the overplus, if any, after payment of such fine and the charges of such digestors and sale, shall be rendered to the person whose goods were so disfrained and sold.

Sect. 3. Every fine imposed in pursuance of this act, shall be paid by the person who receives or levies the same, to the proper officer of the city or town corporate, liberty or franchise, in which the court was holden; and the same shall be applied to such use as the digestors, or other fines sit in courts within such city, &c. are by charter, precept or usage applicable.

Sect. 4. If any action be brought for any thing done in pursuance of this act, such suit shall be brought within six calendar months next after the matter complained of is committed, and the same shall be applied to such use as the digestors, or other fines sit in courts within such city, &c. are by charter, precept, or usage applicable.

A Q
J U R

2. Who are exempted from serving on juries.

It seems to be agreed, that all persons whose attendance is required in the superior courts of justice, such as fequestors at law, counsellors, attorneys and other officers of the courts, are exempted from serving on juries; all peers of the realm are excluded, as not coming within the qualifications mentioned in the writ, viz. Ad factandum quoddam jurat patriae; for they are not pari patriae, but pari of a higher rank; and therefore it is clearly agreed, that if a peer be returned on a jury, and bring a writ of privileges, he shall be excused, even if it seems to be the better opinion, that even without such a writ he may challenge himself, or be challenged by either party. 4 Del. 314. Moir 167. 2 Rel. Abr. 648. Co. Lit. 157. 9 Co. 49. 6 Co. 53. 1 Jones 153.

But members of the house of commons from not to have any privilege to be exempt from serving on juries; yet in the case of Sir Edward Bainain, who being returned on a jury in B. R. the court would not force him to be sworn against his will, he being a parliament-man, and the parliament then sitting. Poph. 17 Car. 2. Sir Edward Bainain's case.

The opinion in ancient demesne are not to be impertinent to appear at Wymington, or elsewhere in any other court, upon any inquest or trial of any cause. 4 Inf. 269.

It seems agreed, that the King by his grant or charter may exempt one, two or more from serving on juries; but he cannot exempt a whole county or hundred, because in such cases there would be a failure of justice; alfo it seems that such exemption does not extend to jurors returned into the King's Bench, unless there be express words including that court; also by the better opinion, the sheriff cannot return such privilege of exemption, but each particular juror must come in, and demand it. 1 Sid. 127. 243. Ram. 113. Hard. 395. 46.

By the statute of Wym. 2. cap. 38. it is expressly provided, that no therd old men above the age of seventy years, nor persons perpetually sick, nor those who are infirm at the time of their summons, nor those who do not reside in the county, shall be put in juries or in the lesser affizes; in the construction of which it hath been held, that though such persons may sue out a writ of privilege for their discharge, grounded on this statute, yet if they be actually returned, and appear, they can neither be challenged by the party, or execute themselves from not serving, if there be not a sufficient number without them. 2 Inf. 446. 3 Bl. Com. 169. 11 B. N. B. 149. 2. Sc. 246. If persons in holy orders, coroners, ministers of the forest, officers of the army, and other officers and ministers belonging to the King, are exempt from serving on juries. Dal. Sher. 121. Trials per Pois 86.

By the 6 W. 3. cap. 4. "Every person acting and executing the art of an apothecary in the city of London, or within seven miles thereof being free of the society of apothecaries in the said city, and who shall have been duly examined and approved, &c. for so long time as he shall exercise the said mystery, and no longer, shall be exempted from serving on any jury or inquest; and other persons exercising the said art of an apothecary in any other parts of this kingdom, who have served as apothecaries seven years, according to the statute 5 Eliz. shall likewise be exempted from serving on juries for so long time as they shall use and exercise the said art, unless such person voluntarily consent to serve." By the 7 W. 3. cap. 4. all regimented seamen are exempted from serving on juries.

By the 7 W. 3. cap. 3. in it is enacted, That no quaker, or reputed quaker, shall serve on juries.

3. Of the several kinds of juries, and jury procedure, and manner of compelling a jury to appear.

Juries are distinguished into grand and petit juries; the grand jury may consist of thirteen, or any greater number; for these being the grand inquisitors of the county, every indictment and preemption by them must be found by twelve at least; but it is not necessary that all above that number should concur in such preemption or indictment. 3 Inf. 30. 2 Inf. 38. 14 Co. 30. 11 P. C. 154.

Upon the summons of a seffion of the peace, and in cases of commissioms of oyer and terminer and gaol-delivery, there goes out a precept either in the name of the King, or of two or more justices, directed to the sheriff, upon which he is to return twenty-four or more out of the whole county, namely, a reckonable number out of every county, the number of which is fixed by the several seffions; if all the seffions of the peace, oyer and terminer, or gaol-delivery are taken, and sworn ad incarnationem pro domino regis & consortem eius. 2 Hal. Hisl. P. C. 154.

Those returned to serve on the grand jury must be free & legalles dominus, and ought to be of the same county where the crime was committed; and therefore it is a good exception at Common law to one returned on a grand jury, that he is an alien or villain, or that he is outlawed for a crime, or that he was not returned by the proper officer, or that he was returned at the instance of the prosecutor; but these exceptions must be taken before the indictment is found. 9 Co. 232. 2 Inf. 30. 12 Co. 99. 2 Red. Rep. 82. 2 Hal. Hisl. P. C. 154-5.

It is laid down by my Lord Chief Justice Hale, that at Common law every person returned on the grand jury ought to be a freetholder at least, and that the statute 2 Hen. 4. cap. 3. that requires jurors that pass upon the trial of a man's life to have 41. per annum. Treedel has been the measure by which the freethold of grand jurors has been measured in precepts of summons of juries. Hale Hisl. P. C. 155, but for this 2 Hawk. P. C. 216. Alto This general act of parliament it is provided, That those who serve on the grand jury be such as are duly qualified. See the fifth division, and particularly the acts 11 Hen. 4. cap. 9. and 3 H. 8. cap. 12. In the construction of the said act 11 Hen. 4. c. 9. the following points have been resolved.

That if a person not returned on a grand jury procure his name to be read among those that are returned, whereasupon he is sworn, &c. he may be indicted for a contempt of this statute. 12 Co. 99. 3 Inf. 33. 3 Inf. 34. 3. Sc. 237. 11 P. C. 134.

Any person arraigned on an indictment taken contrary to the statute, may plead such matter in avoidance of the indictment, and also plead over to the felony. 3 Inf. 34. 3 Co. Car. 134. 1 Jones 198.

That he who is outlawed on an indictment without any trial, may clearly stand in avoidance of such outlawry, that the indictment was taken contrary to the statute; but the court need not admit of the plea of the outlawry of an indictor in avoidance of any such indictment, unless he pleads it have the record ready, unless it be an outlawry of the fame court wherein the indictment is depending; in which case it is said, that any one as unius curiae may inform the court of it; 11 H 4. cap. 9. and if the indictment, that no exception against an indictor is allowable, unless the party takes it before trial. 3 Inf. 34. 3 Co. Car. 147.

That if any one of the grand jury who find an indictment, be within any of the exceptions in the statute, he vitiates the whole, though never so many unexceptionable persons joined with him in finding it. 11 H 4. cap. 9. 1 Jones 198. 3 Inf. 33. 3 Inf. 34. 3 Co. Car. 147.

That if a prisoner indicted for felony offer to take any such exceptions, he shall, upon his prayer, have count affigned him for his assisance. 3 Co. Car. 134. 147. 1 Jones 198.

The said act 2 Hen. 8. c. 12. extends not only to grand juries returned, but to all panels of the petty jury, commonly called the petty jury of life and death which may be returned by the Justices according to the act.
The juror is bound to return the panel so formed. 2 Hal. Hjjf. P. C. 156, 265.

It hath been held, that this statute does not take away the force of 11 H. 4, as to any point wherein both may conflict; and therefore if any indictor be outlawed, or returned at the nomination of any person, contrary to 11 H. 4, then the jury returned thereunder, and the verdict is to be returned. 3 Hif. 34; 16 Ed. 2d. 112; 17 Ed. 2d. 182.

The grand jury, as has been already observed, must consist of twelve at least, the petty jury of twelve, and can be no jury more nor less but it is said, that particular jurisdictions may consist of more or less than twelve. Trials per Pais 80. F. N. B. 107. Finch of Law 100, 484. A writ of inquiry of waite by thirtee"n was held good. 4 Car. 4, 414.

But on a writ of ejectment a judgment out of an inferior court was reversed, because being by default, the inquiry of damages was only by two jurors; and though a cuf- tom was alleged to warrant it, yet it was reversed, that there could not be less than twelve, though the writ of inquiry faith only per factam nonum probatum & legatum, and not duodecim as in a venire. 2 Vent. 113. Also it hath been frequently held, that a cuf"tom in an ancient county, is un"lawful, and that upon a writ of quo"rem custom is used in Woles, yet that by force of the statute 34 Hen. 8, which appoints that such trials may be by six only where the cufom hath been so. 6 Car. 259. 1 Sid. 233. 1 Kt. 526.

The first proc for conveying the jury is the venire, and that is far ab"sence, and thereupon in the Common Plead there issue on the habeas corpora or "finings jurates; but in the King's Bench and Exche"quer after the venire, they proceed on the "finings for; for the venire being in the nature of a summons, if the jury do not appear therein in those courts in which the King's Bench and Exchequer are the more immediate concern, they proceed on the rossent proc, viz. the "finings. Trials per Pais 64.

If the jury do not attend on the habeas corpora or "finings, which is to bring them into court, there ran an undecim, decem, or other tales, according as theumber was deficient, to force others to the King's court to try the issue; this was without a new summons or venire, because it was supposed that the first habeas corpora and "finings had given notice to the visibility that they ought to appear; and therefore the supplemental "is a jury were forced in without a particular summons on them. But if the whole jury be challenged off, then new venire is granted, and if none of the jury appear, a "finings jurates shall issue, and no tales. 4 Hal. Hjjf. P. C. 265.

Jurors being duly served with proc's are compulsory to appear; and therefore where more than one appear, not enough to take the inquest, but some of the three come within view, or into the town where the court is held, but refuse to come into court; in these cases the court may order those who appear to inquire of the third party, and it is said, that a jury is not amercable at all at the return of the first venire, except before justices of oyer and terminer. 2 Hal. Hjjf. P. C. 146, and several authorities there cited. Trials per Pais 200.

See the stat. 27 Eliz. c. 6, sect. 2, and 3 Geo. 2, c. 25, sect. 13, in the first draft of this title.

4. By whom the jury proc's are to be executed, and the jury convened; in what time such proc's are returnable, and what number to be returned.

The sheriff is the proper officer by whom the jury procès is to be executed, unless he be partial, that is, such a one, as from his confuquence or affinity, his being under the immediate power of either of the parties, or from some other cause is suspected to be an indifferent person, as every officer who hath any way to do with the administration of justice ought to be; and in every such case the procès shall be directed to the corones, if they are impartial, or to those of them, who are so, in case some of them lie under the aforementioned prejudices; and in case all the corones are partial or not indifferent, then the venire shall be directed to two elizers named by the court, and against whom, for that reason, no challenge can be taken. 4 Car. 4, 414. 158, a. 12, 2. 16 Ed. 2d. 112. 17 Ed. 2d. 182.

When procès is once awarded to the corones, &c. for the sheriff's actual partiality, the entry is sometimes made in the records, and in such case procès shall not afterwards be awarded to any new sheriff, but where it was awarded to the corones for that the sheriff is tenant, &c. it may be awarded to a new sheriff. 6 Car. 259. 1 Sid. 233. 1 Kt. 526.

Procès against two sheriffs may be returnable immediately into the King's Bench for the trial of an indictment found in the county where it sits; whether for a crime in such county; or for a treason beyond sea; but for the trial of an indictment removed by a certiorari from another county, there must be fifteen days between the issue and return of every procès. 17 Eliz. c. 15. 2 Vent. 113. 4 Car. 4, 414.

Juries in eyre, or of gaol-delivery, may order a jury to be returnable immediately for the trial of a prisoner, also it hath been adjudged, that justitces of oyer and terminer, or of the peace, might for the trial of an issue joined before them, award a venire returnable the same day on which the party is arraigned; but it is said, that there are strong authorities to the contrary, unless the prisoner consent, or the crime amount to felony. 2 Hawk. P. C. 460. and several authorities there cited.

A venire before justitces of oyer and terminer, returnable at a day certain, is erroneous, unless the seions appear to be adjourned to the same day, because otherwise it shall not be intended that their commission continued so long; but such venire may be returnable at the next assizes, and there tried by virtue of 1 Ed. 6, cap. 7. 2 Hal. Hjjf. P. C. 261. 2 Hawk. P. C. 460.

See the stat. 7 & 8 Will. 3, c. 32, in the first draft of this title.

Alsio by the words of the writ of venire facias, the sheriff is only to return twelve, yet by ancient course he was obliged to return twenty-four; and this, says my Lord Coke, is for expediency of justice; for if 12 should only be returned, no man should have a full jury appear or to be formed in respect of challenges without tales, which would be a great delay of trials. 5 Car. 36. 16 Ed. 2d. 557. 4 Car. 223.

The precept that issues before a seances of gaol-deliver, oyer and terminer, and of the peace, is to return 24, and commonly the sheriff returns upon that precept 48. 2 Hal. Hjjf. P. C. 263.

But the other the sheriff return is letter number, as where the sheriff return only 23, and a sufficient number appears, and try the issue, this will be aided by the statute of feases as a mitigation. 5 Car. 36. 16 Ed. 2d. 557. 4 Car. 223.

The precept that issues before a seances of gaol-delivery, oyer and terminer, and of the peace, is to return 24, and commonly the sheriff returns upon that precept 48. 2 Hal. Hjjf. P. C. 263.

But the aver proc's except to try the prisoner after he hath pleaded, is only seances facias 12, and 24 are returnable by the sheriff on that panel. 2 Hal. Hjjf. P. C. 265.
At Common law in civil causes, it forms the sheriff might have returned 24. if he pleaded; and therefore by the statute of Wexon, 2. c. 28, it is recited, that whereas in the sheriff were useful to furnish an unreason-

able multitude of jurors, to the grievance of the people, it is ordained, that thenceforth in one aizize no more shall be returned than 24. Ga. 570. 1 Rot. 310.

See the statute 3 Geo. 2. c. 25. sect. 8. in the first division of this title.

5. In what cases and in what manner special juries are appointed.

Special juries are appointed on motion and application to the court for that purpose, on which, if the court think it reasonable, the sheriff is to attend the secondary or master with his book of freeholders, who, in the presence of the attorneys on both sides, names 48 freeholders, and then each party strikes out twelve, by one at a time, the plaintiff or his attorney beginning first, and the remaining 24 are returned by the secondary, as the jury, to try the cause. 2 Lit. Regist. 127. That the court may order a jury of merchants if they think convenient.

2 Lit. Regist. 132.

If the rule were entered into by consent, it is said to be a contempt in the attorney not to be prefect; but to remedy any inconvenience from hence, a rule was made, that when a master is to strike a jury, he may strike 14 out of the freeholders book, he shall give notice to the attorneys of both sides to be present; and if the one comes, and the other does not, be that appears shall, according to the ancient course, strike out twelve, and the master shall strike out other twelve for him that is absent. 2 Lit. Regist. 127.

And it is said, that if by rule of court the master is ordered to strike a jury, in case it is not expressed in such rule that the master shall strike 48, and each of the parties shall strike out twelve, the master is to strike 24, and the parties have no liberty to strike out any.

1 State Laws 371.

It is said, that a special jury may be granted to try a cause at bar without the consent of the parties, but never at nisi prius, unless for good cause shown. 1 Mod. Ca. Law and Equity 248.

Also it is said, to be contrary to the course of the court of B. R. in capital cases, to order the clerk of the crown to strike a special jury, as is done by the secondary in civil causes upon trials at bar. 2 Jan. 222.

See the statute 3 Geo. 2. c. 25. sect. 15. and 24 & 29 Geo. 2. in the first division of this title.

A rule was made for a special jury, which was entered into by consent; and afterwards when the parties attended the common court, strike twelve jurors and the court, and at the trial challenged the array for want of hundred, which the judge of assize allowed a good challenge; and this was held such a breach and contempt of the rule, for which an attachment was granted. 1 Mod. Ca. Law and Equity 245. The King v. Burrage.

But where in the trial of a case warrants, the defendant challenged the array of a special jury, that had been struck at his request, for partiality in the sheriff, and an attachment being moved for, and the cafe next above relied on, it was denied; and paid per curiam. That the attachment in the case Spira was granted by reason of the abuse of the rule; but here the only foundation is the jury's being so struck at his request, which is not alone sufficient, for he had a right to challenge the array on the proceed's being directed to a wrong officer; and the rule might have been fulfilled another way, viz. as the sheriff was partial, a proper entry might have been made, and proceed directed to the coroner. The King v. Johnson, Mitch. 8 Geo. 2. in B. R.

6. For what misdemeanors jurors are punishable.

In what cases juries are punishable by attaint, see Attaint. And as to the cases where they are otherwise punishable, we must consider jurors either in a multifac-

ried capacity, as persons bound to attend the court, to do the business for which they are returned till they are discharged, and to act in a judicial capacity, as judges, if any trial be to try. In the former capacity they are liable to be punished in several instances, as, for refusing to appear, withdrawing themselves before they are sworn, or refusing to be sworn; for which every court of record may, of common right, impose such a reasonable fine on any one attached, or for being present, as shall form conven-

ent. 8 Ca. 38. b. 41. c. 2. 242. 2 Hal. Ejff. P. C. 309.

So if after they are sworn they refuse to give any verdict at all. 2 No 49. 3 Bab. 173. Vouge 152.

So if they endeavor to impose upon the court, as when a juryman is to strike a jury; and twenty-four are agreed by their whole number, where in truth some of them have not agreed to it, or where they agree upon two verdicts; and first, to offer one of them to the court, and so stand to it, if the court shall express no dissatisfac-
tion to it; but if the court shall disafle it, then to give the other. 1 Bell. Atl. 110. Gen. Eliz. 1. 1 Hawk. P. C. 146. 2 Hal. Ejff. P. C. 309. S. P. and that in such case they shall be fined every, one a part.

So for misbehaving themselves after their departure from the bar; where they do not all keep together till they have given their verdict or, where any of them carry any thing catable with them in their pockets, or cut or write any thing on the table, it shall be fined and im-

posed from the court, before they have given their verdict, that they were agreed on it, and were also all the time in the custody of the bailiff appointed to take care of them.


Also where a jury, after they departed from the bar, being late on Saturday night, separated and went every one to his own house without giving a privy verdict, or without consulting upon the evidence, and gave a ver-
dict according to the direction of the court; but for this misdemeanor they were fined each forty shillings, and judged and granted that hereby the statute 15 Geo. 1, that by legal trial both parties may be prejudiced; for the jurors going at large without consulting together, may well forget the evidence; and it is the right of the King's subjects to have their issues determined when the evidence is fresh in the memory of the jurors; and the suffering the jurors to go to their houses after a privy verdict is only by commissary, but by the rules of law ought not to be suffered. Pach. 27 Ger. 2. in B. R.

Also where the jury have been divided or in doubt about the evidence, and have agreed to determine the matter by throwing cros or pile, &c. and to give their verdict as the chance happens; this has been held such a gross and contemptible proceeding as is false, and for which they are punishable, and for which a new trial will be granted on the common rule of jurisdiction male se gignantis. 2 Lev. 149. 205. 3 Jon. 83. 3 Keb. 805.

Jurors are punishable for finding or for receiving in-

structions from either of the parties concerning the matters in question. 2 Hawk. P. C. 147.

So if a jurymen have a piece of evidence in his pocket, and after the jury sworn and gone together he fetch it to them, this is a misdemeanor fineable in the jury; but it avoids not the verdict, tho' the cafe appear upon ex-

amination. Gen. Eliz. 616. 2 Hal. Efiij. P. C. 306. As to the punishment thereof, it is in their judicial capac-

ity, there are several instances where jurors acquitting great and notorious offenders, contrary to clear and manifest evidence, that contrary to the judge's directions, having been punished in the Star-Chamber, and have also, not only in the King's Bench, but also by judices of our own and territorial courts, who are usually judicial and imperial and bound over to their good behavior; but these me-

thods were thought to be contrary to the opinions in the old books, and contrary to the general reason of the law, and being fully confid'd in Bontfif's cafe, it was then settled, and hath been ever since agreed to, that jurors are no way punishable, except by attaint, for giving

Jutius, (Fr. joufle, i. e. diceur, Laws: in jouflet, in the French language, a species of honour, with fear on horseback, by way of exercises, and fig. Ann. 24 Hen. 8. cap. 13. Edictum Regis Edvardi 1. prohibenda faba facturis unam que facturis, quod non committat, horribilis, adducata verborum, in his facturis, sive Juticiarum, judex, sive Juticiarum, Regis. 29 Edw. 1. Fex. 101. See

Bututammed. And it differed from tournament as species doto from genus, because tournaments were all sorts of military contentions, and consisted of many men in troops: but joufles were usually between two men, and no more. Concern.

Justice, The virtue by which we give to every man what is his due. John R. Lecky. Justice and right shall not be sold, denied or delayed. M. G. 9. lib. 3. c. 29. Right shall be done to all who request it. St. Wem. 1. 3 Ed. 1. c. 1. Shall not be delayed for any command under the Great seal. C. 2 Ed. 3. c. 8. 14 Ed. 3. c. 1. 4 Roeb. 2. c. 10.

Justice, (Jurisdictio.) Signifies him that is deputed by the King to do right by way of judgment: the reason why he is called Juticis and not Judge is, because in ancient times the Latin word for him was Juticis, and not Juticis, because they had their authority by deputation, delegates to the King, and not juris magnifatus, and therefore cannot depose others in their stead, the justices of the forst only execute, who hath generally given him, by 2 Ed. 5. 75. for the Chancellor, Marshal, Admiral, and such like, are not called Juticiarum, but Judges: Of these justices there are diverse sorts in England; of the manner of whole creation with other appurtenances, read Fortescue, 5. 51. Thee in Magna Charta, c. 12. and other statutes, and of the Justice of the Kings Bench, (Capitull Juticiarum, sive Juticiarum de Bono Regis, vel ad placitam coram Rego tenenda,) is a lord by his office while he enjoys it, and the chief of the rest; his office especiellly is to hear and determine all pleas of the Crown, viz. such as concern offences committed against the crown, dignity, and peace of the King; as treasons, felonies, mayem, and such like; which you may read in Bracten, lib. 3. tract. 2. per tition; and in Staunoff, Pl. Cor. from the first to the 515th chapter of the first book. He also, with his assistants, hearth all personal actions, and is not required to give his reason to his justice. See Cramb. Jur. fol. 67. Of this court, Bracten, lib. 3. cap. 7. ann. 2. faith thus, Placita vero civilia in rem & perjura in curia Dominii Regis terminanda coram diversis Juticiarum termi nantur; & illorum curiarum hocat una proprium, solium Alam Regium, & Juticiarum capitulorum qui propriis causis Regii terminando & judicando ex officio vel proderam vel primum cum libertatem; ut si f alii alii qui implacati non debet, nisi coram Rege. Of the ancient dignity of the Chief Justice, thus, Liber Niger Fiscalis, cap. 4. In factario refiato, ius & profectum primus in regno Capitale, sile, Juticia. In the time of King John, and other, as called, and often occurs in chancery of baronage, Quiud non postur respondere, nisi coram nobis vel Capitul Juticiarum nostris. The oath of the justices, see in stat. 18 Ed. 3. stat. 4. in Ordinum Jurisdictionis, a catalogue of all the Lords Chief Justices of England.

The Ch. Jul. had formerly that power alone, which afterwards was distributed to three other magnates, i.e. he had the power of the Chief Justice of the Common Pleas, of the Chief Baron of the Exchequer, and of the Master of the Court of Wards. He usually sat in the King's palace, and they executed that office which was formerly performed pro curioso solatio. See Cramb. in his place all divers things which happened between the barons and other great men of the kingdom, and likewise causes both criminal and civil between other men. And this he did till the ninth year of Henry III. or rather till the 17th of King John, when, at the request of the nobilo...
lity, the King 'granted that Commissi onis platica non sequatur curiam suam, sed in loco censentius.

He had the prerogative to be vicerect of the kingdom when any of our Kings went beyond sea, and was usually chosen to this office out of the greatest of the nobility. And his power was first dignified by Richard I, who made two other justices, and conformed to each other in the same jurisdiction, viz. to one the north parts of England, and to the other the south. And thus it continued till the beginning of the reign of Edward I, who reduced them to one court. And that wise King conformed that some former Chief Justices made use of their power in prejudice to his father and grandfather, did rather diminish their authority, both as to the dignity of their persons, and extent of their jurisdictions; for no more were chosen out of the nobility as formerly, but out of the common people, who were of men good morals, and skillful in the law. And now began the study of the Common law, and not before; and the Chief Justice was no longer filled with... 

Jus or Chief Justice of the Common Pleas, hath also a Court of Law. And he enjoys his office, and is called Dominus Justiciarum et Commissariorum, vel Dominus Justiciarum de Banco, who, with his assidants did originally, and do yet, bear and determine all causes at the Common law, that is, civil causes, as well personal as real, between common persons; wherefore it was called The Courts of Common Pleas, in distinction from the Courts of King's Bench, or the Crown courts, which are special, and appertaining to him only. This court was appointed to be in a settled place, and not as other courts, to follow or attend the King's court or palace, as appears by the flat 9 Hen. 3. c. 11. Of its jurisdiction, see 3 Jef. fol. 93. The Justice's oath, see 18 Ed. 3. sect. 4. This court is 3. 7. tells us, that Justiciarum alli font perpetui certae habitationes quasi in Banco aquatorum-omen, &c. terminantes, &c.

Justice of the King's Bench, (Justiciarum De aspiratione.) Is also a Lord by his office, and bears and determines all offences within the forest, committed against vert or venison: Of these there are two, whereof one hath jurisdiction over all forrest in this side Trent, the other of all beyond it. The chief point of their jurisdiction consisteth upon the articles of the King's charter, called Charta de forstis, made Anno 9 Hen. 3. concerning which see Com. Brit. p. 241. See Porphyr. The court whereof this his justice is president, is called The justi ce-feet of the forest, held once every three years, as you are made in Warwick's Forst Law, c. 24. He is also called Justice in eyre of the forest; and is the only justice that may appoint a deputy, by the statute of 33 Hen. 8. c. 35.

Justice of the hundred, (Justiciarum Hunderati.) Erat ipsis hundredis Dominus, qui de centuria & centennariis, hundredique almandus appellatus est. Praebuit summus hundred friberi, exequiisque de caupi majusculis, quae in eadem finiri non potuerunt. Spelm.

Jultements, from justicia. All things belonging to justice. Cq. on Wifem. 1. fol. 252. Also the effects or executors of the justice or of jurisdiction.

Justices of affises. (Justiciarum ad capiendas affisas.) Are such as were sent by special commission to be sent (35 occasion was offered) into this or that county, to take affises for the ease of the subjects; for these actions pass always by jury, so many men would not, without great damage and charges, be brought up to London, and therefore justices for this purpose were by commission particularly authorized, were sent down to them. For it seems, that the justices of the Common Pleas had no power to take affises till the flat of 8 R. 2. cap. 2. for as that they were enabled to it, and to deliver gaols. And the justice of the King's Bench have by that statute such power affirmed unto them as at the last one hundred years before. These commissions Ad capiendas affisas have of late years been settled and executed only in Lent, and the long vacation, when the justices, and other learned lawyers, may be at leisure to attend those controversies whenupon it also falls out, that the matters that were

Arch. 16. c. 3. 3. can be made by none but the King, 27 H. 8. c. 24. sect. 7.

They shall be attended by the bailiffs, Cq. 27 H. 8. c. 24. sect. 7.

They shall proclaim the statutes against maintenance, 32 H. 8. c. 9. 5. 5.

The statute 33 H. 8. c. 24. that none shall be justice of affise in his own country, not to extend to Lancaster, 33 H. 8. c. 24. sect. 7.

Justices of affise how to take affidavits in their circuit, 29 Car. 2. c. 5.

May hold the affises for Cornwall at other places besides Launceston, 1 Geo. 1. c. 45.

Summer affise to be held at Buckingham, 21 Geo. 2. c. 6.

Justices of both brithstris, Shall decide pleas commenced before other matters be arraigned, St. Wifem. 1. 3 Ed. 1. c. 45. The
The Epijcopos: For a special title, 9. Ed. 3. 1. 2. 8 R. 8. c. 1.
The Chief Justice of the King's Bench not to be justi- 

cifie of affife, except in the county of Lancashire, 13 H. 

c. 5.

For payment of the judges salaries, 10 H. 6. fi. 2.
The court of King's Bench may remit prisoners to 

be within the kingdom, 12 Geo. 2. 3. ed. 1.

Justices in eye (Justiciariorii itinerantes,). Are fo 

told of the old French word errie, as (a grand ere, 

i magnis iterinibus,) proverbially spoken. These in an-

tient time, were sent with commission into divers coun-

tries to hear such causes especially, as were termed pleas 

of the crown. And this was done for the sake of the 

people, who must else have been hurried to the King's 

bench, if the cause were too high for the county-court: 

They differed from the justices of eyre and terminer, 

because they (as we said before) were sent upon one or few 

special causes, and to one place; whereas the justices in 

eyre (as Mr. Gower justly observes) were sent through 

the countries of the kingdom, and counties of the land, 

with more indefinite and general commission, as 

appeareth by Bracton, lib. 3. c. 11, 12, 13, and Briton. 

cap. 2. And again, because the justices of eyre and 

terminer were sent uncertainly upon any upright, or 

other occasion in the country; but these in eyre (as Mr. Gower 

discourses) were sent but few years once, with which 

comes Hone in his Mirror of Justices, l. 1. Quaeus point eftre attarali, &c. 

i. 1. cap. Des pecus criminis, &c. al. fait du Roy, &c. 

and lib. 3. cap. 2. De justicia in eye: Where he also 

declare what belongs to their office. But there is a book 

in Bracton, where they are set down as much as they went often. 

These were instituted by King Henry the Second, as 

said in his Brut, witnessthe, pag. 134. and Hoveden 

ar. post. fuar. Annon, fol. 113. hath of them these words, 

Justiciariorii itinerantes, confciiti a Henrico secundo, 

ui divotis Regnum fuum in fex partes, per quarum fugu-

sias tres Justiciariorii itinerantes constituie, &e. In some re-

pect they resembled our justices of affife at present, the 

their authority and manner of proceeding much differ, 

as in Litt. fol. 293. Cowell.

Justices in eyre shall not amerce townsships if enough 

one, 52 H. 2. c. 24.

The oath of the officers and justiciars in the eye, inter 

flatus incerti temp.—Justices in eye to inquire of un-

due delivery of felons, inter stat. incert. temp.

Justices in eyre can be made by none but the King, 27 

H. 8. c. 24. sect. 2.

Matters inquisitorial in the eye, inter stat. incert. temp. 

are such as are sent with commissions to hear and determine all causes appertaining to such as for any offence are cast into the gaol: part of his authority is to punish such as let to mainprize such prisoners that are not bailable by law, nor by the statute De Finibus, cap. 3. P. N. B. fol. 151. their form in ancient time to have been sent into the country upon several occasions; but after- 

wards Justices of affife were likewise authorized to the like purposes. Anno 4 Ed. 3. c. 3. Their oath is all 

one with other of the King's justices of either bench. Old Abridg-


Justices of affife, if laymen, shall deliver the gaols, 

27 Ed. 1. b. 1. c. 3.

The justices of peace shall deliver over their indi-

ments to the justices of gaol-delivery, 4 Ed. 3. c. 2.

Shall be sworn like as the other judges, 2 Ed. 3. c. 3.
Justices of the peace. (\textit{Justiciers ad paesum}. Are those who are appointed by the King's commissio to attend the peace of the county where they dwell; of whom some, for special ftrees, are made of the gourn, because business of importance may not be dispatched without the presence or affent of them, or one of them. They were called Guardians of the peace till the thirteenth of a year, or years, by which time they were called Justices. Lamb, Eiren, lib. 4, cap. 19. pag. 578. Cowell.

1. Of the ancient officers called Justiciaries of the peace.
2. Of the first infitition of justices of the peace, and the general statutes which gave them jurisdiction.
3. Who are qualified for the office.
4. Of the manner of appointing them; and of their commiffion.
5. Of their jurisdiction relating to treason, felony,Setter officers, and inquisitions not taken before themselves.
6. Of the jurisdiction of one, two or more justices; and how for a justice of a county or a liberty may act out of them respectively.
7. Of their fees; and how they are favoured and protected by the law in the execution of their office.

1. Of the ancient officers called Justiciaries of the peace.

It seems to be clearly agreed, that before the statute 1 Ed. 3, cap. 16, there were no justices of the peace, and that they were first instituted by that statute; yet by the Common law there were certain conservators of the peace, which were of two forts. 1. Those who in respect of their offices had power to keep the peace, but were not simply called by the name of Justiciaries of the peace, but by the name of such offices. 2. Those who were constituted for this purpose only, and were simply called by the name of Conservators or Wardens of the peace. Lamb, book 1, cap. 3. 2 Hal. Hist. P. C. 44. 2 Hawk. 32.

As to the 1st fort, the King is undoubtedly the principal from whom all authority of this kind is originally derived; but it is said, that he cannot take a recognizance for the peace, because it is a rule, that no recognizance can be taken by any who is not a justice either of record or by commiffion also the Lord Chancellor, or Lord Keeper of the Great Seal, the Lord High Steward of England, the Lord Marshal, the Lord High Constable, and every Justice of the King's Bench, and the Master of the Rolls, and, as some say, the Lord Treasurer, have a general authority to keep the peace throughout the realm, and to award process, and to take recognizance for it; but a peer, as such, seems to have no power in this respect, than a mere private person. Dalb. cap. 1. Cramp. 6. Br. Recognizance 14.

All courts of record, as such, have power to keep the peace within their own precincts; and the justices of gaol-delivery may take recognizance of the peace from a person committed, for not finding such recogniz. 10 Hen. 6. 7. 8. Lamb, book 1, cap. 3.

All by every sheriff is a principal conservator of the peace within his county, and may in offices award a process, and take recogniz for it; and, as some say, the recogniz so taken is to be looked on as a recognizance or matter of record, and not as a common obligation, because it is taken by virtue of the King's commissio. 12 H. 7. 17. 8. Bro. Peace 13. Cres. Car. 26. F. N. B. 81.

Alfo a coroner is another principal conservator of the peace, and may bind any one to the peace who shall make an affidavit in his presence; but he is said to have no authority to grant process for the peace; and it seems, that the security taken by him for the peace is not to be looked upon as matter of record, but as matter in pais only, except where it is taken by him as judge in his own county, or in his presence, for the cause. 

Also every high and petit confable are by the Common law conservators of the peace within their several limits, and may take order for the keeping of the same. See Constable.

The conservators of the peace, simply so called, were either ordinary or extraordinary.

The ordinary were either by tenure, viz. such as held their lands by this service, or by election, viz. such as were elected of the King's pleasure, in pursuance of the King's writ for this purpose, or by prescription, viz. such as claimed such a power by an memorial usage in themselves and their ancestors or predecessors, or whose office they had; but the power of none of these conservators of the peace seems to have been perpetual. Of such confables this day, unless it were enlarged by some special grant or prescription. Bro. Peace 18. Prer. Script. 79. 22 Ed. 4. 35. b. Lamb, book 1. chap. 3. Ce. Lit. 114. Diff. and Stud. book 1. ch. 7. Cramp. 6.

The extraordinary conservators of the peace were persons specially commissioned in times of imminent danger, either from rebels or foreign invaders, to take care of and defend such a particular district committed to their charge, and to preserve the peace within the limits of it; and they had power to command the sheriff, with his whole posse, to assist them. Lamb, book 1. chap. 3. 2 Hawk. 34.

After such time as Queen Isabell (contending with her husband King Edward the Second) was returned over the seas into England, accompanied with her son, Prince Edward (called afterward the third of that name) and with Sir Roger Mortimer, and such others of the English nobility, as had for the indignation of the King fled out of the seas unto her. She soon after got into his hands the perdon of the old King, partly by the intelligence of the Henarders, that she brought with her, and partly by the aid of such other persons as she found ready here; and she immediately caufed him (by forced pi- tience) to surrender his crown to the young Prince Arthur; then also, for so much as it was said he was feared, that some attempt would be made to reduce the imprisoned King, order was taken, that he should be conveyed secretly, and by night watches, from house to house, and from caffle to caffle, to the end that his friends should be ignorant what was become of him, and then until, it was ordained by parliament, and the life-time of that deposed King, and in the very first entry of his son's reign, (1 Ed. 3. cap. 15.) that every fearful of the realm, good men and lawful (who were not maintainers of evil, nor barrators in the country) should be affigned to keep the peace; which was as much as to say, that in every thire the King himself would keep the peace, or, in other words, that every common man, and should be both willing and wise to set peace; and be also enabled with meet authority to repulse or intentions of uproar and force, even in the first five thereof, and before that it should grow up to any offer or danger. So that, for this cause, (as he thinks) the election of the simple conservators (or wardens) of the peace was first taken from the people, and translated to the affignment of the King. Lamb, Eiren, 18. 19. 24. Hild. Ch. J. said, he knew not whether at first justices of peace were more than high confables; but the fitu- tution that made them complete judges is that of 34 Ed. 3. 1388, in the Life of Haward v. Pan.

It seems, that the power of such conservators of the peace, whether by tenure, election, or prescription, was no greater than that of confable at this day, unless it were enlarged by some special grant or prescription. 2 Hawk. Pl. G. 34. cap. 8. sect. 11.

2. Of the first institutio of justices of the peace, and the general statutes which give them jurisdiction.

Justices of peace were first instituted by the statute 1 Ed. 3. cap. 16. which provides in the following words: "That for the better keeping and maintenance of the peace, the King willith, that in every county good men and lawful, which be no maintainers of evil, or barrator in the country, shall be appoyed to keep the peace."
And by the 4 Ed. 3. cap. 2. it is further enacted, "That there shall be appointed good and lawful men in every county to keep the peace, and at the time and place thereof, any of the said keepers of the peace shall be indicted or taken by the said keepers of the peace, not be let to mainpaine by the sherifff, nor by none other miniflers, if they be not mainpaine by the law; and he judges affigned to deliver the goals shall have power to deliver the fame goods of those that shall be indicted of the said keepers of the peace, and the said keepers of the peace shall fend their inditements before the judges, &c.

And it is further enacted by 18 Ed. 3. cap. 2. "That three or three of the best reputations in the counties shall be affigned keepers of the peace by the King's commiffion, and at what time need be, the fame, with other with whom the King's commiffion fhall be afford to the King's commiffion to hear and determine felonies and refipfes done against the peace in the counties, and to inflict punishment reasonably according to the law and reafon and the manner of the deed.

And it is further enacted by 34 Ed. 3. cap. 1. "That in every county of England shall be affigned for the keeping of the peace, one lord, with him three or four of the most worthy in the county, with some learned in the law; and they shall have power to restrain the offenders, rioters and all other barrators, and to purfue, refet, take, and affhifie them according to their trifpafs done in the law, and judifie, according to the law and customs of the realm, and according to that to which they shall fenn beft to o, by their direction and good advifement; and also to inform them, and to inquire of all thofe that have been fitters and robbers in the parts beyong the fex, and to low others again, and go wandering, and will not laff as they were wont in times past; and to take and refet all thofe that they may find inditement by or accufation, and to put them in prifon, and to take of all them, that be not of good fame, where they shall be bound, fufficient surety and mainpinez of their good behavior towards the King and his people, and to order and command all thofe people to be by each rioters or rebels troubled or endamaged, nor the eafe bleffed, nor merchants nor other paffing by the highway of the realm troubled nor put in the peril, which may happen of fuch offenders; and also to hear and determine at the King's fuit all manner of felonies and trifpafs done in the same county, and according to the laws and customs aforfeafed.

And it is enacted by 17 Rich. 2. cap. 10. "That in very commiffion of the peace th'o the realm, where end shall be, two men of law of the fame county where fuch commiffion fhall be made, fhall be affigned to the King's commiffion, and there fhall be a correcion of thiefs and felons a foon as they fhall think it expedient.

And it is further enacted by 2 Hen. 5. flat. 1. cap. 4. "That the judges of peace in every firme named of the wurum, (except Lords, and the Judges of either Bench, and the Chief Baron, and Serjeants at law, and the King's attorney, for the time that they shall be occupied in the King's Service) fhall be renfet in the fame firme, and fhall make their felions four times in the year, viz. in the firft week after Michaelmas, Epiphany, Easter, and the translation of St. Thomas the Martyr, and ofterwise if need be, and that the fame judges hold their felions thofe times, or fome time after the fame times every year.

There feem to be the most general statutes relating to the authority of judges of peace, besides which there are a very large number of subsequent statutes which give them particular powers, sometimes to one judge, fometimes to two, fometimes to their felions, fometimes out of the county, and otherwise; and no officer otherwife to take notice than by observing, that where by statute a special authority is given to judges of peace, it must be etfectually purfued. Selt. 475.

3. Who are qualified for the office.

By the statute 2 Hen. 5. flat. 2. cap. 1. it is enacted, "That the judges of peace fhall be made in the coun-

ties of England of most fufficient perfon dwelling in the fame counties, by the advice of the Chancellor and of the King's council, without taking other perfon dwelling in foreign countries, fometimes to one, fometimes to two, fometimes to fome of the said keepers of the peace, the Lords and the Judges of affifes to be named by the King and his council, and except all the King's chief ftyards of the lands and feignories of the duchy of Lancaster in the North parts and in the South for the time being.

By the 1 M. fett. 2. cap. 8. it is enacted, "That no perfon having or affigning the office of a Sheriff of any county shall use or exercife the office of a judge of peace, by force of any commiffion, or otherwife, in any county where he fhall be Sheriff, during the time only that he fhall exercife the faid office or Sherifffwiek, and that all acts done by fuch Sherifff by authority of any commiffion of the said Sherifff, be, during the time above mentioned, in nullity.

By the flat. 18 H. 6. cap. 11. it is enacted, "That no juftice of the peace within the realm of England in any county shall be affigned or defignt, if he have not lands or tenements to the value of 20l. per annum, except in cities, towns corporate, &c.

And now by the 5 Geo. 2. cap. 18. fett. 1. it is enacted, "That no perfon fhall be capable of being a juftice of the peace, or to act as a juftice of the peace for any county within that part of Great Britain called England, or the principality of Wales, who fhall not have an estate of freehold or copyhold to and for his own life or the terms of his fuccessors; or an estate either in law or equity, or an estate for years determinable upon one or more life or lives, or for a certain term originally created for twenty-one years, or more, in lands, tenements or hereditaments lying in that part of Great Britain called England, or the principality of Wales, of the clear yearly value of 100l. over and above what will satisfy and discharge all impanacles that may affect the fame.

Selt. 2. And it is further enacted, that no attorney, folicitor, or proctor in any court whatsoever, fhall be capable to continue or be a juftice of the peace within the county fubfcribed to Great Britain, as the part of the principality of Wales, or the principality of Wales, during fuch time as he fhall continue in the busines and practice of attorney, folicitor, or proctor.

Selt. 3. And it is further enacted, that if any perfon, who fhall not be qualified according to the directions of this act, fhall accept or take upon himself the office of a juftice of the peace, or fhall do any act as fuch, the perfon so offending fhall for every fhuch offence forfeit and pay the sum of 100l. one moieties whereof fhall be to the King's Majefly, his heirs and fucceffors, and the other moiety to fuch perfon or perfon in whom as will fute for the fame by action of debt, bill, plaint, or information in any of his Majefly's courts, and at the costs of the party afofaied; and no effafn, protection, wager of law, nor more than one impalement fhall be allowed.

Selt. 4. Provided, that this act fhall not extend to any city or town being a county of itself, or to any other city, town, cinque port, or liberty having juftices of the peace within their defpective limits and precredits by charter, commiffion, or otherwife; but that in every fuch city, town, liberty and place, fuch perfon may be capable to be juftices of the peace, and in fuch manner only as they might have been if this act had never been made.

Selt. 5. Provided also, that nothing in this act con- tained fhall extend to incapacitate any peer or lord of parliament, or the eldest fon or heir apparent of any peer or lord of parliament, or of any perfon qualified to feeve as knight of a thire by an act intituled, An act to secure the freedom of parlaments, by the further qualifying member can be prevented by the incapacity or exclude the commiffioners and principal officers of the navy, or to the two under-secretaries in each of the offices of prin-
ciplan secretary of state from being justices of the peace, in and for such maritime counties and places where they usually or are been judges of the peace. 

Sect. 7. Provided also, that this act shall not extend to any of the heads of colleges or halls in either of the two universities of Oxford and Cambridge, but that they may be made justices of the peace of and in the several counties of Oxford, Berks and Cambridge, and the cities and towns within their limits, and execute the office thereof as fully and freely in all respects, as heretofore they have lawfully used to execute the same, as if this act had never been made.

Stat. 18 Geo. 2. cap. 2. sect. 1. No perfon shall be capable of being a justice of peace for any county, riding or division in England or Wales, who shall not have either, in law or equity, a freehold, copyhold or customary estate for life, or some greater estate, or an estate for years, determinable upon one or more lives, or for a term originally created for twenty-one years or more in lands, tenements or hereditaments lying in England or Wales, of the yearly value of 100 l. over and above what will satisfy all incumbrances, and over and above all rents and charges payable out of the same; or who shall not be seised of or intituled unto, in law and equity to his own use, the immediate reversion or remainder in lands, &c. as aforesaid, which are leased for one, two or three lives, or years determinable upon one, two or three lives, upon rented rents, and which are of the yearly value of 500 l. and who shall not before he takes upon himself to act as a justice of peace, at some general or quarter sessions for the county, &c. for which he intends to act, first take and subscribe the oath following, viz.

I A. B. do swear, that I truly and bona fide have such an estate, in law or equity, as is for my own use and benefit, consisting of (specifying the nature of such estate) as shall qualify me to act as a justice of the peace for the county, riding or division, according to the true intent and meaning of an act of parliament, made in the 15th year of the reign of his Majesty King George the Second, intituled, An act to amend and render more effectual an act passed in the 5th year of his present Majesty's reign, intituled, An act for the further qualification of justices of the peace; and that the same (except where it conficts of an office, benefit, or ecclesiastical preferment, which is shall be sufficient to afterwards by the said perfon) is being or is, or being out of life, tenements or hereditaments, being within the parish, township, or precept of or in the several parishes, townships or precepts of in the county of in the several counties of

Which oath so taken and subscribed shall be kept by the clerk of the peace among the records of the sessions.

Sect. 2. Every such clerk of the peace shall, upon demand, deliver an attested copy of the said oath to any person paying for the same 2 s. which being proved to be a true copy of such oath, shall be admitted to be given in evidence upon any inquiry, in any action or information brought upon this act.

Sect. 3. Any perfon who shall act as a justice of the peace for any county, &c. in England or Wales, without having taken and subscribed the said oath, or without being qualified according to the meaning of this act, shall not be capable either of being the use of the poor of the parish in which he usually resides, and the other moiety to the use of such person who shall act for the same, to be recovered, with costs, by action of debt, &c. in any court of record at Westminster, in which no effion, &c. shall be allowed; and in every such action or information, the proof of his qualification shall be such perfon againft whom the same is brought.

Sect. 4. If the defendant in any such action or information intend to inflict upon any lands, &c. not contained in such oath, as his qualification to act as a justice of peace at the time of the supposed offence, he shall act at or before the time of his pleading, deliver to the plaintiff or informer, or his attorney, a notice in writing specifying such lands, &c. (other than those contained in the said oath or the charter or place, and the county wherein the same are (offices and benefits excepted, which shall be sufficient to avert or injure their usual names); and if the plaintiff or informer shall thereupon not proceed any further, he may, with the leave of the court, discontinu such action or information on payment of such costs as the court shall order.

Sect. 5. Upon the trial of the issue in any action or information brought as aforesaid, no lands, &c. not contained in such oath or notice, or one of them, shall be allowed to be inflicted upon by the defendant, in part of his qualification.

In case the plaintiff or informer in such an action or information discontinue the cause otherwise than as aforesaid, or be non-suited, &c. the perfon against whom such action is brought shall recover treble costs.

Sect. 9. Only one penalty of 100 l. shall be recovered from the same person by virtue of this act, or of 5 Geo. 2. cap. 18. for the same or any other offence committed by the said person, before the bringing of the action or information upon which one penalty of 100 l. is recovered, and due notice given to the defendant of the commencement of such action or information.

Sect. 10. Where an action or information is brought, and due notice given thereof, no proceedings shall be had upon any subsequent action or information against the same peron, for any offence committed before the bringing of the action or information upon which one penalty of 100 l. is recovered, and due notice given to the defendant of the commencement of such action or information.

Sect. 11. Every action, bill, plaint or information, given by this or the said 5 Geo. 2. cap. 18. shall be commenced within fix calendar months after the suit upon which the same is granted has been committed.

Sect. 12. This act shall not extend to any city or town being a county of itself, or to any other city, town, county or liberty, having justices of the peace within their respective limits by charter, commission or otherwise; but in every such city such persons may be capable to be justices of the peace, and in such manner only as they might have been if this act had not been made.
being judges of the peace for such counties or places
where they usually have been judges of the peace.

Sec. 15. This act shall not extend to any of the heads
of colleges or halls in either of the two universities
of Oxford and Cambridge, or to the vice-chancellor of either
of the said universities, or to the mayor of the city of
Oxford, or of the town of Cambridge.

4. Of the manner of appointing them; and of their com-
misions.

Judges of the peace can only be appointed by the
Kings commission, and such commission must be in his
name; but it is not requisite that there should be a spe-
cial suit or application to, or warrant from the King for
the granting thereof, which is only requisite for such as
are of a particular nature; as constituting the mayor of
such a town, and his successors, perpetual judges of the
pieces, wapentakes, and other towns, with jurisdiction,
neither revokable by the King, nor determinable by his
death, as the common commission of the peace is,
which is made of course by the Lord Chancellor according
to his discretion. Lamb. b. 1. cap. 5. Brook Commission,
cap. 5. Dall. cap. 3. 4 Lev. 219.

The commission is to be given for the peace, as it is
this day, was, according to Hawkin's, settled by the
judges about the 23 Edw. and is in substance as followeth.
Hawk. P. C. 35. 4 1st. 471. Lamb. b. 1. cap. 9.

Beginning with a declaration from the King to the fev-
eral persons named in it, it afterwards assigns them and
wards bed, and the several justices of peace by any
commission granted by his Majesty or his successors, and who
shall take the oaths of office of a justice of peace before
the clerk of the peace of the respective county, &c.,
for which such justice shall act, or the deputy of such
clerk of the peace, and who shall have taken and subscribed
at some general election of the peace, the oath required
by 16 Geo. 4. 20. may act as a justice for such county,
&c., without being obliged to take and subscribe again
the said oath, without incurring any penalty.

Sec. 2. After the paffing of this act, no person who
hath taken or shall take the oaths usually taken by a
justice of peace under a dedimus potestatem issued from
the clerk of the Crown, shall be obliged to sue out any other
dedimus potestatem from the said clerk of the Crown to
authorize any perfon to administer again to such
justice, on any new commission of the peace being issued
under the Great seal of Great Britain, the oaths usually
annexed to such dedimus, and taken by a justice of peace;
but the clerk of the peace, or his deputy, of every county,
&c. in England and Wales, for which any such place
hath acted and qualified, or hereafter before the issuing any
such new commission shall act and qualify himself, shall,
on every new commission of the peace being issued, pre-
pare a parchment roll, with the oaths annexed to, and
usually taken under the dedimus potestatem by justices of
the peace, ingrossed on parchment roll, and shall administer
without fee, the oaths in such roll specified to every such
justice within the respective counties, &c., for which he
shall act, who shall desire to take such oaths; and every
such justice after the taking the oaths shall subscribe
his name and the said parchment roll; and the said roll shall
be kept by the respective clerks of the peace among the
records of the several counties.

5. Of their jurisdiction in relation to treason, felony, in-
ferior offences, and indictments not taken before themselves.

It seems to be clearly agreed, that justices of the peace
have not jurisdiction to hear and determine treason, pre-
munire, or misprision of treason. Dall. cap. 90. 1 Hal.
2 Hawk. P. C. 30.

But as the offenses are against the peace of the King
and of the realm, any justice of peace may, either from
his own knowledge, or the complaint of others, cause
any person to be apprehended for any such offense, and
such justice may take the examination of the person so
apprehended, and the information of all those who can
give
give material evidence against him, and put the name in writing, and also bind over such as are able to give security, due reverence to the King's Bench or goal-delivery, and certify his proceedings to the same court to which he shall bind over such informers: and this doctrine seems to be established by constant practice, especially since the statute 1 & 2 Ph. & Mar. cap. 13, and 2 & 3 P. & Mar. cap. 10, which, directing justices of the peace to proceed in this manner against persons brought before them for felony, seem to give them a discretionary power of proceeding in like manner against persons accused of the above-mentioned offences. See the authorities supra.

And by some acts of parliament justices of peace may take cognizance of other matters. But those preferments they must certify into the King's Bench or goal-delivery, as the case shall require; as upon the statute 5 Eliz. cap. 1, for maintaining the authority of the see of Rome; 13 Eliz. cap. 2, for bringing in bulls for absolution, Agnus Dei, &c. 23 Eliz. cap. 1, for withdrawing and reconciling, or being withdrawn from the King's allegiance. 2 Hal. Hist. P. C. 44, 1 Lev. 230.

So by the statute of 3 H. 5, cap. 7, as to trefasons for clipping, £c., power was given to the justices of peace to inquire and make process thereupon, and anciently that clausue was put into their commiision, but now omitted; for by the statute 2 & 3 Hal. cap. 6, as to libel, 7 & 8 Hal 5, cap. 6, is repealed, and consequently the sect 3 H. 5, cap. 7, that gave power to justices of peace to inquire touching it. 2 Hal. Hist. P. C. 45.

It seems to have been a matter of some doubt, whether justices of peace, as such, have power to hear and determine felonies, &c., and this doubt seems to have staled from the general words of 32 Ed. 3, cap. 1, which is express, that persons assigned to keep the peace shall have power, among other things, to hear and determine felonies, &c., Cro. Jac. 32, Trin. 46. 2 Roll. Rep. 151, Dyer 69, pl. 29., 2 Hauk. P. C. 38.

But it seems to be now set, that the justices of peace have no power to hear and determine felonies, &c., unless they be authorised so to do by the express words of their commission; and that their jurisdictions to hear and determine murder, manslaughter, and other felonies and trefpass, is by force of the second effaginamur in their commission, which gives them or two of them, whereof one is in the quorum, power to hear and determine felonies, &c., Crompt. 120, 2 Hal. Hist. P. C. 42, 2 Hauk. P. C. 38.

And hence it hath been lately adjudged, that the caption of an indictment of trefpass before justices of the peace, without adding necum ad diversas felonias, &c., affinars, is naught. Dominus Roi v. Carter, Trin. 7 Geo. 1, 1 in B. R.

But the' justices of peace by force of their commission have authority to hear and determine murder and manslaughter, yet they seldom exercise a jurisdiction herein, or in any other offences in which clergy is taken away; and this, says my Lord Hale, is for two reasons. 2 Hal. Hist. P. C. 46.

1. By reason of the mention and clause in their commission, viz. in cases of difficulty to expect the presence of the justices of assize.

2. By reason of the direction of the statute of 1 & 2 Ph. & Ma. cap. 13, which directs justices of the peace in case of manslaughter, and other felonies, to take the examination of the prisoner, and the information of the facts, and put the same in writing, and then to baill the prisoner, if there be cause, and to certify the same, with the bail, at the next goal-delivery; and therefore in cases of great moment they bind over the procurators, and bail the party, if bailable, to the next goal-delivery; but in smaller matters, as petty larceny, and in some cases, they bind over to the felonies, but this is but in point of discretion and convenience, not because they have not jurisdiction of the crime.

As to inferior offences, the jurisdiction herein given to justices of peace by particular statutes is so various, and extend to such a multiplicity of cases, that it were endless to endeavour to enumerate them; also they have, as justices of the peace, a very ample jurisdiction in all matters concerning the peace. 6 Mod. 128.

And therefore it hath been held, that not only abbots and batteries, but libels, barratry, and common nightwalking, and haunting bowdy-houses, and such like offences, which have a direct tendency to cause breaches of the peace, are cognizable by justices of the peace, as they are within the purger and natural meaning of the word, 1 Lev. 129, 1 Sid. 273, Letch 173. Poph. 208. Cro. Jac. 32. Trin. 46.

But neither piracy nor forgery, as Common law, nor any other such like offences, which do not directly tend to cause a personal wrong or open violence, are cognizable by them, unless it be by the express words of the commission, such as, &c. Salk. 467, Crompt. 120. Lamb. b. 1, cap. 12.

Justices of the peace may proceed upon indictments taken before their predecessors, which depends upon the statute 11 Haur. 6, cap. 6, and 1 Ed. 6, cap. 7, par. 6, the former of which, reciting the inconveniences that pleas and processes upon indictments before justices of the peace had often been discontinued by making of new commissions of the peace, to the great los of the King, &c., ordains that such pleas, suits, and procresses before justices of the peace, shall not be discontinued by new commissions of the peace, but stand in force, and that the new justices, after they have the record of the same pleas and procresses before them, may continue, and finally hear and determine the same; and this is confirmed by the 1 Ed. 6, cap. 7. 2 Hal. Hist. P. C. 46, 2 Hauk. P. C. 37.

But justices of peace have no power to proceed on indictments taken before a coroner, or before justices of oyer or goad-delivery, or to deliver persons suspected by proclamation. 2 Hal. Hist. P. C. 46.

But if an indictment be taken before the sherif in his turn, by the statute of 1 Ed. 4, cap. 2, those indictments are to be delivered to the justices of peace at their next sessions, and they may proceed on those preferments. 2 Hal. Hist. P. C. 46.

6. Of the jurisdiction of one, or more justices, and how far a justice of a county or liberty may act out of them respectively.

Every single justice has regularly a jurisdiction thro' the whole county, which he alone may exercise for the preservation of the peace; and this jurisdiction he has by virtue of his commission, which constitutes him a justice of peace; but the power of hearing and determining offences is by the commission given to two or more, quarum unum, &c., and therefore if two justices, quarum unum be empowered to do a thing, it must appear that one was of the quarum. 2 Hal. Hist. P. C. 44, 5 Mod. 352, Comb. 200.

So if a thing be required to be done by two justices, they must both be present at the execution of it; as if two justices adjudge a perim the father of a bastard child, and a sentence is paid by one of them, this is naught; for the examination being a judicial act ought to be by both, and it is not sufficient that one of them examined, and made a report to the other; but if they are both present, and one alone examines, or asks questions, it is well enough: So where two justices are enabled to bail a perim, they ought both to be present to do it, and not one of them first to sign the recognizance, and then send it to another. 6 Mod. 180.

By Stat. 26 Geo. 2, cap. 27. No act, order, adjudication, warrant, indenure of apprenticehip or other instrument, made or to be made by two or more justices of peace, which do not express that one or more of them was of the quarum, shall be set aside for that defect only.

A single justice cannot bail a person that is committed by order of the feions; for he that bails must have as high a power as he who commits. 1 Keb. 857, 857 vid. tit. Bail.
But whatsoever power is given to a justice, or to two justices of the peace, by any statute, is given to the justices of the peace, which confifts of a collection of justices. 2 Ed. 7, 1 Ed. 18. It is thought that where a statute says the next justice, it must be the next; but where it says the justices of peace in or near the place, there any justice of peace in the county will serve. 1 Ed. 559.

Justices of the peace are to execute their authority as justices of the peace within the county wherein they are, and cannot lawfully make a special act out of any county, 2 Hal. His. P. C. 50. 2 Hawk. P. C. 37.

Therefore, if a justice of peace live or be out of the county wherein he is justice, he cannot by his warrant arrest a prisoner out of the county whereof he is justice, except before he was in that county. 13 Ed. 3, 29. P. 37, a. Platt's case.

And as justices of the peace have no coercive power out of their county, they cannot make an order of bastardy, or such like orders, out of their county. 2 Hawk. P. C. 37. 37. 32. 580.

A justice of peace may do a ministerial act out of his county, such as examine a party robber, whether he know theélons, according to the statute or not. Crim. Law. 211. 7 Tan. 237.

Alfo by the better opinion, recognizances and informations voluntarily taken before them in any place are good; for, though, says my Lord Chief Justice, they may not be lawfully used by them in any other county, yet it is lawful to examine the witnesses, and make an oath to the informations, or information, or evidence, or commit them, yet that is but for necessity of preferring the peace, for he hath really no jurisdiction in the case. 2 Hal. His. P. C. 51.

If A. commits a felony in the county of B. where he lives, and goes into the county of C. and is there taken, justice of the peace of the county of C. may take his information and bring him into the county of C. and he is then committed in the county of C. but my Lord Hale says, that upon his arraignment in the county of B. he would not allow these examinations to be given in evidence, because though he may commit and examine, and give an oath to the informers, yea and upon oath of evidence, or commit them, yet that is but for necessity of preferring the peace, for he hath really no jurisdiction in the case. 2 Hal. His. P. C. 51.

If A. commit a felony in the county of B. and upon a warrant fided against him by a justice of peace in the county of B. he is purfued, and flies into the county of C. and there before him in evidence, or commit him, yet hat is but for necessity of preferring the peace, for he hath really no jurisdiction in the case. 2 Hal. His. P. C. 51.

But if A. were taken by the warrant in the county of B. and break away into the county of C. and be there upon fresh fait by them that first took him, he may be either brought to a justice of the county of C. where he was last taken, or before the justice of the county of B. by whose warrant he was first taken; for in capitation of law he was always in custody. 1 Hal. His. P. C. 581.

But if he escape before arraif into another county, if it be a warrant barely for a misdemeanour, it seems the officer cannot purfue him into another county, because out of the jurisdiction of the justice that granted the warrant; but in case of felony, affray or dangerous wounding, the officer may purfue him, and rafe him, or take his goods on any county; but if he take him in a foreign county, he is to bring him to the gaol or justice of that county where he is taken, for he doth not take him purely by the warrant of the justice, but by the authority which the law gives him, and the justice's warrant is a sufficient cause of confufion and pariulf. 2 Hal. His. P. C. 115. 1 Hal. His. P. C. 115.

If A. be a justice of peace in two adjacent counties, though by severall commiiffions, as the recorder of London, he, whilst he lives in one county, may fend his warrant to apprehend malefactors in another, and fend them to Nenfet, he is the commiffion both for London and Middelfet, 2 Hal. His. P. C. 581.

The justices of the peace have jurisdiction of felonies arising within the verge. 4 Ca. 48. a. Wigg's cafe.

2 Hal. His. P. C. 52. 2 Hawk. P. C. 37. 2. 47. 54.

Justices of the peace for a county have, by their comniiffions, an authority to commit within the county, as without, and may execute their office within a town with a special commiffion of the peace for its own limits, unless such commiffion have a clause that no other justices, except those named in it, shall any way concern themselves in the keeping of the peace within the liberties of such town. 2 Hawk. P. C. 37. 2 Hal. His. P. C. 49.

Alfo it seems, that though such commiffion have a special exclufive caufe, of which the justices have notice, yet their acts within a liberty are not void, though perhaps they may be punished for proceeding in defance of such refiffive caufe, as for a contempt of the King's prohibition. 2 Hal. His. P. C. 37.

By the 9 Geo. 1. cap. 7, fett. 3, it is enacted, "That if any justice of peace shall dwell in any city, or other precinct that is a county of itself, situate within the county in which he shall be appointed justice of peace, although not within the jurisdiction, he may be and may be lawful for any such justice of peace to grant warrants, to take examination, and make orders for any, matters which any one or more justice or justices of the peace may act in, at his own dwelling house, although such dwelling house be out of the county where he is authorized to act as a justice of peace; and in some city, or other precinct adjoining, that is a county of itself; and that all such warrants, orders and other acts or acts of any such justice of peace, and the act or acts of any confettabie, tythingman, headborough, overseer of the poor, surveyor of the highways, or other officer, in obedience to any such warrant or order, shall be valid, good and effectual in the law, although it happen to be out of the limits of the proper precinct or authority; provided always, that nothing in this act contained shall extend to give power to the justices of the peace for the counties at large, to hold their general quarter-sessions of the peace in cities or towns, which are counties of themselves; nor to impower justices of the peace, sheriffs, bailiffs, confettables, headboroughs, tythingmen, borholfers or any other peace officers of the counties at large, to act or intermeddle in any matters or things arising within cities or towns, which are counties of themselves, but that all such acts and doings shall be of the same force and effect in law, and none other, as if this act had never been made."

Stat. 15 Geo. 2. cap. 24. Where any person liable to be committed to the house of correction, shall be apprehended within any liberty, city or town corporate, whole inhabitants or other persons, he is to be made prisoner, for the purpose of the house of correction of the county, riding or division, in which such liberty, &c. is situate; it shall be lawful for the justices of the peace of such liberty, &c. to commit such person to the house of correction of that county, &c. in which such liberty, &c. is situate; which person so committed shall be dealt with, and be subject to the same correction, as if committed by any justice of the peace of the same county, &c.

Stat. 16 Geo. 2. cap. 18. sect. 1. It shall be lawful for every justice of the peace within his jurisdiction to execute every thing appertaining to his office, so far as the same relates to the laws concerning the poor, vagrants, bills of mortality, and all such taxes or rates, notwithstanding such justice is rated to, or chargeable with the taxes within such parish or place affected by such act of such justice.

Sec. 2. No act already done by any such justice shall be void, because the same hath been done by any such justice so rated or chargeable.
j u s

Sect. 3. This act shall not authorize any justice for any county or riding at large to act in the determination of any appeal to the quarter-justices for any such county or riding, from any order or thing relating to the parish or place where such justice is so charged.

Sect. 24. Gen. 2. cap. 55. sect. 1. In case any person, against whom a warrant is issued by any justice of the peace of any county or place within the kingdom, escapes, goes out of the county, or any other county, place, out of the jurisdiction of the justice granting such warrant, it shall be lawful for any justice of the peace of the county, &c., where such person escapes, and such justice is hereby required, upon proof upon oath of the hand-writing of the justice granting such warrant, to indorse his name on the warrant, and shall be a full discharged authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other county, &c., out of the jurisdiction of the justice granting such warrant, and to apprehend and carry such offender before the justice who indorsed such warrant, or some other justice of such other county, &c., where such warrant was indorsed. In case the offence, for which such offender is so apprehended in such other county, &c., be bailable in law, and such offender be ready to give bail for his appearance at the next assizes or general gaol-delivery, or next general quarter-justices of the peace for the county, &c., when the same was committed, such justice &c., &c., before whom such offender is brought, shall take bail of such offender for his appearance at the next assizes, or general gaol-delivery, or at the next general quarter-justices of the peace for the county, &c., where such offence was committed, as the justices of the peace of the proper county, &c., might have done; and the justice so taking bail shall deliver the recognizance, together with the examination or confession of such offender, and all proceedings relating thereto, to the confilable, or person so apprehending such offender, who is to deliver over such recognizance, &c., to the clerk of affize, or county, &c., where such offender is required to appear by such recognizance; and such recognizance, &c., shall be of the same force as if the same had been entered into, before a justice of peace for the proper county, &c., whereas the offence was committed, and the same proceedings shall be had thereon; and in case full bail be given by such offender to appear by such recognizance, &c., is so delivered, neglect to deliver over the same to the clerk of affizes, or clerk of the peace of the county, &c., where such offender is to appear, such confession of surety, or person so shall forfeit 10 l. to be recovered by bill, &c., in any court at Westminster, by any person who will sue for the same, wherein no offense, &c., shall be allowed, or at the same cause, the offence for which such offender is apprehended in any other county, &c., be not bailable in law, or such offender give not bail for his appearance at the next assizes or general gaol-delivery, or next general quarter-justices of the peace for the county, &c., where the offence was committed, to the falsification of the justice before whom such offender is brought, in such other county, &c., be not bailable in law, or such offender be not bailable in any other county, &c., where such offence was committed, there to be dealt with according to law.

Sect. 2. No action of trespass, false imprisonment, information or indictment, or other action shall be brought against the justice who indorses such warrant, by reason of his indorsing such warrant.

Sect. 3. Provided that such person be at liberty to bring his action against the justice who originally granted such warrant, as he might have done in case this act had not been passed.

Where a city hath justices with an exclusive clause, the justices of the county cannot act in matters of excite; as where the question was, Whether, as the city of New Sarum had an exclusive commination of the peace, the justices of the county of Wilts could by virtue of 12 Car. 2. cap. 23. and 15 Car. 2. cap. 2. act in excite matters within the city. This case was argued three times at the bar, and this term the Chief Justice delivered the refor-
and the justices of peace for the said county are to make a table of such fees at their next general or quarter sessions, after the 24th of June 1754, and to approve or alter the same at the next succeeding general or quarter sessions, and from time to time to make and approve any other such table or tables.

By stat. 7 Jus. 1. c. 15. sect. 1. If any action upon the cafe, trespass, battery, or false imprisonment, shall be brought, against any justice of peace, mayor or bailiff of a city or town corporate, headborough, post-reave, confable, tithing-man, collector of falsdy or fifteenth, for any thing or thing done by reason of their office, it shall be lawful for every such justice of peace or other officer, and all others which in their affiance, or by their command, shall do any thing touching their offices, to plead the general issue. Not guilty; and if the verdict shall pass with the defendant, or the plaintiff become nonsuit, or suffer any continuance, the judge before whom the matter shall be tried shall allow the defendant double costs.

Stat. 21 Jus. 1. c. 12. sect. 5. If any action upon the cafe, trespass, battery, or false imprisonment, shall be brought against any justice of peace, mayor or bailiff of city or town corporate, headborough, post-reave, confable, tithing-man, collector of falsdy or fifteenth, for any thing or thing done by reason of their office, it shall be lawful for every such justice of peace or other officer, and all others which in their affiance, or by their command, shall do any thing touching their offices, to plead the general issue. Not guilty; and if the verdict shall pass with the defendant, or the plaintiff become nonsuit, or suffer any continuance, the defendant shall have double costs.

Stat. 24 Gen. 2. c. 44. sect. 1. No writ shall be sued for against, nor any process of any proceedings at the suit of a defendant shall be served on any justice of peace, for any thing by him done in the execution of his office, until notice in writing of such intended writ or process be delivered to him, or left at the usual place of his abode, by his attorney for the party who intends to sue, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action, on the back of which notice shall be added the name of such attorney, with the place of his abode, who shall be intitled to the sec. of 200. for preparing and serving such notice.

Stat. 1. sect. 2. Upon any action for such justice of peace at any time within one calendar month after such notice given, to tender amends to the party complaining, or to his attorney; and in case the same is not accepted, to sue such tender in bar to any action grounded on such writ or process, together with the plea of Not guilty, and any other pleas, if the party tendered amends to be sufficient, shall give a verdict for the defendant; and in such case, or if in the cafe the plaintiff become nonsuit, or discontinues his action, or judgment is given for such justice upon demurrer, he shall be intitled to the like costs as if he had pleaded the general issue only; and it shall be lawful for every officer or person, church, that the same were not sufficient, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages as they think proper, which he shall recover, together with his costs.

Stat. 3. No such plaintiff shall recover any verdict against such justice, where the action is grounded on an act of the defendant as a justice of peace, unless it is proved upon the trial that such notice was given, but in default thereof such justice shall recover a verdict and costs.

Stat. 4. In ceafe such justice neglect to tender any amends, he may tender insufficient amends, before the action brought, it shall be lawful for him, by leave of the court where such action depends, at any time before issue joined, to pay into court such sum as he fees fit; whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court.
trials, i.e. perjury, a frame or rail, such as vines use to run upon; and byfars, a staff or pole, inferring, that the justices employed in this commission, had authority to proceed without any solemn judgment-feat, but might without more work proceed wherever they could apprehend the malefactors they fought for. If I may be ad- mitted to give my thoughts, I should be disposed to derive the French word tréfl, i. to draw; and byfars, a staff; and the reason of this my supposition is, that the Kings of England having in those times many occa- sions in France, by reason of their frequent wars there; and observing that the marshalls of France had a large power, with which they were invested by the delivery of a certificate, or badge, as a mark of their office and authority; when they returned, and found strange disorders grown here, in imitation of that, erec- ted these justices, who (as they say) had a byfars deliver- ed them as the badge of their office, fo that whoever was brought before them was trésle al byfars, tréstius ad baculum; whereupon with subfimation, may their name easy be deduced, and they called justices de trésle-bac, or justiciarii ad traiandum offendentes ad baculum vel bac- ton. We find a commission of trésle-bacem, eam Ro- gero de Grey & fuis fatis jus licet apud S. Albanum, annos Regni Regis Ed. 3. jufi conquestum, 5. Cowell, edit. 1750. Regni Regis Exchequer, vetús. 7. 3. 145. 35. 149. 157. 158. 160.

J usticia, or justicie. (Fr. justice,) A justice, or justiciary. The Lord Birmingham, justiciar of Ireland. Baker's Chron. Angl. fol. 118. The whole jurisdiction which is now distributed among the several courts of Westminster Hall, seems in the fifth reign after the conquest, to have been lodged in one court, commonly called the King's court, where justice is said to have been administered sometimes by the King himself in person, and sometimes by the high justiciary, who was an officer of very great authority, and used in the King's absence beyond sea to govern the realm as vice-roy. 2 Henr. P. C. 6. 4. 10. The first justiciary after the conquest were Osb bishop of Baeum in Normandy, half brother by the mother to the conqueror, and William Fitte-Ochon, who was vice-roy, and had the same power in the north that Osb had in the south, and was the chief in the conqueror's army. Bradys Preface to the Norman History 151. (B.) Dogd. Chron. Series 1. The next justiciaries were William Earl of Warren in Normandy, a great commander in the battle against Har- rold, and Richard de Bensfucta, alias Richard de Tone- bridge, son to Gilbert Earl of Briton in Normandy, and were constituted in 1073. Bradys Preface, &c. 154. (B.) Dogd. Chron. Series 1. In 1088, Richard the first, put Lenfrank and the said Osb, Guifrifd bishop of Confiance in Normandy, was justiciary. Bradys Preface, &c. 151. (C.) Dogd. Chron. Series 1. In the beginning of William Rufus, Osb was again justiciary. William de Carlefe bishop of Durham, a Norman, succedeth Osb, and then followed Ranulpf Flambar in 1090. Afterwards in the reign of H. I. in 1100. Hugo de Boscud, a Norman, was justiciary, and after him his son Richard Babif was; then Roger bishop of Salisbury, was justiciary and chancellor. The next, in the time of King Stephen, was Henry duke of Nor- manby, afterwards King Henry II. And in Henry the Second's time was Robert de Belle Monts earl of Leicester in 1155, but he was made earl of Leicester by the King, before he had been justice before him; and after earl of Leicester, Richard de Laute was made justice; and after him in 1180. Ranulpf de Glanvill, that famous lawyer was made justice; after him, Hugo de Putcest, commonly cal- led Putez, Putas, or Pofey, nephew to King Stephen by his marriage, was the last justice parts beyond Trent; and William de Long-Camps, or Langh Campb, bishop of Ely, was at the same time by Richard the First, made justice on the fourth parts of this side Trent. Then, after the deprivation of William bishop of Ely, Walter archbishop of Reven in Normandy, was made justice of all England. Bradys Preface, &c. 154. (D) (E) (F) 152. (A) (B) (C). See Dogd. Chron. Series 1, 2, 3, 4, 5. William Long Champ bishop of Ely, chief justiciar and lord chancellor to Ed. 1. Speed 473. Fitz Peter, chief justiciar in the first of John. Speed 487. Hubert de Borch earl of Kent, chief justiciar. 1 H. 3. Speed 513. Made him, Stephen Seymour. Speed 521. The chief justiciar is the minister of regal command in the absence of the King. Speed 513. Towards the latter end of the Norman period, the power of the grand justiciar was broken, to that the Aula Regis, which before was one great court where the justiciar pre- sided, was divided into four distinct courts, viz. Chan- cellor, Comptroller, Treasurer, and Common Pleas. Gilb. Hift. View of the Court of Exchequer. 7. 1. Madd. 2. 4. it determined about the 45 H. 3. Bradys Preface, &c. 154. b. The chancellor was the first in order on the left hand of the justiciary, and as he was a great person in court, fo he was in the Exchequer; for no great thing passed but with his consent and advice, nothing could be faced without his allowance and privy. But the justiciary surmounted all others in authority, and he was the greatest in the Exchequer; for he was at all times of the Chief Stewards, Exchequer, and their Court of Ward. Bradys Preface to the Roman History 153. (B). As long as the power of the justiciar continued, the Aula Regis was one court, and only distinguished by the several officers; for all the officers were united under the justiciar, and he was the governor and superinten- dent in the Exchequer. 3. Hift. View of the Exchequer 10. 14. Justitius, Jurisdiction, prerogative. Cowell, ed. 1752.

Justicie-Seal is the highest court that is held in a forest, and is always held before the Lord Chief Justifie in eyes of the forfs, upon warning forty days before; and there the judgments are always given, and the fines for offences, that were presented at the courts of attachments, and the offenders indited at the eomitias, concerning which see Monuudus Forest Laws, cap. 24.

Justities, is a writ directed to the sheriff, for the dis- patch of justice in some special case of which he cannot by his ordinary power hold plea in his county-court. Hereupon the writ de excommuniation deliberran, is called the Writ of Excommunication Deliberran. 3. Brev. Breton. fol. 35. Also the writ de homina repaginando, Vide. fol. 154. Also the writ de quaesitio paraforenas, Vide. fol. 72. There are many precedents of this in F. N. B. fol. 117. in Actuare, and fol. 152. in Amnity, and fol. 119. in Debt. Kitchin. fol. 74. says, that by this writ of justities, the sheriff shall have power to arrest a great fern, whereas, of his ordinary authority, he can have no pleae, but of them under pain of fines, with whom agreea Gramp. fol. 231. It is called a justicie, because it is a commission to the sheriffs ad ju- stiationem alium, to do a man justice, and requires no return, or any certificate of what he hath done. Broate, lib. 4. tract. 6. cap. 13. num. 2. mentions a justicie to the sheriffs of London, in a case of dower. See the New Book of Entries, verbo Justicie.

Justifiable homicide. See Pompeire. Justification. (Justificatio,) Is an affirming or swearing good reason in court, why he did such a thing as he is called to answer; as to justify in a case of revilein. Bradys Preface to the Roman History. See Acton, Libel, Ectatps. Justificatores. (Justificatores.) Seem to signify purgers, or those that by oath justify the innocence reputation, or oath of another, as in the case of saying law. Will. Ryn Angles carriera & justificationibus sui, annibua sui filiius Norf. satus. Inquisit in pro- comitandi quius jus licet injuriantis facturorum fabores tum incriptione, inde Quo neon. and Nora. Aliem. Et si commissio concordaverit quod aliam regem praetextum facturorum delebat ture, tum praecepto C. solidis, quos Radul. Paffel. impluviet, fine mora ob- reddantur. T. Episcopu Dunelmensis. Sir Henry Spink leaves it thus without explicitation. Justificatores are all jurymen, because they justify that party on whole behalf they give their veredi. Cupid, edit. 1727. Justity.
Julitita, Was anciently used for a judge, and sometimes for a justice, law or ordinance. Richardis Dei,事迹, Saeculi, nos, &c. comport proderum uritem confilis, custes et justitia jubere scripturis. Covelden, p. 666.

Julitita, Is often taken for jurisdictio, or the office of a judge. Leg. Edw. Conf. cap. 26. Julitia cognos-

matis latinus sua effe de homine jus.

Justitia, He who now is called justitiarius was formerly called justitius, i. e. a judge. Leg. H. 1. cap. 42.

Julitita yolle, set a small area urbanum amicum domonstor.

Julititas facere, Is to hold pleas of any thing. Mr. Alden, in his Notes upon Edmuntes, mentioning that terr which was held at Pimened between archbishop Lanfranc and the bishop of Baye, tells us, Their place

of interfertus Gisreduen episcopus Confiantenii, qui in sua regis fuis, & justitiarum ilium tenens, Lanfrancus episcopus qui ut dictum ci placet et tamen diriptiones, etc.

Julitituim, A ceasing from the prosecution of law, or exercising justice in places judicial. Cowell, edit. 1747. See Eleatation.

K.

K 33 A. A key or what? Area in littera encorandam autque excorandare novum novae, f et compatiit aut ubi tractabatur (claviwm infar) firmata. Spelim.

Kratagium, The toll-money paid for loading or unloading goods at a key or what. Pan. 20 Ed. 3.

Kalembur, Rural chapters, or conventions of the rural dean and parochial clergy; so called, because held on the calendar, or first day of every month; As at first every three weeks, and at last only at quarterly, or at degrees wholly intermitted, to the great decay of discipline. See Parish, Antiq. p. 640.

Kalembur, The beginning of a month. See Calendars, Antiqu. According to the description of Mr. Hurry Loyd, out of the laws and ordinances of Howell, the organization from one hundred towns, and signifies as much, under which were contained so many commoners, which the Wiff call communis, and signifies provincia or region, and consisteth of twelve manors, or circuits, and two townships. We find the word mentioned in Mon. Angl. i. part. fol. 319. thus:—Le pri-

mer Gouverneur de tres knarlet de la terre de Breconoch, aitard de Nielmarck Norman. See Cantrbr.

Karte, Carte, The religious called their belt conventional drink, or their starchy, beer, by this name; be- cause after meals they used to drink their poca carisati, or od curisati, i. e. their grace-cups, in this belt li-

que. Quaint, i. 1737.

Kartbr, A man; and sometimes a servant or clown. Hence the Saxons called a feaman a feamann, and a domestick servavit febarle. This word is often found in Douayse, Sel/lins Abre Clarom, and other ancient records. From hence, by corruption, comes our modern word clavell. Cowell, edit. 1737.


Kartbr, See Karp.


Karp, A strong tower in the middle of any other fort or castle, wherein the besieged make their last efforts of

Vol. II. No. 99. defence, was called a keep. Hence the inner pile of fortification within the castle of Dover, erected by King Henry II. about the year 1153, was called the King's keep: So at Harlech.

Keeper of the forest, (Caufes forreftas) Is also called Chief Warder of the forest, Markwood's Forst Law, part 1. pag. 156. and hath the principal government of all things, and the check of all officers belonging to the same; and when it pleath the Lord Chief Justice in yr of the forst to keep his justice-feet, he sends out his warrant, or general summons, to him forty days before, for the warning of all under officers to appear before him at a day affigned in the summons, which fee in Markwood, afo super.

Keeper of the Great seal, (Caufes Magni Sigilli) Is a Lord by his office, and filled the Lord Keeper, as Great seal of England; he is one of the King's Privy council; through whose handes all pafs all charters, commis-

sions and grants of the King under the Great seal; without which seal all such instruments by law are of no force. For the King in the interpretation of law a corporation, and paishes nothing firmly but under the said seal, which is as the publick faith of the kingdom in the high efeem and reputation juftly attributed thereto. This Lord Keeper, by the statute 5 Eliz. 18. hath the fame place, authority, preheminence, jurisdiction, execution of laws, and all other customes, commodities and advantages. Cowell, edit. 1737. as the Lord Chancellor of England for the time being. He is constituted by the delivery of the Great seal to him, and taking his oath. Co. 4 inst. fol. 87.

Keeper of the Psalms seal, (Caufes Privati Sigilli) Is a Lord by his office, through whose hands all pafs all charters signifyed by the Great seal. They come to the Great seal, and some things which do not pafs the Great seal at all: He is of the King's Privy council, and was anciently called Clerk of the Privy seal. 12 R. 2. cap. 11. Gardien del Privy seal, in Rot. Parl. 11 H. 4. num. 28. And Lord Privy seal, and one of the great officers of the kingdom, by 34 Hen. 8. c. 4.

Keeper of the Seale, 12 Hen. 6. 14. Seems to be that officer in the King's Mint, at this time called The Master of the Spet. See Mint.

Keeper of the liberties of England, By authority of parliament. See Custodes libertatis.

Kemets, A sort of coarse Wefl cloth, mentioned in St. 33 H. 8. 3.

Kethale, A commutation for a customary duty for carriage of the Great seal, Compt. 1. 1737.

Kernellare domum, To build a house with a wall or tower, kernelled or crenelle, with cranes or notches, for the better convenience of shooting arrows, and making other defence. Spelman derives it from the Sax. cynel, a feed or kernel; from whence, says he, cynetes, to rise in knoeb or bands. And Du Frasour juftly re-

flects on this violence done to the word, and finds it to be gournellis or quadrancellis, a four figure hole or notch; ubiqueque patern quadrattus fcript us. This form of wall and battlements for military ufe, and chiefly for shooting with bows and arrows might possibly borrow name from quadratellis a four figure square dart. It was a common favor granted by the Kings after long rebellion, démollion, to give their chief sub-


Kernellatius, (from the Lat. Crena, a notch,) Fortified or embattled, according to the old fashion. Et dun (j. L anc.) ditis, quod ipse clamat pro se & heredibus suis: habeat eos unum sciam De Halton, kernellatum. Pl. de leg. arm. de Caesestra, 13 Ed. 3. fortificator of the land. Reform. Est idem quidam castrum duplicie murum kernellatum, &c. Survey of the Dutchy of Carn-

woll. 4 S

Bosrue,
KID

KIN

Kildare, The eighth part of an hoghead.

Kilbrack, An ancient servile kind of payment. Cawth., edit. 1727.

Kildingrim, Keelege. Cawth., edit. 1777.

Kilbysallatt, Where is a lord of a manor was bound by curialion to provide a stallion for the use of his tenants mares. Spelm.

Kilt, At annum annales reditntis de quadam confettinie in Eugus Lazoc vacat. Klith. Pat. 7 Edit. porg. 7. Spelman conferseth he did not know the meaning of the word.

Binders. See Descert, Administration.

King, (Rem.) Is thought by Camden in his Erit, pag. 105. to be contracted from the Saxmon word ceyning for coming, signifying him that hath the highest power, and absolute rule over the whole land; and therefore the King is in intendment of law cleared of those defects which common persons are subject to; for he is always supposed to be of full age, although never so young.

Cropn. fol. 134. Kitchin, fol. 1. He is taken as not subject to death, but is a corporation in himself. Cropn. ibid. He is supers legem by his absolute power. Brath. lib. 1. c. 8. Kitch. fol. 8. and tho’ for the better and more equal course in making laws, he do admit the Necessity of a Law, it is Lords Spiritual, Lords Temporal, and the Commons unto council; yet this derogates not from his power; for whatever they act, he by his negative voice may quaff. See concerning this, Smith de Rep. Anglor. lib. 1. cap. 3. and Braden, ib. 2. cap. 16. num. 3. and Britton, cap. 39. He pardneth life and limb, and the heir of his crown, and dignity, except such as he bindeth himself by oath not to forgive.

Staund. Lib. Cor. lib. 2. cap. 35. and Hobet omnia jura in manu sua. Braden, lib. 2. cap. 24. num. 1. He may alter or fulfill any particular law that seems hurtful to the publick. Blackwood in Apologia Regum, cap. 11. For the King’s oath, see Braden, lib. 3. c. 9. num. 2.

Again: The King’s only testimony of any thing done in his presence, is of as high nature and credit as an record; whence it comes, that in all writs or precepts sent out for the dispatch of business, he useth no other witnesses than himself, always using these words at the end, Tres mei, Lastly: He hath in the right of his Crown many prerogatives above any common perfon, he never so potent and honourable; whereas you may read at large in Staundford’s treatise upon the statute thereof made 17 Edw. 2. Also in Braden, lib. 2. cap. 24. num. 1 & 2. See Prerogative,

Statistics concerning the King, Queen, and Royal Family.

Inquiry to be made in the turn De Suctaoribus Dini Regis et regni, Dominica Reginae, et librorum faciun et consuetudinis, St. Wal. 12 Ed. 1.

They that pursued and took King Edward 2. indemni- nised, 1 Ed. 3. fl. 1. the fame of King Richard 2.

1 Hen. 4. c. 1. 2.

The subjects discharged of all obedience to the King a King of Frakes, 14 Ed. 3. fl. 5.

The King’s children born beyond sea to be held natur- subjuncts, 25 Ed. 3. fl. 2.

The King may do anything with this power, and counsel the King to do any thing against the ordinance for reformation of the government, the second offence felony, 10 R. 2.

Resistance of evil administrition by war, justified

11 R. 2. c. 1.

The Crown entailed on the four sons of King Henry 4.

7 H. 4. c. 2.

They that are on alling the ancient jewels of the Crown 1

H. 6. c. 5.

Judicial acts, &c. of H. 4. H. 5. and Hen. 7. other than in parliament, confirmed, 1 Ed. 4. c. 1.

They who faithfully serue the King for the time being according to their allegiance, shal not forfeit any thing for the same, 1 Hen. 4. c. 1.

Penalty of not attending the King when he goeth to war in perfon, 11 H. 7. 15. 10 H. 7. c. 1.

The King to be reputed the head of the church, 2 H. 8. c. 1.
Privy Council and other great officers to continue six months after the King's Death, unless, &c. 6 Ann. c. 7. f 5.  

The great seal and other publick seals to be used as the seals of the fecouer, until, &c. 6 Ann. c. 7. f 9.  

The succesor impowered to appoint a regency, 4 Ann. c. 8. 6 Ann. c. 7. f 11.  

Precedency of the Princess Sophia, &c. settled, 10 Ann. c. 10.  

The Civil Lift granted to King George 1. 1 Gez. 1. f 1. c. 1.  

Reward for apprehending the Pretender, 1 Gez. 1. f 1. c. 1. f 9. 5. 2. c. 13. f 28.  

Provision for Queen Caroline when Princes, 1 Gez. 1. c. 5.  

Principality of Wales granted to King Geo. 2. 1 Gez. 1. c. 5.  

The restriction in the a of settlement that the King should not depart the land, &c. repealed, 1 Gez. 1. c. 51.  

Annities granted on the Civil Lift to discharge debts, 7 Gez. 1. c. 27. 12 Gez. 1. c. 2.  

Provision made for his Majesty for the Civil Government, 1 Gez. 2. f 1. c. 1.  

His Majestly enabled to be governor of the South-Sea company, 1 Gez. 2. f 1. c. 2.  

Provision made for Queen Caroline, 1 Gez. 2. f 1. c. 5.  

Provision for the debts of King Geo. 1. 1 Gez. 2. f 2. f 5.  

The Prince of Orange naturalized, 7 Gez. 2. c. 3. f 24.  

Annunity granted to the Prince of Orange, 7 Gez. 2. c. 51.  

Prince of Wales naturalized, 9 Gez. 2. c. 24 & 28.  

Provision made for the Princes of Wales, 10 Gez. 2. c. 29.  

Settlement on the Duke of Cumberland and the Princess, 12 Gez. 2. c. 15.  

Provision of a marriage portion for the Princes Mary, 13 Gez. 2. c. 13.  

Annunities granted to the royal family, freed from taxes, 15 Gez. 2. c. 19. f 21.  

Regency of in case of the crown descending to a minor, 24 Gez. 2. c. 24.  

His Majestly impowered to grant entries to the offices of the principality of Scotland, during the minority of the King, 25 Gez. 2. c. 20.  

The royal family exempt from the land tax, 3 Gez. 2. c. 3. fett. 92 of 93. 4 Gez. 3. c. 2. fett. 95 of 97.  

Establissement of the court of civil lift, 1 Gez. 3. c. 1.  

Hereditary and temporary excises, tunnage and poundage, post-office, and small branches carried to the aggregate fund, 9 Gez. 3. c. 1. fett. 3.  

King may be governor of the South-Sea company, 1 Gez. 3. c. 5.  

To provide for the administration of government, in case the crown should descend to any of the children of his Majestly, being under the age of 18 years; and for the care and guardianship of their persons, 5 Gez. 3. c. 27.  

King of heralds, Rex Heraldum, Is a principal officer at arms, that hath the pre-emnince of the society. See Herald and Garter. Among the Romans he was called pater patrias.  

King of the Britshires, at Tustbury in som. Staff.  

His power and privilege appears by a charter of Rich. II, confirmed by Hen. VI. in the 218 year of his reign.  

Cowell, edit. 1727.  

Bing's Bench, (Bancus Regius,) Is the court or judgment-seat, where the King of England was sometimes wont to fit in his own person; and therefore it was moveable with the court or King's household, and called Curia Domini Regis et Aula Regia, as Queen reports in the Preface to his Reading; and that therein, and in the court of Exchequer, which were the only courts of the King till Henry the Third's days, were handled all matters of justice, as well civil as criminal.  

This court of the King's Bench was wont in ancient times to be especially exercized in all criminal matters and pleas of the crown, leaving the handling of private causes and civil actions to the Common Pleas and other courts.  

Glanville, lib. 1. cap. 2. 3. 4. and lib. 10. cap. 18. 

Smith
The Court of the King's Bench has no jurisdiction in civil matters. As such, it was not the venue for the cases involving Henry Crowood. The jurisdiction of the Court of King's Bench was limited to matters of criminal law. For civil cases, other courts, such as the Superior Court of Justice, had jurisdiction.

**1. OF THE JURISDICTION OF THE COURT OF KING'S BENCH IN CRIMINAL MATTERS.**

This court is termed the **Custos morum** of all the realm, and by the plentitude of its power, where-ever it meets with an offence contrary to the first principles of justice, and of dangerous consequence if not restrained, adapts a proper punishment to it. 1 Std. 168. 2 Hawk. P. C. 6.

It has a particular jurisdiction, not only over all capital offences, but also over all other misdemeanors of a publick nature, tending either to a breach of the peace, or to oppression or faction, or any manner of misgovernment; and it is not material what the several offences be, or what be the manner by which the publick good, directly or indirectly, be injured by any particular person or not. 4 Iust. 71. 11 Co. 98. 2 Hawk. P. C. 6.

And for the better restraining such offences, it has a discretionery power of inflicting exemplary punishment on offenders, either by fine, imprisonment or other infamous punishment, as the nature of the crime, conformed in all its circumstances, shall require; and it may make use of any prison which shall seem most proper; and it is said, that no other court can remove or bail persons condemned to imprisonment by this court. 2 Hawk. P. C. 7.

Alfo it has to soveraigne a jurisdiction in all crimi- nal matters, that an act of parliament appointing that all crimes of a certain denomination shall be tried before certain judges, doth not exclude the jurisdiction of this court,
appears in the relation and figure of it given by Mr. Knox in his travels, p. 28.

Bipper-time. No salmon shall be taken between Gravesend and Henly upon Thames in kipper-time, viz. between the Invention of the Croy (3 May) and the Epis- tle of St. Paul to the Romans, Wel. 2. Cowell, ed. 1727.

Bilbyres gold. An ancient record remaining with the Remembrancer of the Exchequer; so called from its being the inquest of John de Kirby. Cowell, ed. 1727.

Birnare, a fynded; sometimes it is taken for a meeting in the church or vestry.

Bisword, an old Saxon word for a man-servant, and so used in 14 Ed. 3. f. 1. cap. 3. and Verfagin in his Refutation of Desired Intelligences, cap. 10. believes it is borrowed from the Dutch enke, which signifies the same thing. And that is some kind of officer or servant, as field-enke was he that wore the weapon or shield of his master. In this in his old English translation, Ew. 1. xvi. If it be a knave child, i.e. a fom or male child. Afterwards it was used of a anno servitum, or devoted, for any serving man: As in the vision of Plers Platon and Coke's, and knave enyeen hohe pye hoote, i.e. Cooks and their boys, or skellions. Cowell, ed. 1727.

Knight, (Sax. eng, Lat. miles, and esquus auratus, from the girt spurs he usually wore, and thence called anciently Knights of the Girt Spur. The Italiun term them Cavalieri, the French Chevalier, the Germans Ritter, the Spanish cavalier, &c.) In its original properly signifies a servant; but there is now but one instance in which it is taken in that sense, and that is knight of the shire, who properly serves in parliament for such a county; but in all other instances it signifies one who bears arms, who, for his virtue and martial prowess, is the king, or one having his authority, exalted above the rank of gentleman to a higher account or step of dignity. The manner of making them, Camden in his Britannia, thus briefly express: Nyftis vero temporibus, qui explefrum dignitatem, &c. From this first signified a squire or boy, as born, he whence a knave-child, i.e. a boy distingufhing from a girl in several old writers. A knave child between them two by gate.—Gower, Poem, fol. 52, 105. And Wick-iff in his old English translation, Ew. 1. xvi. If it be a knave child, i.e. a fom or male child. Afterwards it was used of a anno servitum, or devoted, for any serving man: As in the vision of Plers Platon and Coke's, and knave enyeen hohe pye hoote, i.e. Cooks and their boys, or skellions. Cowell, ed. 1727.

Knight, (Sax. eng, Lat. miles, and esquus auratus, from the girt spurs he usually wore, and thence called anciently Knights of the Girt Spur. The Italiun term them Cavalieri, the French Chevalier, the Germans Ritter, the Spanish cavalier, &c.) In its original properly signifies a servant; but there is now but one instance in which it is taken in that sense, and that is knight of the shire, who properly serves in parliament for such a county; but in all other instances it signifies one who bears arms, who, for his virtue and martial prowess, is the king, or one having his authority, exalted above the rank of gentleman to a higher account or step of dignity. The manner of making them, Camden in his Britannia, thus briefly express: Nyftis vero temporibus, qui explefrum dignitatem, &c. From this first signified a squire or boy, as born, he whence a knave-child, i.e. a boy distingufhing from a girl in several old writers. A knave child between them two by gate.—Gower, Poem, fol. 52, 105. And Wick-iff in his old English translation, Ew. 1. xvi. If it be a knave child, i.e. a fom or male child. Afterwards it was used of a anno servitum, or devoted, for any serving man: As in the vision of Plers Platon and Coke's, and knave enyeen hohe pye hoote, i.e. Cooks and their boys, or skellions. Cowell, ed. 1727.

Knight, (Sax. eng, Lat. miles, and esquus auratus, from the girt spurs he usually wore, and thence called anciently Knights of the Girt Spur. The Italiun term them Cavalieri, the French Chevalier, the Germans Ritter, the Spanish cavalier, &c.) In its original properly signifies a servant; but there is now but one instance in which it is taken in that sense, and that is knight of the shire, who properly serves in parliament for such a county; but in all other instances it signifies one who bears arms, who, for his virtue and martial prowess, is the king, or one having his authority, exalted above the rank of gentleman to a higher account or step of dignity. The manner of making them, Camden in his Britannia, thus briefly express: Nyftis vero temporibus, qui explefrum dignitatem, &c. From this first signified a squire or boy, as born, he whence a knave-child, i.e. a boy distingufhing from a girl in several old writers. A knave child between them two by gate.—Gower, Poem, fol. 52, 105. And Wick-iff in his old English translation, Ew. 1. xvi. If it be a knave child, i.e. a fom or male child. Afterwards it was used of a anno servitum, or devoted, for any serving man: As in the vision of Plers Platon and Coke's, and knave enyeen hohe pye hoote, i.e. Cooks and their boys, or skellions. Cowell, ed. 1727.

Knight's fees. (Fodum militum.) Is so much inheritance, as is sufficient yearly to maintain a knight with convenient revenue; which in Henry the Third's days was 151. Camb. Briton, pag. 111. But Sir Thomas Smith, Repub. Ang. lib. 1. cap. 18. raters it at 40l. and by the statute for knights, a 2. Ed. 2. cap. 1. such as had 20l. per annum in fee, or for life, might be compelled to be knights; which statute is repealed by 17 Car. 1. cap. 20. Stew in his Annals, p. 285. says, there were found in England, at the time of the Conqueror, 6021 knights fees, according to others 6201; whereas the re- ligious houses, by their foundation, were only 1100, reckoned in 28015. Off. carucati terrae fuit faciunt feodum uniis militis. Mon. Angl. 2. pag. 825. a. This of you may read more in Seldeis's Titles of Honour, fol. 691. and Bradton, lib. 3. tract. 1. cap. 2. See Coke in Litt. fol. 69. a. A knight's fee contained twelve plow-lands, 2 Parli. Inf. 1. cap. 3. a term, contain 24 acres, a virgata terra make an hide, and five hides make a knight's fee, whose relief is five pounds. Cowell, ed. 1727.

Knights of the Garter. (Equites Garteri, or Peri- feillos.) Are an order of knights first created by King Edward the Third, after he had obtained notable victories, who, for furnishing of this honourable order, made a choice out of his realm, and all Christendoms, of the left and most excellent renowned knights in virtue and ho- nour, befowing this dignity on them, and giving them a bluegarter, decked with gold, pearl, and precious stones, as a buckle of gold, to wear daily on the left leg, a kirtle, a crown, cloak, chaperon, a collar, and other stately and magnificent apparel, both of fluff and fashion; exquisite and herocical to wear at high fealls, as to high and princely an order was meet. Of which he and his suc- cessors, Kings of England, were ordained sovereigns, and the right fellows and brethren, to the number of two only.

Knights of the Bath. See the antiquity and cere- mony of their creation in Dagdul's Antiquities of War- rants, p. 52. After the war was over, and they were from bathing the night before their creation; their place is for the knights bachelor, and after baronets. This order was re-established by King George the First in the year 1753; who erected the fame into a regular military order for ever, by the same and title of The order of the Bath, to be bestowed, by the king's grace, on deserving officers.

Knights of the Chamber. (Militet Camarum.) Men- tioned in 2 Iff. fol. 666. and in Rot. Pat. 29 Edu. 3. par. 1. m. 29. Seem to be such knights bachelors as are made in time of peace, because knighted commonly in the King's chamber, not in the field, as in time of war.

Knights of the Garter. (Equites Garteri, or Peri- feillos.) Are an order of knights first created by King Edward the Third, after he had obtained notable victories, who, for furnishing of this honourable order, made a choice out of his realm, and all Christendoms, of the left and most excellent renowned knights in virtue and ho- nour, befowing this dignity on them, and giving them a bluegarter, decked with gold, pearl, and precious stones, as a buckle of gold, to wear daily on the left leg, a kirtle, a crown, cloak, chaperon, a collar, and other stately and magnificent apparel, both of fluff and fashion; exquisite and herocical to wear at high fealls, as to high and princely an order was meet. Of which he and his suc- cessors, Kings of England, were ordained sovereigns, and the right fellows and brethren, to the number of two only.
Antiques of the Later (Militia continentis.) Otherwise called Knights of parliament, are two knights or gentlemen of worth, chosen upon the King's writ, in pleno comitato, by the freeholders of every county that can dispense 40 s. per annum, ann. 1 Hen. 5. cap. 1. and 10 Hen. 6. cap. 2. who are in the honour of Knights of the Garter, and fourteen of the secular canons who are priests, or must be within one year after their admission; thirteen vicars, also priests, and twenty six poor knights, that have no other sustenance, or means of living, but the allowance of this house, which is allotted to them in respect to their daily prayer. These are also certain officers belonging to this order, viz. The prelate of the garter, which office is inherent to the bishop of Wim- chester for the time being; the chancellor of the garter, the registrator, who is also dean of Wimchester; the principal king at arms, called Garter, whose chief business is to manage and marshall their solemnities at their yearly feasts and installations. Lastly, The usher of the garter, who is also the usher of the black rod. The site of this college is the castle of Wimchester with the chapel of St. George, erected by Edward the Third, and the chapter-house in the said castle, and their solemnity upon St. George's day. Camden faith, this order received great ornament from Edward the Fourth, Fern's Glory of Generosity, pag. 120. And that most pious Prince Charles the First, as an addition to their splendour, ordered all the companions of the order to wear on the left side of their upper garment, the badge of the Order of the Garter. There are forty miles round about are cast beams of silver like the rays of the sun in full luster. See CARL. Cosewell. ed. 1727.

Antiques of the order of St. John of Jerusalem, Milities Sancti Johannis Hierosolimitani, were an order of knighthood, that began about the year of our Lord 1090, Henor being pope. They had their denomination from John the charitable patriarch of Alexandria, hough vowed to St. John the Baptist their patron: Fern's Glory of Generosity, pag. 127. They had their primary abode at first in Jerusalem, and then in the isle of Rhodes until they were expelled thence by the Turks, anno 1261. Since which time their chief seat is the isle of Malta, where they have done great exploits against the infidels, but especially in the year 1554. They live after the form of friers, under the rule of St. Augustine, of whom mention is made in the statute 25 Hen. 8. cap. 2. and were subject to the king of France, and prior that had the government of the whole order within England and Scotland, Reg. Orig. fol. 20. and the ref prior in England, and fake in the Lords house of parliament. But towards the end of Henry the Eight's days they in England and Ireland, being found over much to their injury against the King, were supprest, and their lands and goods given to the King, by the 32 Hen. 1. 24. For occasion and propagation of this order more specially described, see in the treatise, intituled, The Book of Honour and Arms, lib. 5. cap. 18. written by Mr. Richard Fawcett. Cosewell. edit. 1717.

Antiques of Malta. See Knights of the order of St. John of Jerusalem.

Antiques of Rhodes. 33 Hen. 8. 2. 24. See Knights of the order of St. John of Jerusalem.

Antiques- prior. (Servitium militare,) Was a tenure, whereby several lands in this nation were held of the King, which drew after it howage and service in war, &c. &c. &c. &c. by the right of the house, and of all contracts made within the same house, where to one of the house is a party. Reg. of Virt. fol. 185. a. and 191. a. and Spelman's Gloss. in race Marschall.

Antiques of Wimchester. 33 Hen. 8. 2. 24. See Knights of the order of St. John of Jerusalem.

Antiques- prior. (Servitium militare,) Was a tenure, whereby several lands in this nation were held of the King, which drew after it howage and service in war, &c. &c. &c. &c. by the right of the house, and of all contracts made within the same house, where to one of the house is a party. Reg. of Virt. fol. 185. a. and 191. a. and Spelman's Gloss. in race Marschall.
LABE, The narrow slip of paper or patchment affixed to a deed or writing, for an appending seal, is called a "labil." So any paper annexed by way of addition or application to a will or testament, is called a codicil or laetus.

Cowell, edit. 1727.

LABINA, Watery land; in qua facile labitur: We read it in the Manifistum, 2 tom. pag. 372. "Jamqvus divi

Labinarit", "Procefs, Commissions Their..."

Shall. See Bema.-lar.

LACTEIS, is a word mentioned in Democritus book, and there signifies a fathom. Cowell, edit. 1727.

LACHES, (from the French lache, id. sft., laxare or licere, licet, and signifies slackness of negligence, as appears in the act. 20 Geo. 2. c. 6, 7, where slackness of entry is nothing else but a neglect in the heir to enter; and probably it may be an old English word; as when we say, "there is laches of entry, it is all one as if we should say, there is lack of entry; and indeed it hath no other signification; for so it is used, Litt. ed. 176. and Old Nat. Brev. s. 110. Where a man ought to make or do a thing and he makes or does it not, one cannot have an affine of his laches, but must take an action upon the case. See Coke on Litt. s. 246 and 380.

LAD, A defect in the weight of money: Adjussum (of the maria quanto verba numera curset, unde quantitatis libra fit L. 2. 2. 45, 2. 2. 6. Qua unum latus, qua ibus quantum levat, vis fignifies qui plus laboraverit, perferverer & reddatur, &c. From hence we derive the word lack. Du Frenne.

LADA, A lade, lath or court of justice, from Sax. ladan, to convene or assemble. Hence the annual court at Dim-Church in Romney-March held about Michaelmas, for the election of a bailiff and other officers, is called the lath, and Dim-churb-lath. See Leis.

Lada, A purgation by trial, from Sax. lidan, to purge by sublimation to any legal method of acquittal. Hence the lada simplex, and the lada triplex, or lada plena among our Saxen ancitlers, mentioned in the laws of King Ethelred, and Confessor. See Slack.

LADA, A lade, load or course of water. -- Ex parte felicit orientali navigii vel lades uffici ad locum qui dictius Gangesfeda. Hiftor. Ramef. edit. Gale, cap. 113, whic... navigation is properly navigarium; and Speelman tells us, that lada is a canal to carry water from wet grounds, but it sometimes signifies a broad way, viz. unde pluvium fuit inter esse, &c. vix. Quod uiner lada quae monachi fecret- in ilia maris flabaturam, excepta illa magna lada unde vadis ad Wilhelhamp, &c. per quam monachi addunt lapsides ad constructionem monasterii. Manafon. i tom. pag. 854.

Lede, i.e. the mouth of a river; from the Sax. ladan, purgarre, because the water is there clearer; from hence Credendale, Lecblade, &c.


LADONWICH, is derived from the Saxon Iacedowm Duno... & fase protrude, infidulentia ergo Dunoium, a brenyng our Lord and Master. In the laws of Henry I. cap. 14. Quaundam placita emandario, (i. Quaundam cirrino exsperii) non pagiari, hubreth, bernet, openbeche, ebrmar... ladesuife, which word is also found in Consta... by which names some have written corruptly lardishfe. Cowell, edit. 1727.

LAGA, (lex.) The law, Legam Regis Edwaidi roh... cum illis emendationibus, quibus pater mova om... emendavit, says Magna Charta. Hence we deduce Saxo... Morgen-las, Danem.-lag, &c.

Lagah, A fall, was that right which the chief lons of... to cast than on the violence by the fire; but it was also signified: right which any one had to goods which were fish-tweke... and floating in the sea. Thus Bracton, vil. Quae... in more longus a litteris inventorum, ita ut conficirienum...s juventus pratis, unde stultus huftis dicitur, et dicetur a nonntibus lagius. Lib. 3. cap. 2. But now lagan is taken for goods sunk in the sea, from Sax. Ligan, cakare, & non a legenda. See Lagon.
Proclamation upon an ejection to be awarded into Lanca-
shires, 5 & 6 Ed. 6. c. 26.

Lands freed from the dutchy, reunited to it, 2 &
3 Pk. & Mari. c. 20.

Chancellors of takings, county palatine may
grant commissions to take affidavits, 17 Geo. 2. c. 1.

A quay to be made at Lancaster, 23 Geo. 2. c. 12.

Regulations of returns in Chrever and Lanca-
shire, 22 Geo. 2. c. 46. sect. 35.

Laud (Terre) In a general and legal signification, in-
cluded not only in the lands of grounds, as meadows, pa-
ture, arable, wood, &c. but houses and all edifices what-
soever; but in a more restrained sense it is taken only for

Laws, or tenures. See fywel, gywel, yard, &c.

Land, A lawn or open field without wood. Cewell,
ed. 1777.

Landvoc, A charter or deed whereby lands or ten-
ements are given or held. Cit Anglo-Saxonis chartas & in-
strumenta nuncupatorum, praediorum jussiones, juræ & fœ-
imates continentia, says the learned Spelman. Cewell,
ed. 1777.

Land-lease, An ancient customary fine, paid either
in cattle or money at every alienation of land lying in
some peculiar manor, or the liberty of some borough.
As at Maiden in Essex, there is yet a custom, that for
several houses and land folded within that borough, thir-
ten pence in every mark of the purchase-money shall be
paid to the town; and this custom of land-lease they
claim inter alia, by a grant made to that town by the
bishop of London, Anna 5 Hen. 6. Somner in his Saxon
Dictionarium says, Land-lease oft forfexe pretium fundi
poto datum vel debitum. The word is also read in Spel.
de Concil. vol. 1. fol. 502.

Lanber, A ditch made near wet lands to receive
the water, and carry it into the sea: Vira judicia & auordu
faciat de villis, landis & waternatis.

Landfretus, (Landfretus) The lord of the soil, or
the landlord: From the Sax. land, terra, & rics, re-
tor. Et amoni emat fì alam 12 ris dimidium Landfretico,
dimidium Hemptonic, says Lin. Ethelred, cap. 35.

Landorganum, Was one of the inferior tenants of
a manor. Coftamarius genus sui inferiorum tenantium
mancii, says the learned Spelman, who adds,—Oscar-
rus vox in coftum, de Heham.

Lan-deable, Is a tax or rent issuing out of lands, ac-
cording to the customs of the land, the king having offered
a tract of the kingdom to every house, or to every
house, and a rent given for it: Cuan de leable, de Leable.

This landgavel or landable in the register of Domes-
day, was a quit-rent for the site of a house, or the
land whereon it stood, the same with what we now call
ground-rent. — Térmus Hali per hactare in cnotated XXX
manos præter jam baliam & duas ecclesias & dimidium
— & super maximis habitat locis simul & præter hos de
unæquos, unus dominium, id eft, landable, Domesday.

Landlords, (Agri mensæ), Measurers of land, so
called of old.

Landtenants, Those services and duties which in
the Saxon times were laid upon all that held lands, which
were three obligations called trimda necessitas, expedi-
tion, burgbrote and bigebrote: Which duties the Saxons
did not call servitut, because they were not feudal servities
arising from that servitude of the owners, but landtenants,
rights that charged the very land whatever did thereto set
forth, churchman or lazman. Vide Spelman of Feuds, c. 10.

Landlord. See Domesday, Lease, Rent, Tenant.

Landman, Terricole, The terræ-service.

Landster, The ancient method of taxation was by
sokeage, which was on lands held by knight-tenants,
and by tallage on the cities and boroughs, and it was
made
made in this manner: When the King wanted money for his wars, those tenants that did not attend him in person, paid him an aid, and the aid was affiessed before the justices itinerant. It was generally a gift of all the inhabitants as a body corporate; if they did not give according to the wants of the King, the30 tenants were intimated; and if there were any forfeitures of their charters, quo warranto came out, to seize their liberties into the King's hands. But Ed. 1. found this way of taxing by escheate and tallage to be very incom- plet; because wars were drawn out into great length and expense; and therefore he formed a method by which the tenants in capite that held great baronies, and were called the barons majors, (the now peers of parliament) and the representative of the baronies minors and of several corporations, viz, the citizens and burgesses, of whom he made one body; which now composes the house of commons. Gilb. Treat. of the Excheq. 1592.

King Edward the Fifth granted the people Magna Charta, which they had long contended for, and also the charter of the forefetis; and for Magna Charta they granted the King a fifteenth, by the name of Quindecimam partem omnium baronum; so that instead of particular affiessions in each county, there was one uniform fifteenth of all their substance: This fifteenth seems to have been at first made out of the ecclesiastical tenth; for the popes claimed the tenths of all benefices; it was therefore easy to know, by the popes' collections of his tenths, what was the value of every ecclesiastical bene- fit. King John, in his fifth year, made the tax, and the fifteenth must be 14. 4d. The benefices consisted of the glebe and the tenth part of the town- ship; therefore by the value of the benefice, deducting the glebe, they knew the true value of the township, and how to set a fifteenth upon it: So that the fifteenth of the common tax in each county, was set by the King's taxors and collectors under the act of parliament; and commissaries were granted to the taxors and collectors of them under the Great seal: but in collecting of the fiveeaths the sums only appeared in the books below. And the collectors of every township, either returned their collection into the Exchequer, or else there were head collectors for the whole county, who returned it thither; there were likewise commissaries appointed, to superintend such taxation and collections: But about the time of Edward III. there were certain established sums set upon every township; and so, as the King's wants increased, they gave one, two, or three fifteenths. Gilb. Treat. of the Excheq. 1617, 194.

We find in the times of Henry the Eighth, Queen Eliz- abeth, and King James the First, that they raised both subsidies and fifteenths; this was, because the value of things increased, and therefore the old fifteenths were not according to the then true value of townships. And therefore they contrived that the subsidy should be raised by a pound-rate upon lands, and likewise a pound-rate upon goods; and we find in the subsidy 4 Car. (which is said to be the greatest subsidy that ever was given, and which paid upon the petition of rights) there was 41. in the pound laid upon land, and 21. 8d. upon goods; now these rates were taken to be the 2. 2. 8d. which was upon goods to two fifteenths; but in this they had no regard to the old rates made in the tax- book of the several townships, otherwise than to discover the value of the lands; but a method is chalcked out by the act of parliament to appoint commissaries, affiectors, and collectors in order to rate and get in the fait sub- sidie. This was found very inconvenient, because the commissaries used to be favourable to their own country, therefore it was found necessary to revive so far the ancient method, as to appoint a certain sum; and in the time of the civil war, the long parliament would not settle any personal commissaries, but the appointment of commissaries was made in the act itself: And in this new manner of taxing, they appointed the sum to be levied on each particular county, in the act itself; as well as the commissioners names, and where to levy it: And the six associated counties, viz. London, Middlesex, Kent, Suffolk, Surrey, and Hertford, being not soopiled and pillaged in the civil wars, and more hearty to the parliament inter- est, were taxed higher than any other counties in England. Gilb. Treat. of the Excheq. 194, 195, 196.

The temporality and spiritualty were taxed in the same manner as to their personal estate, but as to their real estate, what was given in conviction excused their tax quod their spiritualities. The commissaries for executing the act, were appointed by the Lord Chancellor, Lord Treasurer, or other great officers of the Crown, or any two members of the Lord Chancellor being one. Gilb. Treat. of the Excheq. 195, 198.

The present land-tax, tho' it follows the plan of the subsidies, viz. in taxing so much on the personal, and so much on the real estate, yet it differs in two material circumstances, viz. that there is a sum imposed on each particular county, and that the commissaries are not to execute the act itself; this came in in the time of the civil war, in this manner; they had first taxed according to the pound-rate, but when the zeal of the people fell off, they found it necessary to set a sum upon each particular county; and so they taxed them according to the highest sum that had been imposed in such counties, and they being then in opposition to the Crown, they named the commissaries in the act itself; and this way of taxing was afterwards followed after the reformation, because they found it for the sake of the Crown to name particular sums in the act of parliament, and then they named commissaries also, who were to assess and rate each particular inhabitant. The commissaries by the subsidy, were duly to execute that act; but by the land-tax they were directed in a particular manner how they should do it: that is to say, by making the distribution of the particular sum upon each parti- cular hundred, lathe and wapentake; but by both laws, the commissaries of the respective counties were not to act out of their dioceres. The commissaries by the land-tax are to give a note to the receiver general, of the names of the acting commissaries, and sums in each division. We do not find this clause

4
LAN

the old subfidy law, because it was not necessary, here there was not a particular sum imposed on each
mony. The commissioners, both in the subfidy and
nd-tax, were to infuere their precepts to the confidences
of other inhabitants, and to appoint affiffants; and by
hth laws, the commissioners are to give a certificate of
nt, and to return such affiffants to the commissioners; who by the land-tax were to return
the names of the creditors. And by both laws, the
fons aggraved might appeal from the affiffants to the
ommiffors; and also flock upon land is excepted from
yng as personal effects. Gilb. Treat. of the Excheq.

By the subfidy law, the commissioners appointed coli-
ors; but by the land-tax, the affiffors brought in
ames of the creditors; because the place was answer-
for the sums so affiffed, until they were paid in to
receivers general; and therefore it was necessary that
affiffors should appoint creditors: But by the subfidy
law, there was no particular sum locally fixed; and
therefore the creditors were appointed by the commis-
niffors, who acted in behalf of the Crown; and the
fors names were returned in, by both laws, to the
ceivers general, or high collectors; and this disposition
for the receiver might know in whose hands the
oney was. In the subfidy, the commissioners appointed
he high collectors in each thire and division, to whom
sub-collectors were accountable; and the high col-
fors were accountable to the Exchequer; and one du-
cate of the affiffants of each thire or division was given
r into the Exchequer; to be a charge on the high
ollectors receipt: But according to the
me of the land-tax, the receiver is now appointed by
Lord Treasurer; and by this law, a duplicate of each
icular division is to be given to the receiver general,
taxed every other to be returned to the Exchequer; the du-
that returned into the Exchequer, to charge the re-
civer general. Gilb. Treat. of the Excheq. 205, 201.

The high collectors by the subfidy law, gave security to
the commissioners by recognizances, to answer the mo-
y by them received; but now, the receiver general, by
conftitution of the treasury gives security to the crown.
the subfidy law and land-tax, the under-collector was
distain the parties refusing to pay the sum affiffed; and
by the subfidy law, the under-collectors paid in the
oney collected to the high collector, who was an ac-
countant at the Exchequer; but by the land-tax, the
money is paid direct to the receiver, and therefore, the
accountant at the Exchequer. If the collectors
not pay in the money they had collected to the re-
civers, the commissioners were to imprison them, and
fine their effects; but if the proportion was not an-
swered, the receivers were to answer for the deficiency
the commissioners. By both laws, the collectors had
receipts and affiffments delivered; and, under such pre-
cepts, had authority to detain the lands and goods of the
forso affiffed, by virtue of the act. By both laws
they were to be taxed for goods, in the place where
were dwelt. By both laws the distress was to be sold
four days; by the land-tax, in four days: And for
except or refusal to pay, and failure of distress, the party
to be imprisoned. By the subfidy law, all the commis-
niffors joined in one certificate; but now the commis-
niffors, in each division return their effects, which are a
charge upon the receiver general; but in the land-tax, if
non-payment in any place be certified by the receiver
nder his hand, Exchequer procures to subjoin against the
ng commissioners. By the land-tax, if land doubly
axed comes into protestant hands, and they get a cer-
tificate from the commissioners, and prove the truth of
the certificate before the receiver general, then, if the
court of Exchequer is impowered to discharge such
from the parish or township in which the lands lie,
and that discharge is carried to the house of commons, in
order to be discharged out of the general fund the next

LAR

land-tenant, is he that actually possesses the land,
or hath it in manual occupation. 14 Ed. 3. fl. 5.
cap. 3. 23 Ed. 3. cap. 1. 26 Ed. 3. fl. 5. cap. 2.
See Largentenant, and 12 Rich. 2. cap. 4. 4 Hen. 4.
cap. 8. It is joined with this word paffifer, as synonymous.

Langemann, Item in ipsa civitate erant 12 Langem-
manni, i. e. Habentes socem & fecam. Domeshy, tit.
Lincolnesire. Sir Edward Coke writes them Lamemanni,
and interprets them lords of manors, Habentes socem &
seam de tenementis & dominibus suis. 1 Inst. fo. 3. a.

Langelum, An under-garment made of web, for-
temerly worn by the monks, which reached down to
their knees; so called, because Lanka ft. We read it in
the Mozif. 1 tom. pag. 410. Ad uflrindam uetem suti-
plum, &e. de langoela & anna lenta.

Lanis de certentis Walliae tracreundis oblique
riflum, &c. is a writ that lieth to the customer of a
por, for the permitting one to pass over woods without
custom, because he hath paid custom in Wolfe before.
See the Regifter, fol. 279.

Lantrerum, The lantern, capola, or top of a steeple.
Cowell, edid. 1727. —— Walterus Sylivano Episcopus
Durhamnsi (ello 1658) magnum partem campitelli, vulgo
lanterii, ministcrii et ecclesiae principalis et confessoris
pag. 775.

Lan tiger, A fort of base coin. Cowell, edid. 1727.

Lapis calaminaris, To what duties liable on expor-
tation, 4 Will. & Ma. c. 5, sect. 2. 8 & 9 Will. 3.
c. 20, 29.

Lapis marmoreus, A marble stone. Qui quidem
Henricus de Clifif (clericus retvulium) in magno aula
Wetmin, apud lapidem marmorium in prorsum duodecim
cancelarii sacramentum, &c. Clau. 18 Edw. 2. in 1.
doro. This marble stone is about 12 feet long and
3 feet broad, and remains to this day at the upper end of
Wetminister-Hall, where there is also a marble chair pla-
ced at the middle of it, in which our Kings anciently
fate at their coronation-dinner, and at other times the Lord
Chancellor; but over this marble table and chair, are
now erected the courts of Chancery and King's Bench.
See Orig. Jurid. fol. 27.

Lapis petris, The same with Rutilum paris, Du
France.

Lapiis, (Lapis,) Is the omission of a patron to pre-
ent to a church, within six months after voidable; by
which neglect, title is given to the ordinary to collate to the
said church: We say, that benefit is in lapis or lapifer,
whereunto he is entitled, which is occasioned from the
ried his opportunity. 13 Eliza. c. 12. This lapsis happens,
when as well the patron is ignorant of the avoidance, as
when he is privy, except only upon the resignation of the
former incumbent, or the deprivation upon any cause pre-
ndered in the flat, of 23 Eliza. 12, Pann in cap. Quia
deprivationis est, non est dictio frequent; &c. In which
cases the bishops ought to give notice to the patron.
No lapis shall run against the King, 12 El. 2. fl. 1.
The King's ancient right to present, in case the ordi-
nary did not collate within one month after the
fix months expired, 25 Ed. 3. fl. 6. 4.

No lapis was ever given to the patron on a depri-
vation, if6 folio. 13 Eliza. c. 12. fl. 8. or on avoidance
by simony, 31 Ed. 6. fl. 7, or on a deprivation by
virtue of 13 & 14 Cor. 2. c. 4. sect. 16. See Adovue,
fon, Peragnotive, Prefentment, Simony.

Larcrip, (Ir. larcon, Lat. larconium) Is a theft
of personal goods or chattels in the owner's absence; and
in respect of the thing stolen, it is either great or grand,
or small; grand larceny is when the things stolen, thofe-
verally, exceed the value of 12 d. petit larceny is when
the goods stolen exceed not that value. Cowell.

A peron who steals the goods of another, let the value
of them be never so small, is guilty of felony; but it is
said to be no felony for one reduced to extreme necessity
to take fo much of another's viftuals, as will save him
from starving; but if such necessity be owing to his un-
thriftiness, it is far from being an exceife. 1 Hawk. P.
C. 93.
But here we must observe the difference between grand and petit larceny, which is again divided into simple and mixt larceny: Simple grand larceny is the felonious and fraudulent taking and carrying away the personal goods of another, not from his person, nor out of his house, where the goods are above the value of twelve pence, but if of that value, or under, then it is petit larceny: if from his person, or out of his house, it is called mixt larceny, but hath no greater degree of guilt attending it at Common law, than simple larceny, for in both cases the offender was allowed the benefit of his clergy, but is at this time in several inclusions excluded by acts of parliament. S. P. C. 27. Cram. 33. H. P. C. 74.

1 Haw. P. C. 97.

If two or more persons together steal goods above the value of 12 d. every one of them is guilty of grand larceny, for each person is as much an offender, as if he had committed the fact alone. S. P. C. 24. Cram. 35.

H. P. C. 70.

Also if one at several times fleale several parcels of goods, each under the value of 12 d. but amounting in the whole to more, from the same person, and be found guilty thereof on the same indictment, he shall have judgment of death as for grand larceny. S. P. C. 24. Cram. 26. H. P. C. 7.

1 Haw. P. C. 95.

If one be indicted for flealeing goods to the value of ten shillings, and the jury find specially that he is guilty, but that the goods are worth but ten pence, he shall not have judgment of death, but only as for petit larceny. S. P. C. 24. Cram. 35.

H. P. C. 70.

All these are under a natural disability of distinguishing between good and evil, as infants under the age of discretion, idiots and lunatics, are not punishable by any criminal prosecution whatsoever, and consequently can't be guilty of felony. H. P. C. 10. 1 Haw. P. C. 2.

Also a false cozen is so much favoured, in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft in company with, or by coercion of her husband. Keelyg 31. S. P. C. 26. 1 Haw. P. C. 2.

But if the be guilty of treason, murder or robbery in company with, or by coercion of her husband, she is punishable as much as if she were sole. S. P. C. 65. 1 Haw. P. C. 2.

Also a false cozen may be guilty of larceny, if she of her own voluntary act, or by the bare command of her husband, fleale the goods of a stranger, but not if she fleale her husband's, because a husband and wife are confident but as one person in law ; and the husband by endeavouring his wife at the marriage with all his wordly goods, gives her a kind of interest in them; for which cause, even a stranger can't commit larceny in taking the goods of the husband by the delivery of the wife, as he may by taking away the wife by force, and against her will, together with the goods of the husband. S. P. C. 65. 1 Haw. P. C. 2.

Haw. P. C. 2, 93.

1. Of what nature the things taken must be, to constitute the offence felony.

2. How far the goods ought to belong to another; and what shall be deemed a felonious and fraudulent taking, and carrying away.

3. Where the offender is or is not excluded his clergy, or is to be transported.

1. Of what nature the things taken must be, to constitute the offence felony.

Here it may be proper to take notice, that in the times of military tenures every tenant was obliged to attend in the camp, and there being no provision made out of the publick flock for them, as there is now-a-days for our mercenary soldiers, it was necessary for every freeman to carry with him his own provision; which obliged them to a very fever and rigid justice upon all persons who should violate any man's property; otherwife camps would have been scenes of intolerable violence, and some man would have perished by his neighbour's sword, and not by his enemies. Hence they learned the infliction of punishing theft by death, and from thence they derived it into our civil law, in which consisting of the fame orders and conditions of offence, it was necessary that the same measures of justice should be the same for a man in his own house and in the camp; for they could not understand that a man should be punished otherwise in the camp than in the civil state, they thought justice was the same, and could not alter it with the deviation of countries and places; and therefore it is that in this punishment our law differs from the Roman and Mo- lasses, which only obliged those for offenders to the restitution of the goods, and custom hath approved the method; for should we admit a restitution from such profligate offenders, we should hazard the end of rapine and violence. S. P. C. 25. See Excd. xxii.

Hence we have the reason of the distinction between the real and personal property, and why our Common law does not punish the fencing of corn or grass growing, or apples on a tree, or lead on a church or house with death, because these never came under the camp discipline; and therefore it was not necessary to carry this fort of property with such fanguinary laws, where the redress may be by a civil action. 12 Att. 32. Br. Att. 37. S. P. C. 25. 1 Med. 89. Allen 83. 2 Keb. 517. 1 Bent. 167.

But if they are fevered from the freehold, whether by the owner, or even by the chief himself, if he be fevered at one time, and then come again at another time, and take them, this is felony. 1 Bent. 187. 1 Haw. P. C. 93.

If a man take away a box of charters, this is not felony, because they are the muniments of the freehold, and relate to the estate at home, and not to the provisions that were used in supplying the camp abroad. 3 Lef. 109. H. P. C. 66.

But it is said, in Hale, to be felony to take away an obligation for money; and the reason hereof may be, because securities might be taken to answer money at the camp from a neighbouring freeholder, and therefore there was the same reason they should be within this provision, as that other chattels should be protected by the obligations being equally valuable. H. P. C. 67.

But her Hawkins, the things taken ought to have some worth in themselves, and not to derive their whole value from the relation they bear to former time, which cannot be stolen, as paper or parchment, or charters, and other proper securities. As charters, there are written assurances concerning lands or obligations, or covenants, or other securities for debt or other chose in action. As the reason, he says, whereof there can be no felony in taking away any such things, feems to be, because, generally speaking, they being of no manner of use to any but the owner, are not supposed to be so much in danger of being stolen, and therefore need not be provided for in so strict a manner, as those things which are of a known price, and every body's money; and for the like reason it is no felony to take away a villain or an infant in ward. 1 Haw. P. C. 93.

But now, by the 2 Gra. 2. cap. 25, it is enacted, " That if any person or persons shall steal, or take by robbery, any Exchequer orders or tallies, or other orders, initing any other perfon or persons to any ananity or trust in any parliamentary fund, or any Exchequer bills, Bank notes, East-Sea bonds, East-India bonds, dividend warrants of the Bank, South-Sea company, East-India company, or any other company, society or corporation, bills of exchange, many bills or debentures, goldsmiths notes for payment of any money, or other bonds or warrants, bills or promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation; and putting away any of the said particulars are termed in law a chofe in action, it shall be deemed and confirued to be felony of the same nature and in the same degree, and with or without the benefit of the clergy in the same manner, as it would have been, if the offender had stolen or taken by rob-
L A R

ber any other goods of like value with the money due
on such orders, tallies, bills, bonds, warrants, debentures
or notes, respectively, or secured thereby, and remaining
unsatisfied; and such offended shall suffer such punishment,
and be mulcted and fined, and in the custody of such and such
and in the second, for falsifying bona fide & ecclesiæ, &c.
and a fortiori therefore it follows, that he who falsifies goods
belonging to a parish church, may be indicted for flealing
boca pareochianum; and it hath been adjudged, that he who takes off a thrown from a dead corps, may
be indicted, as having stolen it from him, who was the
owner thereof, or he or the dead man can have no property.
1 Haw. P. C. 94.
There is also a special case, in which a man may be
guilty of felony in flealing goods, the absolute property
whereof is in himself; as where one who has delivered
goods to a carrier or taylor, &c. afterwards with an
intent to claim such carrier or taylor, fraudulently and
secretly takes them away, Cre. Elin. 536. Mor. pl. 981.
Kitt. 70.
To constitute an offence felony, it is not sufficient
that there be a fraud and intent to steal, unless there be
also a taking, for all felony includes trepasfs, and every
indictment for burglary must have both the words seps et
aopportavi; and therefore if there be no trespasfs in taking
the goods, there can be no felony in carrying them away.
H. P. C. 61. 1 Hawk. P. C. 89.
Therefore if a person finds goods, and converts
them to his own use, anima fraudati, yet he is not guilty
of felony.
1 Inf. 108.
So if a person who has a limited property in the goods,
as one who has goods delivered to him to keep, a carrier
who has a box delivered to him to carry to a certain
place, or a taylor who has cloth delivered to him to make
into a suit of clothes from it, the party injured may feck
redresfs by civil action, and must abide the folly of
his own act in placing confidence in the person who
was guilty of the breach of trust. S. P. C. 25. a.
3 Inf. 108.
But though I lend a box to the carrier, and the
carrier falls it, this is not felony; yet if the box be
broke open, and the goods in it carried away, it is fe-
lon; for he hath property in the box to carry it to the
place appointed, but he hath no property in the goods in
the inside, for that I have referred in my own power,
having locked it up out of the power of the carrier to
whom it is committed, to any man to take it out of the
command of the thing to which he pretends; so if a carrier carries the goods to the place, and
then steals them, this is felony; because the property
is determined when the goods are come to the place ap-
pointed; besides, it is for public convenience that the
inside of the box should be considered; otherwise the
carrier might steal the things contained in the box, and
yet deliver the box itself, which would not be of very
Afr. 73.
He who hath the bare charge of goods, as a shep-
herd has of sheep, or a butler of plate, or that has only
the special use of goods, as a guerd in an inn, and not
the possession, may be guilty of larceny, in fraudul-
ently taking them away, for the offence comes as pro-
perly under the word seps, and the fraud is as secret,
and the villany more base than if it had been done by a
stranger. Mor 246. Phyn. 84. 1 Haw. P. C. 90.
If he who intending to steal goods, obtains a delivery
of them from the sheriff, by virtue of a reprieve, or by
way of execution of a judgment obtained by impostition
on a court, without any colour of title, by false affidav-
its, &c. he may be indicted as having feloniously taken
them; for there will not in such cases be excluded by
such shameful evasion.
3 Inf. 108. H. P.
C. 63. Kelyg. 43. 1 Sid. 254. Ryn. 256.
Also he, who steals goods from one who had stofe
them from me, may be indicted as having stolen them
from me; because in judgment of law both the posses-
sion and property of them was always in me; and for this
cause, he that steals goods in the county of A. and car-
ries them into that of B. may be indicted in either.
1 Haw. P. C. 90.
It was formerly a doubt, whether a lodger, by reason
of the special property he had in the furniture of his
lodgings, could steal goods in tenue absid but now by the 3 & 4 W'. M. cap. 9. it is enacted,
That if any person or persons shall take away with an
intent to steal, imbezil, or purloin any chated, bedding
or furniture, which by contract or agreement he or they
4 X

216
Where the offender is or is not excluded his clergy, or is to be transported.

By the Common law, a person guilty of any crime, which subjected him to the loss of life or member, was allowed his clergy, except in high treason and felony.

And therefore it may be laid down as a good general rule, that whosoever shall be found guilty of his clergy, as he is in petit treason, murder, robbery, burglary, arson, &c., that such denial must be grounded on some act of parliament, which excludes him from the benefit of it. H. P. C. 232. 2 Haw. P. C. 342.

It is also a general rule, that where an offence is made felony by statute, it shall have the benefit of clergy, unless expressly excluded. 2 Haw. P. C. 342.

Where clergy is allowable, those who stand mute, or challenge above twenty, or are outlawed, are as much indicted to it, as those who are convicted. 2 Haw. P. C. 343.

Also a statute, by taking away clergy from those who shall be found guilty, doth not thereby take it from those who stand mute, or challenge above twenty, or are outlawed; but a statute taking it from those who shall be found guilty, extends as well to those who shall confess themselves guilty upon record, as to those who shall be found guilty by verdict. 2 Haw. P. C. 343.

But what we are chiefly to notice here, are the several cases, in which by statute the benefit of the clergy is taken away from this species of felony called larceny: And first, by the 8 Eliz. cap. 4, it is enacted, That no person, who shall be indicted or appealed for feloniously taking any money, goods or chattels from the person of any other, privily without his knowledge, in any place whatsoever, and thereupon found guilty by verdict of 12 men, or shall confess the same upon his or their arraignment, or will not answer directly to the same, according to the laws of the realm, or shall stand wilfully, or of malice, or obtinently mute, or challenge peremptorily above the number of twenty, or shall be upon such indictment or appeal outlawed, shall be admitted to his clergy.

In the first of Ed. 6, cap. 12, and 2 & 3 Ed. 6, cap. 23, Horse-steelers are excluded the benefit of their clergy, and by the latter of the statutes it is enacted, That all persons feloniously taking or stealing any horse, gelding or mare, shall not be admitted to the privilege of the clergy, but shall be put from the same in like manner and form as tho' they had been indicted or appealed for felonious stealing of two horses, two-geldings, or two mares, or any other, and thereupon found guilty by verdict of 12 men, or confessed the same upon their arraignment, or stand wilfully, or of malice mute.

By the 10 & 11 W. 3, cap. 23. All persons, who by night or day shall in any shop, warehouse, coach-house or stable, or freely, or feloniously steal any goods, wares or merchandises of the value of 5s. or more, though such shop, &c. be not broke open, and tho' the owner or any other person be not in such shop, &c. or that will affright, hire or command any person to commit such offence, being thereof convicted, or attained by verdict or confession, shall stand mute, or challenge above twenty of the jury, shall be excluded from the benefit of the clergy.

And by the 12 Ann. cap. 7, it is enacted, That every person, who shall feloniously steal any money, goods or chattels, wares or merchandises of the value of 40s. or more, in or out of dwelling-house, or warehouses, therewith belonging, altho' such house or out-house be not actually broken by such offender, and altho' the owner of such goods, or any other person or persons, be or be not in such house or out-house, or shall affright or aid any person or persons to commit any such offence, being thereof convicted or attainted by verdict or confession, shall stand mute, or challenge above twenty of the jury, shall be absolutely debarred of and from the benefit of the clergy, &c. provided, that nothing in the afo shall extend to apprentices under the age of fifteen years who shall rob their masters as aforesaid.

By the 22 Geo. 2, cap. 5, it is enacted, That no person who shall be indicted for feloniously cutting and taking, stealing or carrying away of any cloth or woollen manufactures from the rack or tenter in the night-time, and thereupon found guilty by the verdict of twelve men, shall have the fame on arraignment, or will not answer directly to the same, belonging to the same, or any other, shall stand wilfully of malice mute, or challenge peremptorily above the number of twenty, or shall be upon such indictment outlawed, shall be admitted to the benefit of the clergy; and by the same act, to steal or imbray any of his Majesty's fall-cloth, cordage or any other of his Majesty's naval stores, is excluded the benefit of the clergy.

It is enacted by 4 Geo. 1, cap. 11, and 6 Geo. 1, cap. 23. 'That where any person or persons shall be convicted of grand or petit larceny, or any felonious stealing or taking of money, goods or chattels, either from the person of any, or from the house of any other, in the same manner, and who by the law shall be intituled to the benefit of the clergy, and liable only to the penalties of burning in the hand or whipping, (except persons convicted for receiving or buying stolen goods, knowing them to be Robyn,) it shall and may be lawful for the court before attained by verdict or confession, or any court, held at the same or at any other place, in the like authority, if they think fit, instead of ordering any such offenders to be burnt in the hand, or whipt, to order and direct that such offenders shall be fent, as soon as conveniently may be, to some of his Majesty's colonies and plantations in America for the space of seven years; and that all such owners or proprietors of such and every subsequent court, with like authority as the former, shall have power to convey, transfer and make over such offenders, by order of court, to the use of any person or persons who
who shall contract for the performance of such transportation to him or them, and his and their assigns, for such term of years; and shall be at liberty to take criminals, for which they are excluded from their clergy, and the King shall extend his mercy to them upon condition of transportation to any part of America, and such intention of mercy be signified by a principal secretary of state, it shall be lawful for any court having power to grant the benefit of a pardon, to order and direct the like transportation to any person, who will contract for the performance thereof, of any such offenders; as also of any person convicted of receiving or buying stolen goods, knowing them to be stolen, for the term of fourteen years, unless such transportation be general. Sums for such other time as shall be made part of such condition; and such person so contracting, and his assigns, shall have an interest in the service of the said offenders for such term of years: and if any such offender return into Great Britain or Ireland, before the end of his term, he shall be liable to be punished as any person attainted of felony, without the benefit of clergy, &c. provided, that the King may pardon and dispense with any such transportation, and allow of the return of such offender, paying his owner, at the time, such sum as shall be adjudged reasonable by any two justices of the peace, and the chief or any other justices shall be transported, and shall have served their terms, such services shall have the effect of a pardon, as for the crimes for which they were transported.

And it is further enacted, That every such person, or any such court shall order any such offenders to be transferred or conveyed, shall, before such offenders shall be delivered to them, contract with such person as shall be appointed by such court, and shall give sufficient security, to the satisfaction of such court, for the transporting such offenders to some plantation in America, to be ordered by such court, and the procuring an authentication certificate from the government of America, or of the said plantation, certified by the said justices to the next court, held with like authority, to be filed, &c.

And it is further enacted, That all charges, in or about such contracts, &c. shall be born by each county, &c. for which the court was held, and that the respective sureties shall pay the same, and that all securities for the clerk of the peace, &c. and the money recovered shall be to the use of the respective counties.

And it is further enacted, That the persons so contracting, &c. may carry such offenders towards the sea-port, &c. and that if any person shall refuse to deliver them, or to deliver them, shall be deemed guilty of felony without clergy; and that if any felon ordered for transportation shall be afterwards at large within any part of Great Britain, without some lawful cause, before the expiration of his term, and be lawfully convicted thereof, he shall suffer death without clergy, and shall be unable to buy such provisions, or coal delivery for the county where he shall be apprehended, &c. or from whence he was ordered to be transported, &c. and that the clerk of the affize, and clerk of the peace, where such orders of transportation shall be made, shall on request of the prosecutor, &c. certify such transportation, as a sufficient proof of conviction and order of transportation, to the justices of assize, &c. which shall be sufficient proof of such conviction and order of transportation. See Clergy, Felony, &c.

1. Lararium, The lorder, or place where the lord and meat were kept. Tenentes de Pidington environabant coram dicto domino de fine ubi emis fuit ad lararium domini. Paroch. Antiquit. pag. 496. Whence laridarius Regis, the King's lorder, or clerk of the kitchen. Cowell, ed. 1727.

Larding-money. In the manor of Bradford in com. Wilts, the tenants pay to their landlord a small yearly rent by this name; which is said to be for liberty to feed their hogs with the mast of the Lord's woods; the fat of a hog being called lord. This was called lararium in old charters, &c. de laminat laridri de Haga. Monast. 1 tom. 231. And safe called lord in the old charters of the chief of the lardery, &c. Regum laridarium suum. Endemus. lib. 3. pag. 66. It seems to have been rather a commutation for some customary service of carrying salt or meat to the Lord's larder. Cowell, ed. 1727.

Lariss, Is the French word for thieves. In the statute for view of frank-pledge, made 18 Ed. 3, the fourteenth article, to be given in charge at a leet, is of petty larcenies, as of geese, hens, &c.

Lassatting, Is often mentioned in Walsingham, and signifies allaffins or murderers, Ann. 1727.

Lait, (Sax.) Elefhan, coverts, let. (Fr.) Signifies a barren in general, and particularly a certain weight or measure. As a loaf of pitch, tar or oil, contains fourteen barrels. 32 Hen. 8, cap. 14. A loaf of hides or skins, twelve dozen. 1 Jac. cap. 23. A loaf of cod salt, twelve barrels. 15 Car. 2, cap. 7. A loaf of herrings contains twenty cates, or thousand; every thousand, ten hundred; and every hundred six scores; A loaf of cole-feet is ten quarters and a half; and the like of oats. A loaf of corn, or rape-feet, is ten quarters; in some parts of England, they reckon twenty-one quarters to a loaf of corn. A loaf of wood is twelve facks. A loaf of leather is twenty dickers, and every dicker ten gross, or of the weight of the landing of such offenders, &c. and their not returning by the willful default of such contractor.

And it is further enacted by the 6 Geo. 1. cap. 23. That the court may nominate two or more justices of the peace, for the place where such offenders shall be convicted, who shall have power to contract with any person or persons for the performance of the transportation of such offenders, and to order such and the like security, as the said former act directs, to be taken by order of court, and to cause such felons to be delivered to a such court, and such fear as is, according to the custom payable by the said pardon, to be delivered to the next court, held with like authority, to be filed, &c.

And it is further enacted, That all charges, in or about such contracts, &c. shall be born by each county, &c. for which the court was held, and that the respective sureties shall pay the same, and that all securities for the clerk of the peace, &c. and the money recovered shall be to the use of the respective counties.

And it is further enacted, That the persons so contracting, &c. may carry such offenders towards the sea-port, &c. and that if any person shall refuse to deliver them, or to deliver them, shall be deputed guilty of felony without clergy; and that if any felon ordered for transportation shall be afterwards at large within any part of Great Britain, without some lawful cause, before the expiration of his term, and be lawfully convicted thereof, he shall suffer death without clergy, and shall be unable to buy such provisions, or coal delivery for the county where he shall be apprehended, &c. or from whence he was ordered to be transported, &c. and that the clerk of the assize, and clerk of the peace, where such orders of transportation shall be made, shall on request of the prosecutor, &c. certify such transportation, as a sufficient proof of conviction and order of transportation, to the justices of assize, &c. which shall be sufficient proof of such conviction and order of transportation. See Clergy, Felony, &c.
Latin, or for Latin. But in the name of a writ, a复合 laltrarius, which entered now being corruptly so called for triftings or tittings. Those matters that could not be determined in the hundred court, were thence brought to the triburing where all the principal men of three or more counties, being summoned by the sheriff or the county bailiff, did debate and decide it; or if they could not, then did send it up to the county court to be there finally determined. Vid. Spelman's ancient Government of England. Cowell, edit. 1727.

Latinism, is used by Sir Edward Coke for an interpreter, 2 pat. Inf. fol. 51. It seems that the word is mistaken, and should be latiturn, because heretofore he that understood Latin, which in the time of the Romans was the prevailing language, might be a good interpreter. Camden agrees, that it signifies a Frenchman or interpreter, and says the word is used in an old inquisition. Britton, fol. 596, says that the word derived up corrupted from the Pr. Lat. lattitum, or latiturn. Cowell, edit. 1727.

Latin. Words which pass under the name of Latin, are of four forts. 1. Good Latin allowed by grammarians. 2. Words significant, and known to the lages of the law, but not allowed by grammarians, nor having any countenance of Latin; and these two are forts within 36 Ed. 3. 6. 15. False or incongruous Latin; this shall abate an original writ, but not vitiate any judicial writ, count, pleading or judgment, (for in all such cases false Latin shall be amended) a nulla fitisitor, it shall not afford or grant an any deed, &c. And therefore false Latin not false English will afford a grant or other deed, but in the intention of the party, as the word is used in an old act. Rept. 132, the second resolution in O'Flahert's case.

Stat. 36 Ed. 3. cap. 15. enacts, That all pleas which shall be pleaded in any court whatsoever within this realm, shall be pleaded, thewed, defended, answered, debated and adjudged in the English tongue, but entered and enrolled in the Latin. Howbeit, the laws and customs of this realm, as also the term and proccess, shall be held and keep as before this time hath been used. Resolved, that this statute as to the first branch was introductive of a new law, but as to the other branches they were a perfect and complete statute, of the due order of things: and before the conquest, the original writs, and all the process and proceedings upon them, were entered in Latin; and infinite records before this time are extant entered in Latin, and yet for the better illustration of the truth, a deed in English, Latin or Dutch, &c. may be entered either in a plea or special case. 10 Rep. 132. b. Mitch. 11. 12. R. R. O'Flahert's case.

False Latin shall not quash an indictment, nor abate any declaration; for altho' the original writ shall abate for false Latin, yet judicial writs, or a fine, shall not be impeached for false Latin. See 5 Gr. Rep. Long's case. But if the word be not Latin, nor a word allowed by the law, (a word, (as the artificer hath its proper terms) but be inoffensive; and if it be in a material point, this makes the indictment insufficient, as burglarlur, mordacium, and the like, are terms of art well known in the law; and therefore if these words, or the like, be mistaken in an indictment, so that there shall be there any illegible or illegible word, which is not Latin, nor any word known in the law, this will make the indictment insufficient and insufficient. See English.


The name of a writ whereby all men in personal actions are called originally to the King's Bench. F.N.B. fol. 78. And it hath the name, as supposing that the defendant doth hunt and lie hid; and therefore being served with this writ, he must put in security for his appearance at the day, for Lattiturns is an interrogative, animo f acundali credi et to esse volentes. But the true original of this writ was this; In ancient time, while the King's Bench was moveable, and followed the King's court, the affidavit was, upon commencing a suit, to fend forth a writ to the sheriff of the county where the action was, and the sheriff returned, Non est inventus in aliqua mar, &c. then was there a second writ filed forth, that had these words, Cam satisfactum est quod latitatum, &c. and thereby the sheriff commanded to attach him in another place where he may be found. Now when the tribunal of the King's Bench came to be fixed, the former affidavit or writ was held for a long time, first sending to the sheriff of Middlesex to summon the party, and if he could not be found there, then to apprehend him wherever; but afterwards, upon pretence of calling the subject, and expediting justice, it was contrived to put both these writs into one, and to attach the party complained of, upon a supposi or fiction, that he was not within the county of Middlesex, but lurking elsewhere; and that therefore he was to be apprehended in any place else, where he was presumed to lie hid, by a writ directed to the sheriff of the county where he is suspected to be. And by this time having united all the writs, the former affidavit or writ was held for a long time, for the bail of the King's Bench, in whose custody, when he be, he may be sued upon an action in that court. Cowell.

Latro, (Latrocinium,) He who had the fide jurisdic- tion in a particular place dia latens. "Tis mentioned in Leg. W. 1. viz. "Sintius quad aliud altit dignus faciam, telenum & latum, cum habeas conced. So in Ochter H. the bail of the King's Bench, in whose custody, when he be, he may be sued upon an action in that court. Cowell.

Lavatorium, A laundry, or place of washing. Then was it used for any person which, after having been one of a fraternity, was called a fraternity in the porch or entrance, where the priests, and other officiating members were obliged to wash their hands, before they proceeded to divine service. Hence in the statutes of the church of St. Paul in London, it was ordained, a iuris lavatorium in ostiolibus per ferventiam sanctorum faciat. Liber Statut. Ecel. Paul. London MS. fol. 59. 6. But it was commonly an ever.


Laudum, An arbitration or award. Welphing, p. 60. Cowell, edit. 1727.

Labinia, for Labina, Watry land, in quo quas sita labiurit. "Tis mentioned in Manafi Angl. 2. tom. pag. 372. In aquis, labinis, & marisj fertifici peritiandi. Laumergraps, (Mentioned in Lat. 7 Rich. 2. cap. 13. A king's bower, or weapons now disused, and prohibited by the late statute.

Lacubratus. In Glamorgan and some other part of Wales, they make a fort of food of a sea-plant which seems to be the ofyler-green, or sea liverwort. They call it Lower-bread. Near St. David's they call it Leuwen or Ewahowan, which I think they interpret blest.

Lauris, Thofe pieces of gold which were coined in the year 1619, with the King's head laureated, were commonly called Lauris, the twenty thilliam piece mark with xx, the ten thilling piece with x, the five thilling piece with v. Camdani Annal. Fac. 1. Mel. In this time also were coined to twenty-thilliam pieces with xx, and the word Lauris is used, among the strange and ignorant people of this kingdom, to signify any coinage or piece of money.
The Law

The Law of arms, (Lex armaturarum,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.

The Law of war, (Lex warum,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.

The Law of peace, (Lex pacis,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.

The Law of commerce, (Lex mercatoria,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.

The Law of nation, (Lex nationum,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.

The Law of state, (Lex regum,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.

The Law of church, (Lex ecclesiastics,) is that which gives precepts, both right and wrong, to all nations, and all nations, to all kings, to all kings, to all men.
and therefore from them. They were reduced to the state of freemen, and this is one reason why leases for years are considered as chattels, and go to executors. 3 Bac. Abr. 296.

Another reason was, because at first the leases were made but for a small number of years, (for my Lord Coke tells us, that by the ancient law of England, no man could have a lease for three years, or any part of the amphistoon) and the reason thereof seems to be, because the tenants were only made to serve the occussions and exigencies of the lord in cultivating and improving his demesnes, not to borrow money on, or raise portions for their daughters, or such other uses as are now made thereof; therefore there was no need to extend them to any great length of time, since they might be renewed as often as occasion required; besides, the lees, if they were evicted, being only to recover damages, it would have been fruitless to prolong leases for the term of 1000 years, when the persons who were to pay les was under such leases had no remedy for their damages but by recourse to the representatives of the tenant's heir. Co. Lit. 45. b. 4 Mer. 164, 293. 1 Vent. 53.

Alfo another reason might be, because the leases for years were under the power of the freeholder to destroy by a recovery, for the person coming in by the recovery, was fuppofed to come in by title paramount, and so was not bound or obliged by them, and by confequenf few would be willing to take leases for any long term, which they might fo easily be defeated of. 3 Bac. Abr. 296.

But tho' in the reign of H. 7, it was revofed, that the leefe should not only recover damages as a recompence for the poifeffion loft, but fhoould also recover the poifeffion itfelf: and the statute 21 H. 8. c. 15, gives the tenant the power to ftart a new action. Bac. tit. Leafe 226. F. N. B. 158, 220. Paugb. 127. 4 Co. So. 1 Lev. 46. 2 Med. 18.

And tho' at this day terms for years are multiplied to a much longer duration than they were formerly, and generally ready to recover the term itself, yet the fucceffion continues the fame; for besides the reafon already given, it would be inconvenient to have had no rule of property for short terms, and another for tho' that were longer, being all of the fame nature, and fill no more than leases for years; besides, the difficulty of fixing the just bounds to any precise determinate number of years, since one year is more or lefs, would have made very little difference in reason, were the bounds affixed to leases of never fo long a continuance and long or fhort are only terms of comparifon; as leve for forty years is long with refpect to one of eight or ten years, and yet fhort with refpect to another of a hundred; and that recovery be an uniformity in the law, all leases for years are held to be of let value than eftates for life, as being originally of much floffer duration, and alfo because they were under the power of the tenant of the freehold to deftroy, and therefore are confidered only as chattels, and cafu upon the execution. 3 Bac. Abr. 297.

1. Of what things lesves may be made for years.

2. Things necessarily required in every good lease; and ftatutes concerning lesves.
1. Of what things leases may be made for years.

After such time as leases for years began to be looked upon as fact and permanent interests, and that the lees so made were not to be defiled or destroyed, nor were poissions, against the acts and incroachments as well of the lees as of strangers, men found it their interest to improve and encourage this sort of property, and therefore extended it to all sorts of interests and poissions what­ever, being extended by that known rule, that whatsoever may be granted or parted with for ever, may be granted or parted with for a time; and therefore not only lands and houses have been left for years, but also goods and chattels, tho' the interest of the lees therein differs from the interest he hath in lands and houses for oet for years; for if one lease for years a flock of live cattle, the owner thereof the lees and the goods and chattels, the profits of them during the term; but yet the leas cannot not any revision in them to grant over to another, either during the term or after, till the leaseth re-delivered them to him, as he would have of lands in case of such lease for years, for the leaseth only a possibility of property in case they all outlive the term; for if any of them die during the term, the leessor cannot have them again after the term; and during the term he hath nothing to do with them, as consequently of such as die, the property eat absolutely in the lese; whether they live or die, let all the young ones coming of them, as lambs, calves, and kindred, be to the lees and the profits arising from the principal, since otherwise the leese would pay his rent for nothing; and therefore this differs from a lease of other dead goods and chattels; for there anything be added for the repairing, mending or improving thereof, the lees shall have the improvement thereof, and all additions, together with the principal, after the lease ended, because they cannot be fevered without destroying the principal; neither is the succession of onys, in case any of the old ones die, to be remitted to any corporation aggregate, whereas any in feoff, that feoffed shall be part of the same corporation, the in its public capa cany lived, but this being a lease of such and such individual cattle, when any of them die, the possibility of yeering property, which was left in the lees, is determined and at an end; but the leeseth in such cattle cannot ill, destroy, fell or give them away, during the term, without being an action of trespass, as it should seem; but in case of a lease of a house, together with gods, it is usual to make a schedule thereof, and affix to the lease, and to have a covenant from the lessee to deliver them at the end of the term, and without such yeerion the leeseth would have no other remedy but tro­ble or suit against the grantor of them after the term, as said in Book 300. Gish. 112. 1 Lea. 42. Gown 15. Co. 6 6, 17. Dyer 56. a. 110. a. 212. b. Bre. tit. Leaes 23. Bul­ly 7. Lit. 67. 1 Co. Lit. 57. a.

If one hath a corolory for life, he may let it to another, to the grantor himself; so may the grantee of house­holds, or hay-bote; but in case such lease be to the leeseth himself, rendering rent, he can only have them by way of renter, being to arise out of his own provoue, or is own land. Bre. tit. Leases 40.

But in lands, or other things of inheritance, as they may be granted or departed with for ever, so they may be a time, and consequently may be leased for years in all cases where no inconvenience or injury to the publick like to ensue; for then means private interests must give way to the publick; and what might otherwise in its own nature be secure and allowable, must upon that account be disallowed and blan condemned; wherefore it having been law for cattle for years, as is customary, if as such should go to executors or administrators; the old case wherein we find an objection to a lease for years is, that of the office of marshall of the King's pri­mas, for that being an office of great trust, concerning the administration of justice in the keeping of prisoners, if it could be granted for years, might be very prejudicial, by being in safe charge till the probate of the will or administration taken out; and if the officer should die incumbent, so that none would prove his will, or take out his administration, then there would be no officer at all, and executors or administrators would be in by act of law, without allowance of the court; also it might be a ques­tion whether such office should not be forfeited by outlawry, or be affected in the several courts of justice, and all inconveniences would follow, if such grant for years were allowed; for the same reason it was held likewise, that the offices of Cufnas Præviam, chirographer, clerk of the pipe, of the King's silver, or of the crown, remembrancer or chamberlain of the Exchequer, provosts, wardens, and other offices in the several courts of justice, could not be granted for years; and tho' the offices of thorp and cor­oner were granted for years, till restrained by 1 Ed. 3. c. 7. it was never debated what inconveniences might ensue by allowing thereof; and these reasons held equally good against granting the office of warden of the Fleet, or any other office.

1 Ed. 3, 13, 353. 4 Ed. 3, 153. 3 Med. 145.

And although it hath been resolved, that the office of the marshall of the King's Bench prono cannot be granted for years, yet it hath been held, that a lease thereof for years during the term of the grantor, as well as if the danger of the office's going to executors is avoided, which the book says is the sole reason why the office is not absolutely granted for years. 6 Med. 57. See (Parthial of the King's Brevile).

All it appears, that the dean and chapter of Waltham made a grant of a tenement in Kent, and the leese had committed several offences which amounted to a forfeiture, for which the office was forfeited, but no objection made to its being let for years. Reyh, 216. 2 Lea. 71. 3 Lea. 32.

But such an officer as do not concern the administration of justice, but only require skill and diligence may be granted for years; because they may be executed by de­puty, without any inconvenience to the publick: therefore where a grant for years was made of the office of garber of spicers in London, it was adjudged to be a good grant, or at least a good appointment for years, within the intent of the statute 1 Jac. 1, cap. 19. Hard. 46.

The office of printer was granted for years 6 Car. 1. and held a good grant, being but an employment: so the office of postmaster was granted to the Lord Stanhope for years, and held good. Hard. 352.

The office of regiller of policies of affurance in London concerning new policies was granted for years, and been, was granted, and adjudged to be a good grant; because it did not concern the administration of justice in any court, but required only the skill of writing after a copy: So the office of making and sealing fisher-man's was granted for years, and allowed to be good; and there several precedents are cited of other offices of a similar nature, in which it is said, that the safety of the realm was concerned, as the office of the warden of a haven or port by H. 6. of gun­powder, 1 C. 1. of making gunpowder by Car. 2. also offices concerning the trade of the realm have been granted for years; as 1 H. 7. of the exchange of money; 18 H. 8. of gaver; 17 Rich 2. of the marshall; a fea belongs to it, with which the officer is intrusted; of the letter office, 3 Car. 1. also offices in courts of justice have been granted for years; as the office of sur­veyor of the green wax, of the fixpenny write in Chan­cery and fisherman's, of comptroller and custome, and of making proclives in C. B. all this, and several others, have been granted for years; but no dispute having been made of the validity of them, how far some of them would hold at this day, may be a question. Hard. 354, 357. Dyer 39. 3 H. 146. 3 Lea. 50.

But where one made a grant for years of theeward­ship of a court of record, and held good as to the court-­leas being a judicial office, but good as to the court­baron, being only ministerial, and the suitors judge thereof; but the grant appearing afterwards to be for years, determinable upon the death of the leeseth, it was held good for both, because there was no danger of its coming to executors or administrators. 2 Lev. 245. 2 Jew. 146.
One Mrs. Dennis was found by office to be an ideot a naturitave; the King grants the custody of the body and estate to Sir Alexander Treasour, his executors and administrators, during the ideot; Sir Alexander dies, and then the King grants the custody to Mr. Predgers; and whether he or the executors of Sir Alexander had the better title, was the question; it was said to be a truth in the King, and therefore not grantable to executors or administrators, and that if the grantee die intestate, there would be none to take care of the ideot. On the other side it was said, he had not only a true, but an interest, and might have disposed of the profits to his own use, or grant them over as he thought fit, for the use of an ideot, though it was otherwise in case of a lunatick, and that it being a chattel should naturally go to executors; and to this opinion my Lord Chancellor inclined, but directed the validity of the patent to be tried at law; and in H. R. the grant to Sir Alexander was held good; for the King has the same interest in an ideot that he had in his ward, which always went to the executor of his grantee, tho' it was otherwise in the case of a lunatick. 2 Clau. Ca. 70. 1 Vern. 9, 137. 3 Med. 43.

The office of park-keeper was granted for years, and no objection made to it; for this does not concern the ad- ministration of justice, but only requires diligence and care. 2 Rel. Rep. 274. 4 Grot. 413.

Dignities or honours cannot be granted for years, as to be earl, duke, baron, &c. because then they must go to the executors or administrators, which the estate that should support them would go to the heir, and so introduce confusion and absurdity. Ca. Lit. 16. 8. Ca. 97. 8.

By 23 H. 6. cap. io, it is provided, That no thrift shall let to farm in any manner his county, nor any of his bailiwicks, hundreds or wapentakes; which proves that before this statute it was not usual to let them to farm. By the 12 Car. 2. cap. 23. fet. 27. The Lord Treasour or Commissioners of the Treasury for the time being, have power to let to farm all or any the rates or duties of excise upon beer, ale, cider and other liquors therein mentioned, so as the same exceed not the term of three years; without which clause the Treasurer or Commissioners of the Treasury could not have made such lease, though perhaps the King himself might, having the absolute interest and ownership therein.

By the 2 Car. 2. cap. 25. fet. 3. Power is given to the King's agents for granting of wine licences to any person or persons for any time or term not exceeding twenty-one years, if such person or persons shall for long time and shall be agreed on, to be paid half-yearly; and such licence not to be granted to any but those who personally use the trade of selling by retail, or to the landlord of such house; nor shall the same be assignable, or of any benefit but only to the first taker.

By the 12 Car. 2. c. 25. f. 16. it is provided, that his Majesty, his heirs and successors, may grant the office of Post-Master General, with all profits, fees, &c. to any person or persons for life, or term of years, not exceeding twenty-one years, under such rents and covenants as shall be thought best for the good of the kingdom.

By Cap. 29. c. 14. fet. 6. Power was given to the maker and chaplains of the Savoy, to encourage the rebuilding thereof, to demise any of the lodgings for any term not exceeding forty years, under such rents as they could procure, without renewing.

2. Things necessarily required in every good lease; and statutes concerning leases.

Regularly these things must concur to the making of every good lease: 1st. There must be a lefso, (as in other grants) and he must be a person able, and not restrained to make a lease; 2dly. There must be a leaseable, and he must be capable of the thing demised, and not disabled to receive it. 3dly, There must be a thing demised, and such a thing as is demisable. 4thly, If the thing demisable be not grantable without a deed, or the party demising not able to grant without a deed, the lease must be made by deed; and if so, then there must be a sufficient description or setting forth of the person of the lessor, lessee, and the thing leased, and all the necessary circumstances, as sealing, delivery, &c. required in other grants must be observed. 5thly, If it be a lease for years, it must have a certain commencement, at least when it comes to take effect in interest or possession, and once to cease, generally either by an express enumeration of years, or by reference to a certain event that is expired, or by reducing it to a certainty upon some contingency preceding by matter or post facto, and then the contingency must happen before the death of the lessor or lessee. Only, There must be all needful ceremonies, a lively of the effects, and a proper form for the like, in cases where they are requisite. 7thly, There must be an adequate price for the thing demised, and of the estate by the lessee; but whether any rent be refered upon a lease for life, years, or at will, or not, it is not material, except only in the cases of leases made by tenant in tail, husband and wife, and ecclesiatical persons. 1 W't's Cases Comy. 685.

Stat. 32 Hen. 8. cap. 28. fet. 1. All leases made of any manors, lands, &c. by wills intestate for term of years or life by any person of full age, having an estate of inheritance either in fee-simple or in fee-tail, in their own right, or in the right of their churches or wives, or in the right of their executors, shall be good in law.

Selt. 2. This aet shall not extend to leases of any lands to be made of any manors, lands, &c. being in the hands of any farmers by virtue of an old lease, unless the same old lease be expired, surrendered or ended, within one year after the making of the new lease; nor shall extend to any grant of any reversion, nor to any lease of lands which have not most commonly been letten to farm by the space of twenty years next before such lease made, nor to any lease to be made without impecumishment of waife, nor to any lease to be made above the number of twenty-one years, or three lives, from the time of the last cession; and upon such lease there shall be referred yearly to make rent, or money; All such hath been most accurately paid for the lands so letten in twenty years next before. And every person, to whom the reversion of such lands shall appertain after the deaths of such lessors, shall have like remedy against the lessees as the lessor might have had.

Selt. 3. Provided, that the wife be made party to every such lease made by her husband of any lands being the inheritance of the wife, and that every such lease be made by indenture in the name of the husband and his wife, and fine to the same, and that the rent be refered to the husband and wife, and to the heirs of the wife, according to his charter; and that the husband shall not alien the rent longer than during the husband's life, without it be by fine levied by the husband and wife. Selt. 4. This aet shall not give power to any person to take more farms than he might have done, nor give power to any parson or vicar to make any lease of any churchings, lands, tithe, &c. belonging to their churches or vicarages, otherwise than they might have done.

Selt. 5. No fine or other aet done by the husband only of any manors, lands, &c. being the inheritance or freehold of his wife, shall be any discontinue thereunto or refered to the wife or her heirs, but that they may enter according to their right, and whereas the wife is party and privy only excepted.

Selt. 7. This clause shall not give liberty to such wife or her heirs, to avoid any lease made of any inheritance of the wife according to this aet.

Stat. 18 Eliz. cap. 19. fet. 7. All grants made by any archbishop or bishop, or any others, upon the pollutions of his bishopprick, to any parson (other than to the Queen) whereby any estate should pass, other than for term of twenty-one years, from such time as such grant should begin, and whereupon the old rent or mort should be voided.

Stat. 1 Eliz. cap. 5, fet. 3. All leases, conveyance or eftates, to be made by any master and fellows of an college, dean and chapter of any church, master or great diacon of any hospital, parson, vicar or any other having ecco
unreserved be dealings of any hereditaments, being parcel of the possessions of such spiritual promotion (other than for the term of one and twenty years, or thereon from the time such lease shall be made, whereupon the accrued yearly rent or more shall be payable yearly during the term) shall be void.

Sect. 4. This act shall not make good any lease made by benefices for one hundred years than are limited by the privy statutes of the college.

Sect. 5. This act shall not extend to any lease to be made upon surrender of any lease heretofore made, or by reason of any covenant contained in any lease now confinuing, so that the lease to be made do not contain more of the freedom of the years of the former lease, nor less rent than is reserved in the former lease. Declared to include head houses by 14 Eliz. cap. 14.

Sect. 13 Eliz. cap. 20. sect. 1. No lease to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, so improper, shall induce longer than while the benefice shall be ordinarily refided, and serving the cure of such benefice without absence above fourfoorde days in any one year, but every such lease immediately upon such abstinence shall cease, and the incumbent to offending landlord lose one year's profit of his benefice to be determined by the ordinary among the poor of the parish. And all charges and impediments shall be void, and no such lease shall endure no longer than during such tenant's residence without absence above forty days in any one year. This act to continue to the end of the next parliament.

Made perpetual, 3 Car. I. cap. 4.

Sect. 14 Eliz. cap. 11. sect. 15. All bonds, covenants, promises and covenants to be made for suffering any person to enjoy any benefice or ecclesiastical promotion with cure, or to take the profits thereof other than such bonds and covenants as shall be made for assurance of such lease, shall be void. And any lease heretofore made, ordinarily for such force, and of otherwise, as leases by the fame persons made of such benefices and ecclesiastical promotions with cure.

Sect. 16. All leases, bonds, promises and covenants, worrying benefices and ecclesiastical livings with cure to be void, shall be of no other force than the fame had been made by the reserved person himself that dedicated the same to cure or curate.

Sect. 17. The said branch of 13 Eliz. cap. 10. shall extend to any lease of houses situate in any market town, so that such house be not the dwelling house used by the inhabitant of the persons, nor have ground to the same belonging above the said house.

Sect. 18 Eliz. cap. 6. sect. 1. No matter, proof, affidavit, warden, dean, governor, rector or chief ruler any college, cathedral church, hall or house of learning, or any corporation, or the corporation of the same, shall make any lease for years or years of their lands to the which any titheable land, meadow or pasture, shall appertain, except to third of the old rent to be referred in corn, viz., in good corn, after 6s. 8d. the quarter or under, and four times the quarter or under, to be delivered annually at the said colleges, etc., and for default thereof to pay to the said colleges, etc., in ready money, at the election of the lessors, after the rate of the best wheat and all in the market of Cambridge, for the rents that are to be paid to the houses there, and in the market of Winchester, for the rents that are to be paid to the houses there; and in the market of Windsor, for the rents that are to be paid to the houses there; and in the market of London, for the rents that are to be paid to the house at the next market day before the rent shall be due, without fraud, and all leases otherwise to be made, all collateral bonds or assurances to the contrary shall be void. The same wheat, malt or money, to be tended to the relief of the commons, and diet of the college, etc., only, and by no fraud sold away from the profit of the colleges, etc., upon pain of deprivation of the governor and chief rulers of the said colleges, etc., and all other penalties.

Sect. 3. This act shall not extend to any lease to be made by the president and scholars of the college of St. John Baptist in Oxford, to any heir male of Sir Thomas White, late knight and alderman of London, founder of the said college, which lease shall be made according to the mea- sure of the foundation and statutes of the said college, of the manor of Fitzfield, and all other hereditaments.

Stat. 43 Eliz. cap. 9. sect. 8. All judgments and decrees shall be void, for the intent to have or enjoy any lease contrary to the statutes 15 Eliz. cap. 20. 14 Eliz. cap. 11. and 18 Eliz. cap. 6. shall be void, as bonds or covenants made for that purpose are appointed to be void by this act. Stat. 29 Geo. 2. cap. 31. sect. 1. Where any person under the age of twenty-one years, or a lunatick, or feme covert, is interested in, or intituled to, any lease for life or lives, or for any term of years, either absolute, or determinable upon the death of one or more persons, or otherwise, it shall be lawful for the other person or persons on his behalf, and for such lunatick, as his guardian or committee of the estate, or other person on his behalf, and for such feme covert, or any person on her behalf, to apply to the court of Chancery of Great Britain, the court of Exchequer, or the court of the counties palatine of Chester, Lancaster and Durham, or the courts of great feoffion of Wales respectively, by petition or motion in a summary way; and by the order of the said courts respectively, made upon hearing all parties concerned, to perform under the age of twenty-one, and such lunatick or person appointed by the said courts respectively, and such feme covert, by and for the deeds only, without levying any fines, shall be enabled to surrender such lease, and accept in the name and for the benefit of such person under the age of twenty-one, or lunatick, or feme covert, one or more new leases of the premises comprised in such lease surrendered, for such number of lives, or term of years determinable upon such number of lives, or term of years absolute, as was mentioned in such lease so surrendered, at the making thereof, or otherwise, as the said courts shall direct.

Sect. 2. All money and other consideration advanced by any such guardian or other person for a fine or other income for the renewal of any such lease, and all reasonable charges and expenses, shall be paid out of the effects of the infant or lunatick for whose benefit the said lease is renewed, or shall be a charge upon such leasehold premises, with interest as the said courts shall respectively direct, and concerning leases to be made upon surrender by feme covert, and leasehold premises, for a fine or consideration of such lease, and the reasonable charges, be otherwise paid and secured, the same, with interest shall be a charge upon such leasehold premises, for the use of such person who advances the same.

Sect. 3. The leases to be so renewed shall be to the same uses, and liable to the same trufts, charges, dispositions, devi- sions and conditions, as the leases surrendered.

Sect. 4. Every such surrender, and such lease granted thereupon, shall be as valid as if such surrender had been made by and for the use and behalf of a person of full age, sane mind, or not married.

For more learning on this subject, see 3 Bac. Abr. tit. Leases, and 10 Vin. Abr. 296—368, 396—410.

Lease of a farm, lett at rack-rent for seven years, with variety of good covenants.

This Indenture made, &c., between W. B., &c., of the one part, and W. W., &c., of the other part, witnesseth, That the said W. W. for and in consideration of the yearly rent and covenants herein after reserved and contained, doth grant, assign, and demise, and bequeath, to the said W. B., and his executors and administrators, for ever, to have and to hold, to be paid, kept, done and performed, to the contrary, as the premises, rent and covenants, and to farm letters, and to be performed, and to be done, by and for the said W. W. All that messuage, tenement and farm, commonly called or known by the name of, etc., lying and being in the parish of, etc., in the said county of, etc.,
The page contains a legal document and requires careful transcription due to its complex nature. The text is written in a formal style, typical of legal or court documents, and includes terms like "executor," "appurtenances," and "families," indicating it pertains to inheritance matters. Without a more detailed transcription of the full document or a clearer view of the specific page, it's challenging to provide a coherent summary. However, the general theme suggests it deals with matters of estate management, inheritance, and property rights. The text is dense and requires specialized knowledge to fully understand its implications and applications.
Lea and release. A conveyance by lease and release, is where he who is to convey any lands or tenements shall make a lease (or bargain and sale) of the premises to the person to whom the estate is to be conveyed in six months, a year or thereunto, but usually for a year, to be as good, the grantor of the estate by virtue of the estate hereby to be conveyed to a third party, for the consideration stipulated for by the said lease, or for aforesaid, or other considerations, or for the purpose of bringing the land into a better state, for the benefit of the lessee, and heirs for ever, and the lessee (or releasee or assigns) of the estate hereby to be conveyed shall execute the same as aforesaid, and shall take and hold the estate hereby to be conveyed to him, or in consideration, for the consideration aforesaid, or for the purpose of bringing the estate hereby to be conveyed into a better state, for the benefit of the lessee, and heirs for ever.

Lease and release not to be void by the failure of consideration. — Where a lease and release are made, and the estate to be conveyed is not consummated, the lease and release shall not be void, but shall continue in force, and shall be void only if the lease and release be for a specified term, or for a term not less than one year, and the person for whose use and benefit the estate is to be conveyed is not made. The lease and release shall be void if the consideration for the lease and release is not paid, or if the lessee or releasee fails to perform the terms of the lease and release.

Lease and release not to be void by the death of the lessee or releasee. — Where a lease and release are made, and the lessee or releasee dies, the estate to be conveyed shall not be void, but shall pass to the heirs of the lessee or releasee, or to the person for whose use and benefit the estate is to be conveyed.

Lease and release not to be void by the failure of the consideration. — Where a lease and release are made, and the consideration for the lease and release is not paid, the estate to be conveyed shall not be void, but shall pass to the person for whose use and benefit the estate is to be conveyed.
If a man occupies as tenant; suffrage, a lease, will not enure to him for want of privity. Lit. sect. 461, 462.

His being tenant at suffrage is not sufficient to vest any estate in him for want of privity between them; and a lease to him, as to him who had the reversion, is void, because he had not any poissession, there being no estate in him; and an estate cannot be vested in him in reversion by this means. If tenants for life relesse to him in the reversion, it is void by way of release; and it cannot pass as a surrender for want of apt words. 


But where a man is in possession by virtue of a lease at will, there a release shall operate by reason of the privy

ity which he had in the premises. And it is in vain to make an estate by livery of feisin to another who has the possession before. Lit. sect. 461, 462.

Thirdly, with respect to the words in a release; If I let land for life or years, and release all the right I have without the word heirs, this at the Common law is but an estate for life; but if I release to him or his heirs, or to him and the heirs of his body, then this is an inheritance. Lit. sect. 465.

Fourthly, with respect to recitals, the uses, conditions, defeasances, warranties and covenants: A release may have one or more recitals in it (which is most commonly the easement) and it is not void without any. 1 Wood's Cony. 716.

If the words, to the only use and behoof of the said A. B. and his heirs and assigns for ever, or such like words, are not recited, then the release executes by the statute of uses, and the truth is void. 1 Wood's Cony. 716.

Where no use is declared, it is to the use of the releasor and heir. 1 Wood's Cony. 716.

Where a release is made to A. B. his heirs and assigns for ever, to the only use and behoof of the releasor, his heirs and assigns for ever, in truth for the said C. D. (which said C. D. must be a party to the deed, and a confidereion of 5l. to be for or by the releasor and the purchase money declared to be paid to C. D. the cestui que trufy) if these words are not in the deed, then the eale executes by the statute of uses, and the truth is void. 1 Wood's Cony. 716.

In case of lease and releas to make a tenant to the prativi in a common recovery, if the release is made to the tenant and his heirs; it must also be to the use of him, his heirs and assigns for ever; for the release must be absolute tenant of the freehold. 1 Wood's Cony. 717.

A release that enures by way of paimng away an eale, &c. may be made upon condition, or with a defeasance; for such a condition may be contained in the release, or delivered at the same time with it. Co. Lit. 236.

And altho' there may be warranties, covenants, and such additions in releas, (which is usally the cafe) yet they are good without them. 1 Wood's Cony. 717.

A. devised lands to J. S. and his heirs, but the will was defeavily executed out of a afterwards the heir, in consideration of 100 guineas paid him by J. S. the devisee, by deed, reciting that this will was duly executed, released to the devisee all his right to the eale devised; and after that, there being debts appointed by the will to be paid, the devisee told the heir, that it would facilitate the raising of the money for the payment of the debts, if he (the heir) would join in a lease and releas of the devisee premises; and thereupon, for fifty guineas more paid to the heir, he, together with the devisee, by lease and releas conveyed the premises to J. N. and his heirs in consideration of 400l. mentioned to be paid by J. N. and his heirs, which was given; but in truth this purchase-money was not paid, but J. N. was only trustee for J. S. The court fer aplied this lease and releas, upon payment of the 150 guineas and interest; and said, either faggesia vix, or faggesia falsi, is a good reason to fer aplied any releas or conveyance; and that to recite in a deed or release that the will was duly executed, when it was not, is faggesia falsi, and to conceal from the heir (as here) that the will was not duly executed, is faggesia vix. 1 Will. Rep. 239, 240, 737.

Lex, A mild-bit, corruptly militate. A trench to convey away, or from a sewer, mentioned in fol. 7 Jac. 1. cap. 19, but most peculiar to Devonshire, 1

where in conveyances the word does frequently occur. Cawll. edit. 1792.

Leather. The flaple for leather, where to be held, 27 Ed. 3. stat. 2. c. 1.

It shall have no imposition without consent of parliament, 45 Ed. 3. c. 4.

Ancient prohibitions of the exportation of it, 27 Ed. 3. c. 2. c. 3. 8. 38 Ed. 3. c. 6. 18 El. c. 9.

1 Jac. 1. c. 22. sect. 55, 55.

Aliens shall not buy leather but in open market, 3 Hen. 8. c. 10.

The wardens of the curriers in London may search for leather insufficiently tanned, 3 Hen. 8. c. 10. 24 H. 8. c. 7.

Liberty of buying leather granted to certain strangers, 5 H. 8. c. 7.


How fanangers are to convey leather from one port to another, 27 H. 8. c. 14. sect. 4.

Exportation of leather refrained, 2 & 3 Ed. 6. c. 9.

1 M. ft. 3. c. 8. 5 El. 8. & cap. 22. sect. 2. 14 El. c. 4. 18 El. c. 9.

Leather may be bought and fell tanned leather, 3 & 4 Ed. 6. c. 6.

Buying of raw hides to fell again untanned, prohibited, 3 & 4 Ed. 6. c. 9.

Artificers may buy tanned leather, 1 Marin. 3. c. 8.

1 El. c. 3.

Shells shall be searched and sealed, 1 El. c. 9. sect. 1. c. 22.

Felon to export leather or tallow, 1 El. c. 10. permitted by 20 Car. 2. c. 5.

Sheep skins tawed may be exported, 8 El. c. 14.

Exporting of tallow and raw hides prohibited, 8 El. c. 14.

 Owners of ships, knowing the offence, to forfeit ship, &c. 18 El. c. 9.

None but tanners to sell unwrought leather, 27 H. 8. c. 14.

How leathers shall be wrought and curried, 1 Jac. 1. c. 22. 9 Ann. c. 11. sect. 10. 12 Geo. 2. c. 35. sect. 7.

None but artificers may buy leather, 1 Jac. 1. c. 22. No perfon shall foreale hides, &c. 1 Jac. 1. c. 22.

Selling of the rights of the universities, 1 Jac. 1. c. 22.

sect. 48.

This act not to extend to Wales, 1 Jac. 1. c. 22. sect. 53.

This act not to extend to Scotch hides brought to Berwick, 1 Jac. 1. c. 2. sect. 56.

Letters patent contrary to this act void, 1 Jac. 1. c. 22. sect. 57.

prohibitions, 1 Jac. 1. c. 9. sect. 4.

Sheep skins need not be searched or sealed, 4 Jac. 1. c. 6. sect. 2.

Tanned leather shall not be sold by weight, 4 Jac. 1. c. 6. sect. 2.

Sheep skins and calves skins dressed or undressed, and all manufactures of leather may be exported, 12 Car. 2. c. 4. sect. 10.

Leathers and hides of ox and calves not to be exported, 13 & 14 Car. 2. c. 7.

Leather shall be sold in open market only, 13 & 14 Car. 2. c. 7. sect. 4.

Exportation declared a public nuisance, 13 & 14 Car. 2. c. 7. sect. 11.

This act not to prohibit the carrying of hides for the necessary use of any ship, &c. 13 & 14 Car. 2. c. 7. sect. 4.

General liberty to export leather, 20 Car. 2. c. 5.

1 Jac. 2. c. 13. 1 W. & M. c. 23. 9 Ann. c. 6. sect. 4.

Leather curried shall be deemed made ware, 1 W. & M. c. 33.

Tanned leather may be sold by leatherfellers, &c. in their ships, 1 W. & M. c. 33. sect. 5.

Duties
Duties upon leather, parchment, &c. 9 Ann. c. 11. 10 Ann. c. 26. made perpetual and part of the general fund, 3 Geo. 1. c. 7.

Cows to be marked on paying duty, 9 Ann. c. 11. sect. 44.

Forsaking the marks, death without clergy, ibid.

Commissioners or other officers not to influence elections, 9 Ann. c. 11. sect. 49.

Increase of the bounty upon leather exported, 12 Ann. c. 2. sect. 6.

Tawed sheeps skins to pay the smaller duty, 3 Geo. 1. c. 4. sect. 13.

Counterfeiting the leather flamps felony, 5 Geo. 1. c. 2. sect. 5.

Artificers may freely buy their leather, and cut it, and sell it in small pieces, 12 Geo. 2. c. 25.

Penalty on curriers neglecting to curry leather, 12 Geo. 2. c. 25. sect. 4.

The statue 1 Ann. fl. 2. c. 18 extended to the manufactories of leather, 13 Geo. 2. c. 18.

Journeymen to perform the duties if they are engaged in, ibid, sect. 8.

Lecturer, A riotous debauched preacher, a lecher, and a whoremaster. Scient, quod Ego Johannes confessabirius et certiorus est dei, sed causas humanas, totius annun lectorum & meretricum tuas Ccelebraverit ex libris illum magistratum tene comite salve meo mitti & haeresini mei. Sine dat. fed circa annum 1220. Cowell, edit. 1727. See Lecturers.

Lecturerly, Fine on adulterers and fornicators. Coles, Maintenance of a weekly sermons, and magistrates to prevent them, 12 Ann. c. 20.

Lecturnum, A bed; sometimes all that belongs to bed. Flor. Warr. pag. 631.


Lecturn, In London and other cities there are the lec- turers or preachers in many of the churches. They are generally chosen by the vestry or chief inhabitants; and are usually the afternoon preachers. There are also one or more lec- turers in most cathedral churches; and many lec- turerships have likewise been founded by the donation of private persons, as Lady Molyne's at St. Paul's, and many others: And it seems generally that the bishop's power is only to judge as to the qualification and fitness of the persons, and not as to the right of the ecurthep. As in the case of the churchwardens of St. Bartholomew's, M. 12 W. 1. one Fishburne lett 25 Apr. 3 a year C.

Provided, that the lector should be chosen by the parochioners, and to preach on any day in every week as they should see fit. The physician fixed on Thursday, and chose a lector every year; and now Mr. Turton being lecturer, and the parson having chosen Mr. Rainier, the other churchwardens not being of the choice; whereas the church- wardens that Turton out of the church. Afterwards the bishop of London determined in his favour, and granted in inhibition and monition for that purpose. But by Hilt Chief Justice; a prohibition must go try to the right is; it is true a man cannot be a lector, without a licence from the bishop or a tribun; but their power is only as to the qualification and fitness of the person, and not as to the right of the lectorship; and the ecclesiastical court may punish the churchwardens, if they will not open the church to the parson, or to any one acting under him, but if they refuse to open it to any other. 3 & 4 Vict. c. 39, 69, 66.

But in cases where there is no fixed lector, or ancient salary, but the lectorship is to be supported only by voluntary contributions, and there is not any custom concerning such ecclesiation; it feemeth that the ordinary is the proper judge, whether or no any lector is in such place Chetham admitted; As in the case of the lector of St. Ann's Welfinylger, T. 16 Geo. 2. the court of King's Bench, upon consideration, refused to grant a mandamus to the bishop of London to grant licence to a lector; who appeared to have no fixed salary, but to depend altogether upon voluntary contributions; and where there was no curfew; and the rector had refused his leave to preach in the church to the parson now applying. Str. 11.

By statute 13 & 14 Car. 2. cap. 4. sect. 19. No per- son shall be allowed or received as a lec- tor, unless he be first approved and thereunto licenced by the archbishop of the province, or bishop of the diocese, or (in case the fee be void) by the guardian of the spiritualities, under his seal, and shall, in the presence of the said archbishop or bishop, sign and subscribe his the thirty-nine articles, with his declaration of his unfeigned ancient and different faith: And every person who shall be appointed or received as a lector, to preach upon any day of the week, in any church, chapel or place of publick worship, the first time he preached (before his term) shall openly, publicly and solemnly read the common prayers and service appointed to be read for that time of the day and thereupon and there publicly and openly declare his dissent unto and approbation of the said book, and to the use of all the prayers, rites and ceremonies, forms and orders therein contained, and shall, upon the first lector day of every month afterwards, as long as he continues or preach there, at the place appointed for his said lector one ternt before his said lecture or sermon, openly, publicly and fo- lemnly read the common prayers and service for that time of the day, and after such reading thereof, shall openly and publicly before the congregation there assembled declare his unseigned dissent unto the said book according to the form aforesaid: And every such person who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other lecture or sermon, in the said or any other church, chapel or place of publick worship, until he shall openly, publicly and solemnly read the common prayers and serv- ice appointed by the said book, and conform in all points to the things preferred according to the purport and true intent of this act.

Sect. 20. Provided, that if the said lecture be to be read in any cathedral or collegiate church or chapel, it shall be sufficient for the said lector to open the said book, and upon the day and time aforesaid to declare his dissent and consent to all things contained in the said book, according to the form aforesaid.

Sect. 21. And if any person who is by this act dis- abled for prohibiting, sect. 7.] to preach any lecture or sermon, shall during the time that he continue so disabled (or prohibited,) preach any sermon or lecture; he shall suffer three months imprisonment in the common gaol: And any two justices of the peace of any county within this realm, and the mayor, or chief magistrate of any city or town corporate within the same, upon petition from the ordinary made to him or them of the offence committed, shall and are hereby required to commit the person so offending to the gaol of the same county, city or town corporate.

Sect. 22. Provided, that at all times when any sermon or lecture is to be preached, the common prayers and serv- ice in and by the said book appointed to be read for that time of the day, shall be openly, publicly and solemnly read by some priest or deacon, in the church, chapel or place of publick worship where the said sermon or lecture is to be preached, before such sermon or lecture be preached, and that the lector then to preach shall be present at the reading thereof.

Sect. 23. And provided, that this act shall not extend to the university churches, when any sermon or lecture is preached there, as for the university sermon or lecture; but the same may be preached or read in such north and manner, as the Faculty have been heretofore preached or read.


Lecturn, (Lecturn) The rising water, or increase of the sea. Du Frisse.

Lect, Lecta, vixis Frangi plegis, Is otherwife called a low-day. Smith de Rep. Angl. lib. 2. cap. 18. and seems to have grown from the Saxo Ines, which, as appears, by

5 A the
LEG

the laws of King Edward, published by Lambert, num. 34, in a court of jurisdiction above the wapentake or hundred. Many lords, together with their courts-baron, have likewise leets adjourned, and thereby do enquire of such transgressions as are subject to the enquiry and cour-

reception of this court, whereof you might have heard in the Kitchin, from the beginning of the book to the fifth chapter, and Britton, 3. 35. 28. But this court, in whose manor formerly it was held, after 4, is accounted the King's court, because the authority thereof originally belongs to the crown, and

court, as specially tended to the business of those offences under high treason, committed against the crown and dignity of the King, though it cannot punish many, but must certify them to the justices of assize, by the statute of 1 Ed. 3, cap. 51, but what things are only inquirable, and what punifiable, see Kitchin in the charge of a court leet, from fad. 8. to fad. 20. See also the statute 1 Ed. 3, and 4 Iustf. b. 261. Heretofore curia praestila ilia, (faith Spenner) quanl inter Saxones ad Fri-

bergen, decausten tenementes pertinente. The jurisdiction of bailiffs within the dutchty of Normandy, in the com-

pacts of their provinces, seems to be the same, or very like our leet, cap. 4. of the Grand Inquisition. Let it come from the three, i.e. confessa, arbitrium, or

feudum, cognito, aeminentia. Quod in hac eligium curia de

dominis eftinmatur inter vicinas emergentius, ut potest in LL. Edw. Conf. cap. 10. See Sir William Dugdale's

Warwickshire, fol. 2. This court-leet is a record of court, having the same jurisdic-

tion within some particular precent, which the

eriff's ton taken in this county. Finch 246. 2 Hazuk. P. C. 72.

The flat of Ed. 2. which shews what things the

eriff's ton and court-leet shall have cognizance, does not

confine their jurisdiction to those particular

events enumerated in the statute.

no case can come within two leets at the same time, and

in the same respect; therefore, he who refines within

the precentic of a leet, the lord whereof doth duly hold

his court, cannot be compelled to come to a superior

leet, for any purpose which may as will be answered by

his attendance at his own leet; but if a private leet be

especially granted for two or three articles only, it

seems that the inhabitants must attend the ton for all

other matters; also a grand leet may prescribe to oblige a
to

certain number of inhabitants in every town within its pre-
centie, to appear at every such grand leet, to inquirie of

such offences as are mentioned by the statute: Alfo if a

court be feised in the king's hands, all who owed suit to

it ought to come to the ton, &c. &c. the sheriff's ton,
as an overleer of the leet, is to inquire whether the

thing be full, and may inquire of the concealments of

offences inquirable in leets. 2 Hazuk. P. C. 73. and

several authorities there cited.

A court-leet shall be forfeited, not only by acts of gross

injustice, but also by bare omissions and neglects, es-
specialiy if often repeated, and without excuse. 2 Hazuk.

P. C. 73.

The caption of an Indictment in a court leet, ad cur-

us eff. Franc. pleb. curtor, &c. &c. is good, for the

words in Latin and English shall be rejected, for it shall be in-
tended that the indictment was taken by the ton, which

alone hath the colour of authority to take it. 1 Salt.

195.

The not setting forth in the caption, whether the

court was held by grant or by prerogation, is helped by

the multitude of precedents. 1 Salt. 200.

Swarms of courts leet and courts baron, shall not take any profits or perquisitions, 1 Jac. 1. c. 5.


Leets or Leets, Meetings for the nomination or election of officers of justice, is a word often used in archbishop

Wood's Hisstory of the Church of England.

Legum et Lata. Anciently the ally of money was so
called. Debita summi temporis quam vetere legis &

lacione (ni fallar) appellaban. Splein.

Legitimen, What is not intailed as hereditary, but

may be bequeathed by legacy in a life wait and testament.

LEG

Confidenta oft in pluribus cotitutis & burgis quod non

demissi possessi legati in testamentis & alta non, quia ille de ta-

siunt, & illus non ess legatis, vel quis debere possi offe

legitilis, & eorum num. — Article proposuit in parlamentou


Arch. Ebor. MS.

Legate. (Legatus.) Is a particular thing given by a

man to a particular person, and received by

him to whom such legacy is given, is called the legatee.

If a man transfer his whole right or estate to another, that the Civilians call He-

rate, but we call him heir only, to whom all a man's lands and hereditaments defend by right of blood.

Cowell.

A legacy is defined a gift or bequest of a particular

thing by testament, in which an executor is named, or

his estate to be transferred, they term

Heret; but we call him heir only, to whom all a man's

lands and hereditaments defend by right of blood.

Cowell.

If a man covenants with j. s. to pay him 20l.

and afterwards by will he devises to him 20l. in discharge of the

said covenant, this is not a legacy fiable in the

spiritual court, but remains still a debt, recoverable at

Common law. 2 Lean. 119.

But if A. covenants with J. S. that he will pay 20l.

a-piece to B. C. and D. and afterwards he devises 20l.

to B. C. and D. in discharge of this covenant, there

are good legacies, and recoverable in the spiritual

court; the covenant in this case being with a flayer,

and therefore B. C. and D. have no remedy, but the

applying as legatees. 2 Lean. 119. Davies and Pierie's

cafe.

A specifick legacy is a gift or bequest of a particular

thing, such as the testator's horse, cow, er. and differs from a pecuniary legacy, or a sum of money, in that the

legatee is not, in case of deficiency of estates, to be

3. apportion, as pecuniary legacies must do. 2 Chan. Ca.

25. 171. 1 Fern. 31. 2 Salt. 416.

If a man devise his personal estate at H., that is as much a specifick legacy, as if he had enumerated the

several particulars of it, and told the other legacies full

thor's, yet the legacy must have this specifick legacy in


If the testator devise his personal estate at A. and

his personal estate at B. and then devises a legacy out of

his personal estate, and has no personal estate but what

lies in those two places, the pecuniary legacy must be

paid out of these specifick legacies thus particularly
defined. Precod. Chan. 393.

If a horse or a term of years, which is specifically
devised to another, be taken in execution by creditors on

a judgment obtained, (as they may be) the specifick le-

gatee shall have recompense in equity against the exec-

utors, or redivisary legatees, for the value, who are to

have nothing till after the debts and legacies are paid.

Precod. Chan. 393.

If j. s. having 4000l. secured on him by bond in the

names of A. and B. in trust for himself, devised it to

his daughter, (now married to the plaintiff) and made her

redivisary legate, and by the same will devised a lease he

had in farm to R. D. and there not appearings affairs to

R. D. was for the payment of debts; afterwards, by
decree of this court, the 40. cl. was adjudged to be to pay debts, and was brought into court, there to remain for this

purpose; the plaintiff proposed to have what remained of the 4000l. paid out of court to his own estate being

afterwards sold for payment of debts; and, the defendant R. D. opposed it till he had first had a satisfaction out of it for the value of the

farm devised to him, and for the payment of

debts; the court held, that the devise of this

money was a specifick legacy, and therefore R. D. can

have but a proportionable part of it. App. in the specifick

legacy out of it. Abb. Eq. 208. Lord Cowper v.

Lord Fultinhaw 1. 126.
1. What words shall be deemed sufficient to give a legacy.

2. What shall be a sufficient description of the person to take, and of the thing given.

3. What shall be deemed an ademption or extinguishment of a legacy; and where a legacy shall be presumed to be a satisfaction of a debt or duty owing from the testator.

4. Of voided or lapsed legacies.

5. Of abuses, refunding, and giving security for that purpose; and of residual legacies and legaties.

1. What words shall be deemed sufficient to give a legacy.

Here we must observe, that although in grants and deeds of gift the law requires a certain form of words, yet in last wills and testaments, which are premised to be made at the time when the testator is in his senses, the law regards chiefly the intention of the testator, and therefore any words, which manifest his intention to create or give a legacy, will be sufficient for that purpose. Gedolph. 281.

2. What shall be a sufficient description of the person to take, and of the thing given.

It seems agreed, that if a man devizes legacies to all his children and grandchildren, that this extends only to those who were in life at the time when the will was made, for then the will speaks, and none born after are to be let in, unless there had been future words in the will, to all his children or grandchildren which should be born or be living at his death. Vern. 153. Wurbam v. Brown.

3. Of abuses, refunding, and giving security for that purpose; and of residual legacies and legaties.

If any devise his land for payment of his debts and legacies, and devises also a-piece to two of his children, to be devised to his children, and if any one of them should think fit; the third shall have 200l also, and be made equal to the other devises, if the estate will hold out. 2 Vern. 153. Wurbam v. Brown.
death, one year’s wages; per Lord Keeper, Stewards of courts, and such who are not obliged to spend their whole time with their master, but may also serve any other master, at 6s. for every foon of the will; but I will not narrow it to such servants only who lived in the testator’s house, or had diet from him. 2 Vern. 546.

A. gave legacies of 15 l. a-piece to each of his relations of his father and mother’s side, and gave the for- lopus of his personal effate to R. and made C. his executor; the executor paid 15 l. to the testator’s cousin German, and 15 l. a-piece to her four children; and the court allowed the payment to the children, and would not refrain the devide to the relations within the nature of distributions. 2 Vern. 381. Jones v. Bland.

3. What shall be deemed an ademption or extinguishment of a legacy; and where a legacy shall be presumed to be a satisfaction of a debt or duty owing from the testator. Swinburne distinguishes between the ademption and translation of a legacy; the first, he says, is the taking of a legacy which is bequeathed, which may be done by an express revocation thereof, or by the court, secretly and by implication, as by giving away, or voluntarily alienating the thing devise. Translation of a legacy is the befallowing of the same upon another, which is likewise an ademption; and therefore there may be an ademption without a translation, but there can be no translation without an ademption.

The ademption of a legacy is no more to be presumed than the revocation of the testament, unles it be proved; and therefore if the testator bequeaths all the corn in his barn, and lives after the making of his will till all the corn is spent, and other corn is put in the place thereof, this spending of the corn is no ademption of the legacy, and therefore the legatary shall have such corn as is found in the barn when the testator dieth, unles the corn found in the barn at the death of the testator be greater in quantity than was the corn at the time of the will made, for so much is it and not a greater quantity than was the first. Swinb. 522.

If so the testator bequeath a ship, and afterwards, by piece-meal, repairs and renawes the same, so that there remaineth nothing of the old ship but only the bottom-tree, there is no ademption of the legacy, but the legate may take as much as the ship shall be worth. Swinb. 523.

If a man bequeath a house, which afterwards he voluntarily pulls down, or which is blown down by the wind, or is consumed by fire, and afterwards erects a new house where the old house stood; Swinburne is of opinion, that the legatee in neither of these cases can have the new house, it being a general rule of the Civil law, that a house bequeathed being destroyed, if the tes- fator build another in the same place, the legacy is ex- tinguished, unles the meaning of the testator were other wise. Swinb. 523-4.

But if the testator do bequeath an house, and after wards, by piece-meal, repair the same, so that there is no part of the old matter or fluff remaining, the will of the testator is not hereby presumed to be changed; so therefore the legatee may recover the house so repaired for it is deemed to be the same house full in law. Swinb. 523-

If so, if the testator, being confirmed by necessity, is for the payment of his debts, supplying himself or his family with food and necessaries, &c. alienate the thing bequeathed; this is no ademption of the legacy, and therefore the executor is bound to redeem the same, or to pay the full value thereof to the legatee. Swinb. 524.

So if the thing bequeathed be not fully alienated, as it be pledged or pawned, the legacy is not thereby extin- guished; and therefore the executor in this case is bound to redeem the same, and to restore it to the legatee, or to pay the price thereof, if he suffered it to be forfeited. Swinb. 525.

If a legacy be given to one perfon, and afterwards to another, the same thing is given to another perfon as this is an ademption of the legacy as to the first person, if the utmost confidence shall be presumed in the testator to the contrary appears; and therefore in this case they shall divide the legacy between them. Swinb. 528.

If a man bequeath a legacy in these words, I give to my niece A. 500 l. which my sister B. has now in her hands of mine, as by bond appears; at after the money is paid in, and ten years after pay- ment thereof the testator dies, yet the legacy is good though the security is altered; for by the words, it more is intended but that the legacy should be as to all intents and purposes the same. Raym. 325, 326.

So where a man devised in the following manner, I give and devise to A. my good and only uncle, the sum of 500 l. that is to say, that bond and judge gave me for 400 l. and 100 l. in money, and mak-
The intention of the testator being the prevailing rule to go by in the construction of wills, it is often from thence established as doctrine, that wherever a provision, by his will, gives a legacy as great or greater than the debt he owes to the legatee, that such legacy should be a satisfaction of the debt, on the presumption that a man must be intended just before he is bountiful, and that his intent is to be given due effect.


As where a man by marriage settlement provides 400l. for daughters, and having two daughters, by will gives them 200l. a-piece for their portions, without taking notice of this, it is held, that the 200l. a-piece should be a satisfaction of the portion by the settlement.

2 *Ferm.* 111. *Bluet* v. *Bluet*, cited to have been adjudged.

So where a man had prevailed on his wife to join in falling 7. 10l. per annum of her jointure, and after 6l. 10l. per annum, more, and having given two several notes, that his executor should pay her the said two several sums during life, he afterwards makes his will, and thereby gives her 14l. per annum during life, cut of certain lands; and this was held to be a satisfaction of the notes.


So where one settles his estate on trustees, to be held for payment of his debts, with power of revocation, then he marries a daughter, gives her a portion, and covenants that the husband shall have the estate 1500l. cheaper than any other; afterward he, by will, revokes the settlement, gives the husband 1500l. and dies, and the legacy was held to be in satisfaction of the 1500l. secured by the settlement.


So if *A.* by marriage articles, agrees to leave his wife 800l. and her jewels, &c. but it is declared, that notwithstanding he still owed her 100l. and that nothing else, he should give her by will; and *A.* by will, makes a disposition of his whole estate among his children, &c. and gives his wife 1000l. the wife must wave the articles, or the will, for the cannot have both; for his making a disposition of the whole estate, shows that he intended that every part should be performed.


So where a child, intituled by his father's marriage articles to a share of his father's personal estate, has a legacy given to him by the will of his father; and it was held, that if he was to take the legacy, he must waive the benefit of the articles.

2 *Ferm.* 553.

So where a Freeman of London made his will, and devised legacies to his children more than their orphanage parts would amount to, without taking any notice whatsoever of the cullion; and it was held by the Muller of London, that if he omitted such legacies, he must waive the benefit of the articles.

2 *Ferm.* 551.

Though the cullion on this head have prevailed thus far on the circumstances attending them, and the intention of the testator, yet as a legacy is a gift or gratuity, it is to receive the most favourable construction; and therefore if it be less than the sum due, payable on a contingency or future day, on the like and the like circumstances attendant; it is an exceptional bounty, and not a satisfaction: And in all these cases the intention of the party ought to be the rule.

1 *Salk*. 508.

As if *A.* give a bond to *B.* her servant to pay her 20l. per annum, quarterly, for her life, free from taxes; and *B.* pay, without taking notice of the bond, gives 20l. per annum, for her life, payable half yearly, but not paid.
free of taxes; B. shall have both the annuities, for that, by the will, not being so advantageous as the first, cannot be premised a satisfaction. 2 Vern. 478. Atkinson v. English, 110. 9 Ves. Ch. Jan. 28. S. C.

So where A. on his marriage covenanted to purchase and settle a jointure of 20l. per ann. on his intended wife, and if he died before such purchase or settlement made, she should have 300l. out of his estate for her own use; the marriage was never had, and the deed died, but the will was made; but by his will he devised to his wife 330l. for her life, with power to dispense of 30l. part thereof at her death; and it was held, 1. That she had a right to 30l. and intereft, and that the executor could not now be at liberty to settle 20l. per ann. as the tefteator might have done. 2. That she should be at liberty to settle 30l. as an additional bounty and provisiton for her wife. 2 Vern. 505. Perry v. Perry.

4. Of voided or lapsed legates.

It seems by the rule of the Civil law, and by the cafes on this head, that if a legacy be devifed to J. S. and he dies in the life-time of the tefteator, that the legacy is lapsed, being no fuch perfon to take at the time when the will is to take effect. Abr. Eq. 296. 297.

So where A. by will, retaining certain sums to his wife, and devising 400l. to him, provided he be out of 40l. paid severally sums in the will mentioned to his wife and children, and the refl and residue he freely and absolutely gave to him, and willed and required the executor to deliver up the security immediately upon his death, and not to claim or pledge the debt, or any part thereof, but to give such releafe or discharge, as B. his executors or administrators, fhould require or think fit; B. died in the life-time of the tefteator; and it was held, that the money directed to be paid the wife and children was well devifed; but as to the releafe devifed to the debtor himself, that it was a lapsed legacy, he dying in the life-time of the will, that it was not ad-

mitted, that if the tefteator had faid, I forgive fuch a debt, or that my executor fhall not demand it, or fhall releafe it, that would have been a good releafe of the debt, tho' the debtor died in the life-time of the tefteator. 2 Vern. 521. Elliot v. Davenport.

A. devifed an effate to his wife, and after to the plaintiff, his niece, and her heirs, upon condition and to the intent that she pay 40l. to fuch perfonn, as his wife by her will in writing, or any other writing, fhould direct and appoint, and dies; the wife after marries a fecond husband, and then makes a will, appoints the 40cl. to be paid to her husband, his executors or administrators, and that when he fhall have fully received the 40cl. he fhall pay 100l. out of it to B. 50l. to C. and 50l. to D. and makes her husband her executor; and then goes on, and fays, that he has published this her laft will and teflament in the presence of three witnesfes; and the husband fubfcribed that he does not approve of this will; afterwards the husband dies before her, and makes her executrix of his will and reftatory legate; then B. and C. die, both inteftate, and afterwards the wife dies, and the defendants take out administration to her, with the will annexed, and also administration to B. and C. and the apportionment was, whether this appointment being made by will, and the appointee dying before the appointor, this fhould be in the nature of a legacy, and fo the ap-

pointment void, the teflatrix surviving the nominee; my Lord Keeper held, that if it was a thing purely teflamentary, it would be plainly a lapsed legacy, but that in this cafe the 40cl. was not in its own nature teflamentary, but was taken as nones, and it is but the ex-

ecution of a trufl; and decreed the money to be paid. Abr. Eq. 796. Barnet v. Holgrave.

So where E. made her will, and devifed in thofe words, I give unto my loving kinman R. H. the form of 300l. one and a half years after my decease, or if before, which I intend to give to my cousin S. H. his youngeft daughter; but my will and defeft, that he will give the said 300l. to his daughter S. H. at the time of his death, or fooner, if there be occasion, for her better advancement and
LES

the will, in case either died before the time of payment, a new substitutive devise of the whole 100l. to the survivor; and decreed accordingly. *Air. Eq. 295. Sedding v. Green.

5. Of abating, refunding, and giving security for that procures, and of reducible legates and legatees.

Pecuniary legates fall ablaze in proportion to the deficiency of assets; and therefore if the ecclesiastical court go about to compel an executor to pay a legacy without security to refund, a prohibition will be granted; for that in this case no pay the legatey without such caution is not a security, yet he is not obliged to. *Cris. Eliz. 467. Mov. 413. Owen 72. Allen 40.

So if a man devise several legacies, as 100l. to one, and 50l. to another, &c. there aliquo he directs the legacy of 100l. to be paid in the first place, yet if the other legacies fall short, then the legatee of 100l. must make a proportionable abatement of his legacy. 1 Fern. 31. Brown v. Allen.

So if a legacy be given to executors for care and pains, yet this shall give such legacy no preference, but the executor must abate in proportion. 2 Fern. 433. Pettit v. Redman.

As to refunding and abating, it seems clear, that creators may com. al legates in equity to refund when assets become deficient, aliquo there was no provision made for refunding at the time the legacies were paid. 1 Fern. 94. 1 Fern. 358, 360. 2 Fern. 205.

So where A. being indebted to B. made C. his executor, and C. wafted the estate, and died, having defived several legacies, and made D. executor, which legacies D. paid, and B. having exhibited a bill against D. the executor of C. for his debt due from the first testator, and against the legatees in the will of C. to compel them to refund their legacies, there not being sufficient assets if the first testator, it was declared accordingly; for a refidor may follow the assets in equity, in whole hands ever t ey come. 1 Fern. 162. 2 Fern. 205. laid own as a rule.

Alle one legatee may compel a pecuniary legatee to fund where the assets become deficient, aliquo there was no provision made for refunding, aliquo he hath full re-acy against the executor, and may compel him to pay out of his own purse, if he whiluntly paid away the lets to the other legatees. 1 Chon. Ca. 136. 248. 2 Chon. Ca. 132. 1 Fern. 205.

But it seems to be agreed, that an executor who voluntarily pays a legacy, or affetrics to the devicer thereof, inno, either in favour of other legatees or creditors, compel the legatee to refund, but that in such case he will bear the loss himself. 2 Chon. Ca. 9. 145. 1 Fern. 462. 2 Fern. 203.

But it is said, that if an executor pays out the assets in legacies, and afterwards debts appear, of which he had no notice at the time of payment of the legacies; or if he had been compelled by a decree in equity to pay legacies, but in those cases he may, by bill in equity, compel the legatee to refund, aliquo he took no sufficient assets at that purpose. 1 Chon. Ca. 136. 2 Fern. 205.

For more learning on this subject, see 3 Bic. Abr. tit. legacies, and ser. Etrouge, William.

Legatia bonum. Is taken for him who stands retus in res, not outlawed, nor encommunicated, nor defamed: but in these words is often used, *Fride &c. bonds given. Hence legata is taken for the condition of such a man. Ipsa tamen molefactor tradat falsiportas face & legitamine tenenda, i.e. Sureties for his good behaviour. *Lid. Eqat. Conf. cap. 18. See *Promian.

Legatari (Legatoris) Tlie or the to whom any legatee, legate, legivel or a legatee, *Stir. *Seland. *Spelman says, it is in some cases used for legata vel unius.

Legate, An ambassàiour, or other representative of a certain, especially of the Pope's, of Rome, who in England sat the archbishops of Canterbury for their legates natas; and upon extraordinary occasions went over legates a latere. Is legates are not mentioned in our old historians; the difference between them is thus: Legatis a later
Lex

Lex et Lex. The lefis be that leales lands or tenements to another for term of life, years or at will. And to whom the leafe is made is the leffe. See Lefage. See Lefage.

Lefagep, Lefage-free, or exempt from the duty of paying bailiff money. Cowell, edit. 1727.

Lentes, or Lelos. Is a word used in Dunafysh, to signify penalties, and still used in many places of Eng- land, and other parts infected in deeds and conveyances. Cowell, edit. 1727.

Lex Jerusal. The old duty of quadragesimal, or the customary oblations made on Midlent-Sunday, when the proper hymn was, "Lentur Jerusalem," &c. by the inhabitants with a dole to the mother cathedral church, which old custom of procession and oblation at that time, was the beginning of that practice which is still retained among us, of mothering or going to visit par- rents on Midlent-Sunday. But to return; these volun- tary offerings on that Sunday, were by degrees fitted into an annual composition or pecuniary payment, charged on the parishioners, who was preferred to receive them from his people, and obliged to return them to the cathedral church; there in some forms of approbation, the suble religious took express care to throw this among other burdens upon the oppressed vicars. See In- ordination of the vicarage of Letchworth, in the archdeaconship of Huntingdon, made in the year 1570. It is provided, Qui guidem vicarior societatem vires, obese Jerusal, & literas, solemnitas & alia ornamens, lamarine competent in concello. We now speak, of the annual vicars, in many parishes, as a custom, or custom, and in some other order of religion. The form of which you may see in Morn. Fucroxhymiae, pag. 7.

Letter of attorney (literas attinentas) is a writing authorizing an attorney, that is, a man appointed to do a lawful act in our stead. Wyl. Symbal. part. 1. lib. 2. fell. 559. As a letter of attorney to give feft of lands, to receive debts, to fuse a third person, &c. See the flant. 7 Ric. 2. 1513. See Attorney.

Letters of accusation (literas clausas) Close letters opposed to letters patent; those close letters being commonly sealed up with the King's signet or privy seal, while the letters patent were left open, sealed with the broad seal.


Letters patent, (literae patentes) Are writings sealed with the Great seal of England, whereby a man is au- thorized to do or enjoy any thing, that other wise of him- self he could not. 15 H. 7 7. And they are so termed from their form, because they are open with the seal affixed ready to be shewed for confirmation of the authority given by them. Common persons may grant letters paten- tis, F. N. B. f. 35. but they are rather called patents than letters patents. Letters patents to make devisa- tors, 32 H. 6. 6 yet for difference faking, those granted by the King are called Letters patent royal. 2 H. 6. 26.

Letters patent conclude with testis meus, &c. Charters with his testibus, 2 par. biff. 78. They are sometimes called also Letters oer. En testiuminio, quod et velum man omn. testibus, &c. See Letters Overyr. Pat. 23 Eliz. 2. m. 1. Letters patent of summons of debt. 26 H. 9. 2. cap. 18. There is likewise a writ pa- tent mentioned in F. N. B. fol. 1. &c.

Levant and rotheant. Is when cattle have been so long in another man's ground, that they have lain down, and are riven again to feed; in the Latin records they say, levantes & culantes. Cowell, edit. 1727. See Common.

Levatum, Leavened bread. From the Lat. levare, to make lighter.

Levatum, To make hay, or properly to call it into wind-rows, in order ad iudicandam, to cock it up._—Hermes de Hedington venit cum fortis suae ut dedit forum levandum & tautandum. Park. Antiq. pag. 320. Hence una levatus font was one day's hay-making, a service paid the lord by inferior tenants. Rea. Orig. fol. 294. f. 300, and also F. N. B. 265. See Creation, Recogintur.

Levari farias, is a writ directed to the sheriff, for the levying a sum of money upon lands and tenements of him that has forfeited a recognizance. Rea. Orig. fol. 295. f. 300, and also F. N. B. 265. See Creation. Recogintur.

Levari farias dama de distriscessitibus, is a writ directed to the sheriff, for the levying of damages where- in the diffizer hath formerly been condemned to the defizer. Reg. Orig. fol. 214.

Levari farias, levatum debiti, is a writ directed to the sheriff, for the levying the remnant of a debt upon lands and tenements, or chattels of the debtor, that has in part finished before. Reg. Orig. fol. 299.

Levari farias, quando discriminatibus quum hatali emptoribus, is a writ commanding them, to sell the goods of the debtor which he has already returned that he could not sell them, and a much more of the debtor's goods as will satisfy the whole debt. Reg. Orig. fol. 300.

Levi, is a measure of land, consisting of 1500 pace ingalliis tells us, is 2000 pcce, pag. 910. In the Mens. 1 tem. p. 319. it is 480 perches.

Leviathan, is a word of ground, as much as a mi- nute; De befo, &c. continentis unum lavacum latitudine & dimidium in angustiis. Monast. f. 719. p. 768. And so it seems to be used in a charter of W. iiiam the Conqueror to Battle Abbey. Cowell, edit. 1727.

Legit, a leg, even or upon the level. Cowe edit. 1727.

Levy, (levius) Signifies to gather or exact; as to bode money; and is sometimes used to erect or set up; as levy a mill. Ritchin, fol. 182. Also to raife or call up as to levy a ditch. Old Nat. Brit. fol. 110. and to a fine, which is now the usual term: And anciently when a fine was made ufc of. Cowell, edit. 1727.

Levontus, is punishable not only with fine and imprison- ment, but also with such infamous punishment in the court to differ thrall seem proper. 1 Hen. C. 196. and Misch. 15 Cor. 2. A perfon was indicted for open lewdness,owing his behawing his wife, and other misdemeanors, and was fined 20 marks, imprisoned for a week, and bound to the go behaviour for three years. 1 Sid. 168. See Hudbert BILLARD, HABU boute.

Let, is often taken for judicium Divi. 'Tis the fu as ludo among the Scots, which is either a cannon or a weapon. In Leg. H. cap. 62. Ab adu- domini uque ad eisrem Epiphanon non est tempus in facienda.

Ler amilla, or legem anfitter, vizz. One who is infamous, perjured or outlawed person. In Bratton, 4. cap. 19. par. 2. Non est ulterior dignas leges.

Ler apollata, or Legum apostolata, is to do thing contrary to law. 'Tis mentioned in Leg. H. cap. 12. Qui legum apostolatibus uerba sue fere regna faciant.

Ler Baptonia, The Brevum law, was a law peculiar to Ireland, overthrown by King John in the twelfth ye, and the English laws settled therein. See Blyton.

Ler Baptope, The law of the Britains, or of c Marches of Wales, Ler Marchitiae. See Blyposed.

Ler verratifia, (Rectus deraurif) Is the proof of any thing which one denies to be done by him, and his ven- tory affirms it; devising and confounding the affair of
of his adversary, and flieving it to be without and against reason or probability. Cowell, edit. 1727.

Ley judicatis, is properly Purgatio per judiciam ferri, Sometimes it is called Judicium. Leg. H. 1. cap. 9, 45.

Ley facramentalis, Purgatio per sacramentum. Leg. H. 1. cap. 9; guid bene vel lege sacramentali, &c. repetetur.

Ley terrae, The law and custom of the land, diftinguished by this name from leges civit. as Mr. Seldon tells us in Differtiae ad Eictum, cap. 9, par. 3.

Ley Wallenfena, The British law, or law of Wales. Statut. Wall.

Ley, The French word for late. We also term pife by a frequent name in several countries, lysi, and fo it is used in Dominy's Disp. 6, ed. 1795.

Whoever in the beginning or end of names, signifies an open field, or large pastures. From the Saxon, leg, campus, pousum; as Blechington, &c. Cowell, edit. 1727.

Ley, (mentioned in sat. 1 Co. 1. cap. 3.) Wager of law. See Vagrand of fabe.

Ley, (ellius) Literally an age, a little book, but by use it is the original declaration of any action in the Civil law. 2 H. 5. 3. and 2 Ed. 6. 13. It signifies also a criminal report of any man cast abroad, or otherwise unlawfully published, and then called famulus libellus; and this either in srcipit, and free scriptis: In scrripiti, when an episcopus, or other church officer, is compelled or pub- lished to another's disgrace, which may be done servitum consilis: As when this is maliciously repeated or sung in the presence of others; or else testimoniwm, when he libel, or any copy of it is delivered over to fandana the party. Famulus libellus, free scriptis may be tudio;

1. Picturis, as to paint the party in a shameful and ignominious manner. Or, 2. Signis, as to fix aallows or other ignominious figns at the door of the arty, or elsewhere. 5 Co. Rep. De famulis Libellis.

A libel is defined a malicious defamation, expressed either in print, or writing, or by figs, pictures, &c. ending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to publick hatred, contempt and ridicule. Hawk. P. C. 103. 5 Mod. 1635.

This species of defamation is usually termed written malice, and thereby applied to any defamation whatsoever, expressed either by figs or pictures; or by fixing up a gallows at a man's door, or elsewhere; or by painting him in a shameful or ignominious manner, as by exposing a man and his wife by a fkinning or riding, though a special custom is alleged for that practice. 5 Co. Rep. 175. 5 Mod. 1732.

Reg. 451. 2 Eliz. 37th.

And since the chief cause, for which the law severely unites all offences of this nature, is a direct tendency to them to a breach of the publick peace, by provoking the parties injured, and their friends and families, to acts of revenge, which would be impossible to restrain by any other means; the law, for the sake of economy, gives the office for injuries of this kind, of all, others, are more sufficiently felt; and since the plain meaning of such scandal, as is expressed by figs or pictures, is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking as that which expressed by writing or printing, should it not be equally criminal? 1 Hawk. P. C. 103.

1. What degree of defamation will amount to a libel? and what certainty is requisite in the matter and application of a libel.

2. Whether proceedings in a court of justice are libel- ra; and whether any thing of this kind can be justified.

Vol. II. No. 102.

3. Who shall be deemed the author or composer of a libel? who the publisher; and how the offenders shall be punished.

1. What degree of defamation will amount to a libel; and what certainty is requisite in the matter and application of a libel.

As every person devises to appear agreeable in life, and must be highly provoked by such ridiculous representations of him, as tend to leflein him in the esteem of the world, and take away his reputation, which to some men is more dear than life itself. Hence it hath been held, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libel- lous, but also such as set him in a caricature or ignominious light for their equally create ill blood, and pro-voke the parties to acts of revenge and breaches of the peace. 5 Co. 125. 1 Ed. 293. Mor. 267. 1 Rul. Abr. 37.

Hence it hath been held, that words, though not scandalous in themselves, yet if published in writing, and tending in a direct manner to the discredit of a man, are libel- lous, whether they be words defaming his private persons only, or persons employed in a publick capacity in the latter case they are said to receive an aggravation, as they tend to scandalize the government, for reflecting on those who are intrusted with the administration of pub- lic affairs, which do not only endanger the publick peace, as all other libels do, byEfilting up the parties immediately concerned in it to acts of revenge, in which also have a direct tendency to breed in the people a dif- like of their governors, and incline them to faction and sedition. Hard. 470. Stin. 123. 5 Co. 125. 2 Rul. 86. 1 Hawk. P. C. 94.

As where a person delivered a ticket up to the minister after fermon, wherein he desired him to take notice, that oaffives paffed now without control from the civil magnificat, and to quicken the civil magnificat to do his duty, &c. and this was held to be a libel, as more particular in our country; and though it was not averred that the magnificats suffered those vices knowingly. 1 Sid. 219. 1 Ed. 773. The King v. Pym.

A. gunsmith, published an advertisement in a common news-paper, that he had invented a short kind of gun that fired for as far as a long gun, and that he was made gunsmith to the Prince of Wales; and B. another gunsmith, counter-advertised, that whereas, &c. reciting the former paragraph, he defined all gentlemen to be cautious, for that the said A. durft not en- gage with any artist in town, nor ever did make such an experiment; and that the word's were not to be given over gun, as any gentleman might be satisfied at the Crown Guns, in Long Aers, the said B.'s house. And the court held, that tho' B. or any other of the trade, might counter-adver- tise what was published by A. yet that should have been done without any general reflection on him in the way of his business; that the advice to all gentlemen to be cautious, was a reflection on his honesty, as if he would deceive the world by a feticious advertisement, and the allegation, that he would not engage with an artist, was setting him below the rest of his trade, and calling him a bungler in general terms, and not relative to the precedent manner, and that the words except out of a leather gun, was charging him with a lie, the word gun being vulgarly used for a lie, and gunner for a liar; and that therefore these words were libellous, and gave judgment accordingly; and herein the court held, that words, even such as are vulgarly employed in themselves, yet being published in writing, and tending any way to the party's discredit, were actionable, and that all words were to be construed faponum jubtellum materiam, and to be understood by the court in the same sense that others do. 3 Bow. Abr. 491. Pofch. 3 Geo. 2. in B. R. Har- man v. Delanor.
of the law, and punishable either by civil action or criminal proceedings. In such cases, at the election of the party injured, the court of King's Bench, whose jurisdiction herein is founded upon the necessity of preventing quarrels and ill blood, and which deals with this offence as of dangerous conseqwencc to, and destructive to the peace of the nation, always exercises a discretionary power, in granting proper remedy, upon offence of this nature, and, will, in many cases, leave the party to his ordinary remedy; as where the application is made after a great length of time; fo where the matter complained of as a libel happens to be true; as where the granting the information and an order to the court, where the matter complained of was intended for reformation, not defamation. 3 Bac. Abr. 492.

So where a man advertises in a publick news-paper, that his wife had eloped from him, and cautioned all persons from trusting her; and an information for a libel being moved for, it was denied, because it was the only way the husband could take to secure himself. 3 Bac. Abr. 492. The King v. Enni, 5 Geo. 2. in B. R.

So where it was advertised in one of the daily papers, that Lady Mordington kept an assembly in Munsfield, and it being counter-advertized by the said Lady, the Queen, that the assembly of Lady Mordington was an impoftrix, and that there was no such person except his wife, who always lived with him; the court refused an information; for though she be called an impoftrix, yet that relates to her as alluming the title of Lady Mordington, and what she said alluded to that title, and therefore in this respect may well be called an impoftrix. 3 Bac. Abr. 492. The King v. Jannear, Poph. 8 Geo. 2. in B. R.

A writing was directed to general Wills, and the four principal officers of the guards, to be presented to his Majesty for redress; the paper contained the defendant's name, that he furnished the guard at Whitehall with fire and candle, for which the government owed him 350 l. that he obtained a warrant for his money, and Captain Carr (the proctor) told him, that if he would affign the warrant, he would procure him the money; the warrant was affigned; and the money paid to Carr, who refrud paying it to the defendant; and the question was, if an information should be granted; and the court held no libel, but a representation of an injury, drawn up in a proper way for redress, without any intention to affcrbe the proctor; and tho' there be a figuration of a fraud, yet this is no more than what is in every day bill in Chancery; with which was never held libels, if relative to the subject matter. 3 Bac. Abr. 492. The King v. Bayley, Hill, 8 Geo. 2. in B. R.

Here it may be proper to infer the remarkable case of parfon Prick, who in a sermon recited a flory out of Parc's Martyrology, that one Greenwood, living near a perjured person, and a great perjurer, had great plagues inflicted on him, and was killed by the hand of God; whereas in truth he was never so plagued, and was himself present at that sermon; and he thereupon brought his action upon the cafe, for calling him a perjured person; and the defendant pleaded Not guilty; and the information for an information was filed upon the evidence. Wray Ch. Juft. delivered the law to the jury, that it being delivered but as a flory, and not with any malice or intention to slander any person, he was not guilty of the words maliciously, and so was found Not guilty. Gra. Jas. 90, 91.

It is certain that a requisite in the matter and application of a libel, it seems to be now agreed, that not only scandal expressed in an open and direct manner, but also such as is expressed in allegory and ironv amounts to a libel, and that the judges are to understand it in the same manner as others do, without any flied at all, unless they were to say that the offence, which in some measure would be to encourage scandal; as where a writing in a taunting manner, reckoning up several acts of publick charity done by one, says, You will not play the Jew, nor the hypocrite, and so goes on, in a strain of ridicule, to infer that what he had been owing to his vainglory; or where a writing, pretending to recog-
2. Whether proceedings in a court of justice are libellous; and whether any thing of this kind can be justified.

It seems to be clearly agreed, that no proceeding in a regular course of justice will make the complaint amount to a libel; for it would be a great discouragement to litigants to subject them to public procures, as they proceed, and to a court of justice, if the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and oblige them to refer the decision of their grievances to the public officers appointed to determine them.


Therefore it has been resolved, that no fable or scandalous matter contained in a petition to a committee of the House of Commons, or in articles of the peace exhibited to justices of peace, are libellous. 1 Lev. 240. 1 Sid. 414. 2 V. 392. 4 Cr. 14. 1 Hawke. P. C. 194.

Also it is held, that no prentent of a grand jury can be a libel, not only because persons who are supposed to be returned without their own seeking, and are from this reason presumed to have no proper evidence for what they do, but also because it would be of the utmost ill consequence any way to discourage them from making inquiries with that freedom and readiness which the public good requires. Moor 637. 1 Hawke. P. C. 194.

And it is held by some, that no want of jurisdiction in a court to which such a complaint shall be exhibited will make it a libel; because the mistake of the court is not imputable to the party, but to his counsel; but herein is said by Mr. Hawkins, that if it shall manifestly appear from the circumstances of the case, that a prosecution is entirely false, malicious and groundless, and composed not with a design to go through with it, but only to expose the defendant's character, under the flaw of a legal proceeding, there can be no reason why such a huckery of publick justice should not rather aggravate the mischief of the charge than make it one, and make such a scandal a good ground of an indictment at the suit of the King, as it makes the malice of their proceeding a solid foundation of an action on the cause at the suit of the party, whether the court had a jurisdiction of the cause or not. 2 Edg. 272. 4 Cr. 14. 1 Hawke. P. C. 194.

Also it seems to be clearly agreed, that in an indictment or criminal prosecution for a libel, the party cannot justify that the contents thereof are true, or that the performer whom it is made has had a reputation; since the greater appearance there is of truth in any malicious innuendo, the more it is likely to be taken for a scandal, and that the jury are entitled to give such a verdict. Lord Coke observes, in a settled state of government the party aggrieved ought to complain for every injury done him, in the ordinary course of law, and not by any means to revenge himself by the odious course of libelling, or otherwise. 5 Cr. 175. H. 325. Moor 637. Hawke. P. C. 194.

Also it seems now settled, that no scandal in writing, is as any more justifiable in a civil action brought by the party to vindicate the injury done, than in an indictment of information at the suit of the Crown; for tho' in actions for words, the law, thro' compassion, admits the party is to be pleaded as a justification, yet his tenderness of the law is not to be extended to written scandal, in which the author acts with more coolness, and deliberation gives the scandal a more durable flame, and propagates it wider and further; whereas in words men often in a heat and passion say things which they afterwards abhormed of, and tho' they seem to act with deliberation, yet the scandal soon dies away, and is forgotten; and therefore from the greater degree of mischief and malice attending the one than the other, the law allows the party to justify in an action for words, their application to scandal; from whence it follows, that the only favour truth affords in such a case is, that it may be flown in mitigation of damages in an action, and of the fine upon an indictment or an information. 3 Bar. Ab. 405. The King v. Roberts, Mich. 8 Gent. 2 in B. R. again to a caulker publishing a libel on Mr. Bentley, recorder of Warwick.

3. Who shall be deemed the author or compiler of a libel, who the publisher, and how the offenders shall be punished.

It has been already observed, that a libel may be expressed not only by printing or writing, but also by signs or pictures; but it seems that some of those ways are essentially necessary; and it is laid down in Lamb's case, that every person who compiles or publishes a libel must be the compiler, procurer or publisher thereof. 9 Cr. 59. Moor 813. Lamb's case.

It has been strongly urged, that he who writes a libel dictated by another, is not guilty of the composing and making thereof, because it appears that neither is the author or contriver; but herein the court held, that the writing being the essential part of a libel, the reducing it into writing in the first instance was a making, and differed from a transcribing; and, according to the report of this case, in 5 Med. it was held, that if one author and another writes, both are guilty of making it, for he shows his approbation of what he writes. So if one repeats, another writes a libel, and a third approves what is written, they are all makers of it, as all who concur and assist to the doing of an unlawful act are guilty; and murdering a man's reputation by a libel, may be considered as murdering a man's person, in which all who are present and encourage the act are guilty, tho' the wound was given by one only. Carth. 405. 5 Med. 163. 10. 167. The King v. Payne.

Also it has been held, that transcribing and collecting libellous matter is highly the act of the party composed or published it; for his having it in readiness for that purpose when occasion served, or its falling into such hands after his death, might be injurious to the government. Carth. 407. 2 Sail. 417. The King v. Bear.

It is said by Holt C. J. that when a libel appears under a man's hand-writing here in no other author is known, he is taken in the manner, and it turns the proof upon him; and if he cannot produce the compositor, it is hard to find that he is not the very man. 2 Sail. 410.

And it is said to have been resolved by the court, that in libels making is the genius, composing or printing is one species, writing a second species, and procuring to be written a third species: And finding a man guilty of writing only, is finding him guilty of one species of making. 2 Sail. 413.

But where in some cases the writing of a libel may be a lawful or innocent act, as by the clerk that draws the indictment, or by a student who takes notes of it, because it is not done ad insaniam of the party; but absolutely considered, the writing the copy of a libel is writing a libel, because such copy contains all things necessary to the construction of a libel, viz. the scandalous matter, and the writing; and it has the same pernicious consequence, for it perpetuates the memory of the thing, and some time or other comes to be published. 2 Sail. 418.

It seems to be agreed, that not only he who publishes a libel himself, but also he who procures another to do it, is guilty of the publication; and it is held not to be material, whether he who disperses a libel knew any thing of the contents or effects of it or not; for that nothing would be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of any writing from an illiterate publisher would make him safe in dispersing them. 9 Cr. 59. Moor 637. 1 Hawke. P. C. 195.

And on this foundation it has been confidantly ruled of late, that the buying of a book or paper containing libellous matter, or a bookeller's shop is, sufficient evidence to charge the matter with the publication, altho' it does not appear that he knew of any such books being there, or what the contents thereof was; and it will not be
be prejudiced that it was brought and told there by a stranger, but the matter must, if it suggests any thing of the kind, in his excuse, prove it. The King's Narr, H3. 2. 2. 1743, &c. was ruled on evidence at Goldhill, by Raymond Chief Justice.

The reading of a libel in the presence of another, without knowing it to be a libel, or the laughing at a libel read by another, or the saying that such a libel is libel, is not so far spoken with or without malice, amounts not to a publication of it. 9 Co. 59. Mors 813. 1 Hawk. P. C. 156.

Also it is held, that he who repeats part of a libel in merriment, without any malice or purpose of defamation, is no way punishable; but of this Hatchets making doubts, for the truth of this kind are not to be endured, and the injury to the reputation of the party grievous is no way lessened by the merriment of him who makes so light of it. Mors 627. 1 Hawk. P. C. 156.

But it seems to be agreed, if he who hath either read a libel himsclf, or hath heard it by another, do afterwards maliciously read or repeat any part of it in the presence of others, or lend or give it to another, he is guilty of an unlawful publication of it. Mors 813. 9 Co. 59. 1 Hawk. P. C. 155.

It is said by my Lord Coke in the case of Dr. libelli sako-my, have been resolv'd, that if one finds a libel, (and could keep himself out of danger) if it be compos'd against a private man, the finder may either burn it, or presently deliver it to a magistrate; but if it concern a magistrate, or other publick person, the finder ought presently to deliver it to a magistrate, to the intent that he may take care of the industry the author may be found out and punished. 5 Co. 138.

It seems to be a matter of doubt, whether the finding an abusive letter, filled with provoking language to another, will bear an action as for a libel, because here is no publication; but it seems to be clearly agreed, that the finding of a libel, without other publication, is an offence of a publick nature, and may be taken as much for a libel as it tends to create ill blood, and causes a disturbance of the publick peace; and if the bare making of a libel be an offence, whether it be published or not, as it esteem'd to be hol'd, surely the finding of it to the party reflected must be a much greater offence. 4 Inf. 180. 3 Inf. 174. 12 Co. 34. Popb. 135. Raym. 201. 1 Lev. 135. 1 Keb. 931. 1 M. 58. Shin. 123. 4.

And on this foundation the court of King's Bench granted an action against a person for finding an abusive letter to Mr. Bernard, &c., therein calling him tattle and foul; although he were not able to write this to the party himself, and never made it publick, being only a piece of private contempt; but the court held, that this method provok'd persons to duelling, that the writing and finding was a good publication, and that the intent of the party shall not be explained by himself. 3 Bac. Abr. 497. The King v. Pullough. Mich. 5. Co. 2. in B. R.

If one deliver a paper full of reflections on any person in nature of a petition to a committee of parliament, to any other person except the members of parliament, he may be regarded as the publisher of a libel, in respect of such differing thereon among those who have nothing to do with it. 1 Sand. 133. 1 Lev. 240. 1 Sid. 414. 1 Keb. 832.

But it hath been held, that the bare printing of a petition to a committee of parliament (which would be a libel against the party petitioning) could not be enjoined, if it were made for any other purpose than as a complaint in a court of justice,) and delivering copies thereof to the members of the committee, shall not be looked upon as the publication of a libel, insomuch as it is justified by the order and course of the proceedings in parliament, whereof the King's courts will not take judicial notice. 1 Hawk. P. C. 95. and the authorities supra.

There can be no doubt but that a person who writes or publishes a libel is subject to the action of the party injured, in which damages shall be recovered; and that being convicted on an indictment or information, shall pay such fine, and also suffer such corporal punishment as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offenders. 9 Co. 175.

and this judgment, 2 B. Ayr. and 15 Vin. Abr. tit. Libel, and 80 Laws of Libels, &c. and Digest of the Laws concerning Libels, &c.

Libell. A levy or delivery of so much grain or corn to a customary tenant, who cuts down or prepares the said grain or corn, and receives some part or small portion thereof for his wages or grantuity. Cowell, edid. 1727.

Libell battel, a free boat. Cowell, edid. 1727.

Libell chafæ habundæ, Is a writ judicial, granted to a man for a free chafæ belonging to his manor, and which he by a jury proved it to belong to him. Cowell, edid. 1727. Regillus of Writs judicial, fol. 26 & 37.

Libell of good faith, is such as being granted to one, he hath a property in the land, &c. 2 Sand. 637.

Libell taurum, A free bull. Cowell, edid. 1727.

Libell waræ. See Catura.

Librett, Is a writ issuing out of the Chancery, to the Treasurer, Chamberlain, or Barons of the Exchequer, or Clerk of the Exchequer, for the payment of any annual pension, or other sum granted under the Great seal. See Brokes, tit. Tyle of Exchequer, gen. 5. Roy. Orig. fol. 153, or to some other and the sheriff, &c. Nat. Bro. fol. 132. for the delivery of any lands or goods or things of value, to the custody of the executors, or assignats of recognition, see Cit. lib. 4. fol. 64, 66, 67. Publifhing a libel. It is also to a gaoler for the delivery of a prisoner, that hath kept a bail for his appearance. Lamb, Eirenarch. lib. 3. cap. 2.

Liberratio. Whatever money, meat, drink or clothes, is yearly, or at any set times in the year, given by the lord to his domaines. Cowell, edid. 1727.

Liberritate publicæ. This is the most frequen phrase in our old writers, to signify church liberty, or ecclesiastical immunities: The right of immunity extorted from our Kings by force of papal power, was a gift the only thing challenged by the clergy, as their right to ecclesiastæ: But by degree, under weak princes are prevailing factions, under the title of church liberty, the freedom of their persons and property from all secular power and jurisdiction, as appears by the canons and decrees of the council held by Boniface Archibishop of Canterbury, at Merton, A. 12. 1258 am at London, A. of 129 free. Cowell, edid. 1727.

Liberritate publicæ. Is a writ by request for such were challenged for slaves, and offered by them selves free, directed to the sheriff, that he take security of them for the proving of their freedom before the justice of affile, and provide that in the mean time they be quite delivered from the hands of those who challenge them. F. N. fol. 77. Villenage, and the admission there of, is infranchissement, &c. Write De natura hominis, libert. et privationes, &c. were of old great titles in the books, but now antiquated. See Martio habundæ.

Liberratæ aliarum. Is a writ that lies for a citizen, or burgess of any city or borough, that contrary to the liberties or towns whereof he is, is impeded before the King's justices, or judicatures, or the justices of the forest, &c. to have his privilege allowed. Roy. Orig. fol. 262. F. N. fol. 232.

Liberratæ extremis in titulis, is a writ where by the Privy Council, or the justices in eyre to admit of an attorney, for the defence of another man's liberty before them. Reg. Orig. fol. 19.

Liberties and rights. Magna Charta, 9 Hen. 3. cap. 9. The city of London shall have all her ancient liberties and customs; and all other cities, boroughs and towns, and the liberties and privileges of the five ports, and all ports shall have all their liberties and freedoms. Magna Charta, 9 Hen. 3. cap. 29. No freeman shall be taken or imprisoned, or be diffus'd of his freehold, or of his liberties or free customs, or be outlaw'd, banish'd, or otherwife destroyed; nor shall the King pass or fend upon his officers, or upon any other person, anything to pervert his judgment, or to delay the law of the land. The King shall in no wise grant, sell, or lend, or delay to none, right or justice. See afterwards 2 Ed. 3. fit. 5. cap. 4. and 42 Ed. 3. cap. 3.
and customs which they have reasonably used in time past.

Stat. 14 Ed. 3. b. 2. cap. 1. The felony given to the King shall not be in had in example, nor shall the pledges, ears, barons and commons, citizens, burgesses and merchants, be charged to make any aid, if it be not by the common assent of the great men and commons in parliament.

Stat. 14 Ed. 3. b. 5. The realm of England shall not be put in subjection of the King, his heirs or successors, as Kings of France.

Stat. 25 Ed. 3. b. 5. cap. 4. None shall be taken by petition or suggestion made to the King or his council, unless it be by indictment of lawful people of the neighbourhood, or by process made by writ original at the Common law. And none shall be put out of his franchises or freedom, unless it be duly sought to answer, and forjudged by course of law; and if anything be done to the contrary, it shall be redressed and holden for none.

Stat. 28 Ed. 3. cap. 3. No man shall be put out of land, nor taken, nor imprisoned, nor ditched, nor put to death, without being brought in to answer by due process of law.

Stat. 42 Ed. 3. cap. 3. No man shall be put to answer without prententment before juries, or matter of record of due process, or writ original, according to the ancient law of the land. And if any thing be done to the contrary, it shall be redressed and holden for none.

Stat. 2 Ric. 2. cap. 2. Peace shall be firmly kept, so that all loyal subjects may safely go, come and abide, according to the laws and usages of the realm; and good justice and equal right shall be done to every one.

Stat. 11 Ric. 3. cap. 10. Letters of the signet or privy seal shall not be forfeit in prejudice of the realm of the issue of barons, earls, barons, knights, burgesses and other freemen of the realm.

Stat. 15 Ric. 2. cap. 12. None of the King's subjects shall be constrained to appear before the council of any lord, to answer for his freehold, nor any other thing real or personal, which be the law of the land; and if any find himself grieved contrary to this ordinance, he shall file to the Chancellor, who shall give remedy.

Stat. 16 Ric. 2. cap. 2. If any lord or other the King's subject do contrary to the statute 15 Richard 2. cap. 12. he shall incur the pain of 20 l. to the King.

Stat. 2 Hen. 4. cap. 1. If any man have had or enjoyed her rights and liberties; and all the Lords Spiritual and Temporal, and all cities, boroughs and towns enfranchised, shall enjoy their liberties which they have duly used; and all the lieges may in safe protection of the King, go and come to his courts; and full justice and right shall be done, in such case as it shall be thought meet for the same, and shall be done by the King's proper真空, without the aid of any man.

Petition of Right, 3 Car. 1. sect. 10. No man shall be compelled to yield any gift, loan, benevolence, tax or such like charge, without common consent by act of parliament; and none shall be called to make answer, or take oath, or to give attendance, or be confined, or otherwise disqualified concerning the same, or for refusal thereof, and no Freeman shall be imprisoned or detained, without cause Lawfully, to which he may make answer according to law; and the people shall be not be burdened, to suffer soldiers and mariners to journey in their houses against their wills; and no commissions shall issue, to proceed within the land according to martial law.

Sect. 11. The late proceedings in the premisses shall not be drawn into confederation; and all the king's officers shall serve him according to the laws of the realm, as they tender the honour of his Majesty, and the prosperity of the realm.

Stat. 16 Car. 1. cap. 10. sect. 3. The court called the Star-Chamber shall be dissolved, and neither the Lord Chancellor, Lord Treasurer, Keeper of the Privy seal, or President of the Council, nor any Bishop, Temporal Lord, Privy Counsellor or Judge, shall have power to hear or determine any matter in the said court, or to do any judicial or ministerial act in the said court; and all acts of parliament, by which any jurisdiction is given to the court called the Star-Chamber, shall, for so much, be repealed.
Sect. 4. The like jurisdiction used in the court before the President and council in the marches of Wales, and in the court before the President and council in the Northern parts, and also in the court of the duchy of Lancaster, and in the court of Exchequer of the county palatine of Chester, held before the chamberlain and council of that court, shall be also repealed; and no court or place of justice shall be erected within England or Wales, which shall have the like jurisdiction, as hath been used in the court of Star-Chamber.

Sect. 5. Neither his Majesty, nor his privy council, have any jurisdiction, power or authority, by English bill, petition, articles, libel, or any other arbitrary way whatsoever, to determine or dispose of the lands or goods of any subjects of this kingdom; but the same ought to be tried and determined in the ordinary court of justice, as by course of law.

Sect. 6. If any Lord Chancellor, Lord Treasurer, Keeper of the Privy seal, President of the council, Bishop, Temporal Lord, Privy Counsellor, Judge or Justice, shall offend contrary to this law, they shall forfeit £500. unto any party grieved, his executors or administrators, who shall prosecute for the same, and first obtain judgment, to be recovered in any court of record at Westminster; and if any person against whom any such recoverable offence shall be, the same, he shall forfeit £1000. unto any party grieved, who shall prosecute, &c. and if any person against whom such second recovery shall be had, shall offend again in the same kind, and shall be convicted by indictment or information, or any other lawful way, such person shall be incapable to bear his office, and shall be likewise disabled to make any gift or disposition of his lands or goods, or to take any gift or legacy to his own use.

Sect. 7. Every person so offending shall likewise pay unto the party grieved his treble damages, to be recovered in any of his Majesty's courts at Westminster.

Sect. 8. If any person shall be restrained of his liberty by order or decree of any such court as before, or by command of the King's Majesty in person, or by warrant of the council-board, or of any of his Majesty's Privy council; every person so restrained, upon demand, or motion made by council, or other employed by him, unto the judges of the King's Bench, or Common Pleas, in open court, shall without delay, for the ordinary fees, have a bates corpus directed generally unto all and every sheriffs, gaoler, minister, officer or other person, in whose custody the party shall be, and the sheriffs or other persons shall at the return of the writ (upon due notice given, at the sheriff's will to draw the writ, and return upon security by his own bond, to pay the charge of carrying back the prisoner, if he shall be remanded; such charges to be ordered by the court, if any difference shall arise) bring the body of the party before the judges in open court, and shall certify the cause of his detainment, and thereupon the court, within three days after such return made, shall proceed to determine whether the cause of commitment be just, and shall thereupon do what to justice shall appertain. And if any thing shall be wilfully done or omitted by any judge, officer, &c. contrary to the direction hereof, such person offending shall be liable to any party grieved his treble damages, to be recovered as aforesaid.

Sect. 9. This act shall extend only to the court of Star-chamber, and to the said courts holden before the President and council in the marches of Wales, and before the President and council in the northern parts, and to the court of the Duchy of Lancaster, and the court of Exchequer of the county palatine of Chester, and all courts of like jurisdiction to be hereafter erected, and to the warrants and directions of the council-board, and to the commitments of any persons made by the King in person, or by the Privy council.

Sect. 10. If any person should be molested for any offence against this act, unless he be implicated within two years after the offence committed.

Sect. 11. Stat. 1 Will. & Mar. (1668) c. 2. cap. 2. sect. 1. Whereas the Lords spiritual and temporal and commons assembled at Westminster, representing all the estates of the people of this realm, did upon the 13th of February 1668, present unto their Majesties, then Prince and Princes of Orange, a declaration, containing that,

The said Lords spiritual and temporal and commons, being assembled in a full and free representative of this nation, for the vindicating their ancient rights and liberties, declare,

That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal;

That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been allowed and exercised of late, is illegal;

That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious;

That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;

That it is the right of the subjects to petition the King, and all committees and prosecutions for such petitioning are illegal;

That all keeping a standing army within this kingdom in time of peace, unless it be with consent of parliament, is against law;

That the subjects which are protestants may have arm for their defence suitable to their conditions, and as allowed by law;

That election of members of parliament ought to be free;

That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament;

That exeuctive bail ought not to be required, nor exeeutive fines imposed, nor cruel and unusual punishment inflicted;

That jurors ought to be duly impanelled and returned and jurors which pass upon men in trials for high treason ought to be freeholders;

That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void;

And for redress of all grievances, and for the amending, strengthening and preferring of the laws, parliament ought to be held frequently;

And they do claim, demand and insist upon all singular the premises as their undoubted rights and liberties of this kingdom, and so shall be esteemed, allowed, adjusted and taken to be; and all the particulars aforesaid shall be firmly held as they are expressed in the said declaration, and all officers shall serve their Majesties according to the same in all times to come.

Sect. 12. No dispensation by any absolution of any statute, shall be allowed, except a dispensation be allowed of such statute; and except in such cases as shall be specially provided for during this session of parliament.

Sect. 13. No charter granted before the 23d of October 1689, shall be invalidated by this act, but shall remain of the same force as if this act had never been made, and the 13 Will. IV. cap. 2. sect. 7. Whereas it is necessary that further provision be made for securing religion, laws and liberties, after the death of his Majesty; and the Princes Anne of Denmark, and in default of issue of the body of the said Princes, and of his Majesty's successors; therefore, Whereas it is necessary that the said claim and possession hither hereafter come to the possession of this crown, shall join in communion with the church of England, as by law established.

That in case the crown and imperial dignity of the realm shall hereafter come to the possession of any person, not being a native of this kingdom of England, this nation be no
obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without consent of parliament.

That from the time that the further limitation of this act shall take effect, no person born out of the kingdoms of England, Scotland or Ireland, or the dominions thereof, butler cowell, liberty, liege

But that after the said limitation shall take effect, judges commissioners may be granted 

And liberty, liege,

That no person who has an office or place of profit under the King, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

That no pardon under the Great seal of England be answerable to an impeachment by the commons in par

Sect. 4. Whereas the laws of England are the birthright of the people thereof, and all the Kings and Queens who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to execute the laws and statutes of this realm, as the act of security for the established religion, and the rights and liberties of the people, and all other laws and statutes now in force, are by his Majesty, with his advice and consent of the lords spiritual and temporal, annull'd, nullified, and confirmed. See Hab. 2. 4.

King, Naturalization.

Liberty, Liberties, Is a privilege held by grant or prescription, whereby men enjoy some benefit or favour beyond the ordinary subject. See Bract. lib. 2. c. 5. But a more general signification of this is, the law, which gives liberty, and which is accounted very precious, not only in respect of the profit which every one enjoys by his liberty; but also in respect of the publick.

Litt. lib. 169.

Librarum, The manner of briefing any one, or sometimes his taking for a barbarous locution, Leg. lib. 6. Gower, edit. 1727.

Libra panata & panfata & ad numerum: A phrase which often occurs in the Donzelaty-Roster, and frequently the memorial of that and the next age,—as Aldilbary in Buckinghamshire, the King's man.—In statu valentis reditur lib. ars & panfata, & de libenis x libris. The value it pays fifty-five pounds burnt and weighed; and for toll ten pounds by the score. For they sometimes took their money ad numerum in the current coin upon content. But sometimes they rejected the common coin by tale, and would melt it down to take it by weight when purified from the lead and too great alloy; for which purpose they had in both times always a fire ready in the Exchequer to burn his money, and then weigh it. Cassell, edit. 1727.

Libra pensa. A pound of money in weight; for it was usual in former days, not only to tell the money, but to weigh it; for several cities, bishops and nobles, and some other persons, had coined money and coined none, and therefore though the pound consisted of 20 s. he weighed it. Thus in Doniesel we read, Reddit uno 30 libras ars & penata. Gait's Hist. of Brit. 1794.


Librata terrar, Contains four oxgangs, and every oxgang 13 acres. See, verb. Benata terras, with us it is so much land as is yearly worth 20s. for in Henry the Third's time, he that had quadrinum libras terrar was to receive the twelfth part of the neighborhood. See Fardinagable.

Some are of opinion, that as money is divided into pounds, shillings, pence, halfpence and farthings, the same degrees are to be observed in the division of lands; and therefore as quadrans signifies a farthing, so quadrata is the fourth part of an acre, ethlata is half and de:nariata is a whole acre, seditata is an acre and libreta is twenty times twelve acres, i.e. two hundred and forty. Spelman is of another opinion, who compares an acre to a mark in money; and as in one there are one hundred and sixty pence, so in the other there are one hundred and sixty perches, which they divide into halves and quarters: So that an acre contains three hundred and sixty denaries; but some say, that libreta terrar is so much ground as is worth yearly 20s. of current money. Cowell, edit. 1727.

Licent. See Authoritas, grant, and 15 fin. Abr. tit. Licence.

Licentia a reale. Licentia surgendi, Is a liberty given by the court to a tenant that is enfeoff'd de male ledbi, in a real action: For the law, that in this case he may not arise out of his bed, or at least go out of his chamber, until he have been viewed by knights thereto appointed, and have a day adjigned to appear: And the reason of this is, that it may appear whether he could himself be enfeoff'd deceitfully or not; and therefore if the demandant can prove that he was seen abroad before the view, or licence of the court, he shall be adjudged to be deceitfully enfeoff'd, and to have made default. Of this, see Bracton, lib. 5. trad. 1. num. 13. and Flata, lib. 6. c. 10. and Harv's Mirror of Justice, lib. 2. cap. Des Effions.

Licentia to go to election. Licentia eligendi, Regis, fol. 204. See Tonge d'Clitre.

Licentia, See Melonies, Haundy, FogoFalling, Pauiters, Lecturer, Barrage, School, Scamps. Licentia coire&iebani, See King's silver.

Licentia surgendi, Is the writ whereby the tenant enfeoff'd de male lecbi, obtained liberty to rise.

Licentia transfruetadi, Is a writ or warrant directed to the keeper of the star chamber, or other person of that degree, to let some pais quietly beyond sea, who have formerly obtained the King's licence thereunto. Reg. Orig. fol. 193.

Libra law, Is a proverbial speech, intending as much as to hang men first, and judge them afterwards. Cassell, edit. 1727.

Lige, (Liger,) Is a word borrowed from the Glossary, and hath two several significations in the Common law, sometimes being used for liger lord, as 34 & 35 Hen. 8. cap. 1. and 25 Hen. 8. 3. and sometimes for liger man, as 10 Rich. 2. 1. and 11 Rich. 2. cap. 1. Liger lord is he that acknowledges no superior. Ducartes in comment. de confuflitt, feudorum, cap. 4. num. 5. Liger man is he that oweth allegiance to his liger lord. Skew de verbis signatis, verb. Lignanis, faith, that is derived from the Italian word liga, a bond or obligation; in whom read more of this matter. See 8 H. 6. cap. 10. 14 H. 8. cap. 2.

Ligeres and Liger-peole, (Ligeri,) The King's subjects, anciently so called, because they owe and are bound to pay allegiance to him. Stat. 8 Hen. 6. cap. 10. 14 Hen. 8. cap. 2. and divers other statutes. Yet anciently private persons had their liger. Cassell, edit. 1727.

Litt. (Fr.) Is a word used in the law of two significations: personal lien, such as a bond, covenant or contract; and real lien, a judgment, statute, recognizance, which oblige and affect the land. Tener de leg. See 15 fin. Abr. 96—99.

Litt. In freed or in place of another thing. Lit. Dist. And when one thing doth come in the place of another.
it shall be of the fame nature as that was; as in cafe of an exchange, &c. 2. Ship. Act. 359.

Licit covenants. In law proceeding, signifies a caffle, manor, or other notorious place, well known and generally taken notice of by those who deal about it. 2 Litt. 464. A mere factum, or for a jury to appear, may be from licet covenants; and a fine or recovery of lands in a licet covenant, is good; but it is said in a sc. fa. to have execution of such fine, the ville or parish must be named. 2 Grot. 574. 2 Med. Rep. 48, 49. See 13 Vin. Ab. 253, 288, 289. 3 Vin. Ab. 205.

Lietenant, (in the tenement,) is compounded of liet, loci & tenore, and signifies him that occupieth the King's or any other person's place, or representeth his person, as the Lieutenant of Ireland, 4 Hen. 4. 6. So also it is used 2 & 3 Ed. 6. cap. 2. whence that officer seems to take his beginning. See Littell, ed.

Lieutenant of the Auditor, Seems to have been an officer under the constable. Cassell, ed. 1727.

Littlewit, (Malloa adulteriorum. Flata, lib. 1. cap. 7.) Is used for a liberty, whereby a lord challenges the penalty of one that lieth unlawfully with his bond-woman. Cassell, ed.

Littlewit, Union and co-operation of soul with body; enjoyment or possession of terrestrial existence. Job. 36. The life of every man is under the protection of the law. Wend's Jenl. 11. A lease made to a person during life, is determinable by a civil death; but if it be to hold during natural life, it is determinable by the death of any person. If any man be determinably deceased, he shall not put his life in jeopardy again for the same offence. Br. Appeal, pt. 12.

Lifefates. Stat. 19 Car. 2. cap. 6. sect. 2. If such perons, for whose life any estates shall be granted, shall abstain themselves seven years, and no proof made of the lives of such persons, so that any action commenced for recovering such tenements by the lefors or reviversons, the persons, upon whose lives such estates depended, shall be accounted as dead; and the judges shall direct the jury to give their verdict, as if the person abstinently himself were dead.

Lifefates, In any such action wherein the life or death of any such person shall come in question between the reviverson and the tenant in possession, it shall be lawful for the reviverson to take exception to any of the jurors, that the greatest part of the real estate of such jurors is held by lease or copy for lives.

Lifefates, If any person shall be evicted out of any lands by virtue of this, and afterwards such person upon whose life such estates depend shall return again, or shall, on proof in any action to be brought for recovery of the same, be made appear to have been living, the lefsees may re-enter and enjoy the lands in their former estate so long as the said person shall be living, and also shall recover for damages the profits of the lands, with interest for the time that they were ousted.

Stat. 29 Car. 2. cap. 3. sect. 12. Any estate par autem vie shall be deivable by will in writing, signed by the party, or by some other person in his presence and by his express directions, sufficed in the presence of the devisor by three witnesses; and if no such devise be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occassion, as affects by defiant; and in case there be no special occassion, it shall go to the executors, and be affets in their hands.

Stat. 6 Ann. cap. 18. sect. 1. Any person who shall have any claim or demand to any remainder, reversion or expectancy, in any estate after the death of any person within age, married woman or any other person, upon affidavit made in Chancery by the persons claiming such estate, in his title, and that hath cause to believe that such minor, married woman or other person, is dead, and that the death is concealed, may once a year move the Lord Chancellor to order such guardian, trustee, husband or other person, suspected to conceal such person, to produce to such persons (not exceeding two) as shall in such order be named by the party prosecuting, such minor, married woman or other person; and if such

guardian or other person shall neglect to produce such infant, &c. on whose life such estate doth depend according to the directions of the order, the court of Chancery is required to order such guardian, &c. to produce such infant forthwith. And if it shall be proved that two of such commissioners shall be nominated by the party prosecuteing; and such a court, the court of such guardian, &c. shall neglect to produce such infant, &c. in court or before such commissioners, whereas return shall be made by such commissioners, and that return filed in the Petty-bag-office, the said minor, &c. so conceived shall be taken to be dead, and it shall be lawful for any person claiming title after the death of such infant, &c. to enter upon such lands as if such infant, &c. were dead.

Sed. 2. If it shall appear to the court by affidavit, that such infat, &c. for whose life such estate is holden, is at certain time place beyond the seas, it shall be lawful for the party prosecuting such order, to fend over the perons appointed by the said order to view such minor, &c. and in case such guardian, &c. shall neglect to produce to such persons a personal view of such infant, &c. such per- sons shall make the place of return of such neglect, which return shall be filed in the Petty-bag, and thereupon such minor, &c. shall be taken to be dead.

Sed. 3. If it shall afterwards appear upon proof in any action that such infant, &c. were alive at the time of such order made, it shall be lawful for such infant, &c. to appear in court, and elsewhere, according to the order and that they cannot procure such infant, &c. to appear and that said infant, &c. were living at the time of such return made and filed; it shall be lawful for such person to continue possession of such estate.

Sed. 4. If any such guardian, &c. having any estate determinable upon the life of any other person, shall by the satisfaction of the court make appear, that they have used their utmost endeavours to procure such infant, &c. to appear in court, or elsewhere, according to the order and that they cannot procure such infant, &c. to appear and that such infant, &c. were living at the time of such return made and filed; it shall be lawful for such per- son to continue possession of such estate.

Sed. 5. Every person who as guardian or trustee for any infant, and every husband feigned in right of his wife and every other person having any estate determinable upon any life, who after the determination of the life of the express content of whom, are next intituled upon the determination of such particular estates, shall hold over and continue in possession of any lands, shall be adjudged trepellers; and every per- son, his executors and administrators, who shall be intituled to such lands by reason of the determination of such estates, shall recover in damages against every person so holding over, and against his executors or administrators, the value of the profits received during said wrongful possession.

Stat. 14 Geo. 2. c. 20. sect. 9. Eftates par autem vie shall not have been determined according to 29 Car. 2. c. 3. or so much thereof as shall not have been so divided, shall be distributed in the same manner as the personal estate of the tefator or intestate.

Life-rent, is a rent or exhibition, which a man re- ceives either for term of life, or for one's naturall life and ticulars, shall receive estates, &c. from others, and answer to the tenter of the usufruct or annuity. See on Lit. 129. and 7 Rep. Calvins cafe.

Ligante, (Ligantia.) Is a true and faithful ob- dience of the subject to his sovereign; sometimes it fig- nifies the dominions or territory of the liege lord, out of theliegen of the King; also the same with Ligante. See Co. on Lit. 129. and 7 Rep. Calvins cafe.

L I M
adovatorum partem in alippe confuerit, &c. This is otherwise called Legiotis. Caffin. de Confessio. Barg. pag. 420, 421. This word is often used in our statutes, as Ann. 6, c. 2, and several others. It seems to be derived from the Ital. ligio, a league or bond; Vinculum articulius inter fidemnum & Regem ursusque intervicii connectiss.; and the French, sall et ligum, illus ad tributum & debirum subiectissum; and such a man may owe or bear to more than one lord; and therefore it is most commonly used for that duty and allegiance, which every good subject owes to his liege-lord. Edmund, c. 1279.

Light-house. For enabling the master, &c. of Trinity-house to rebuild Edzell-light-house, a Ann. c. 20. 8 Ann. c. 6. For maintenance of the Stellars lights, 3 Geo. c. 36. See Ships.

Lights. Stopping lights of a house is a nuisance; but stopping a prospect is not, being only matter of delight, not of necessity; and a person may have either an affine of nuisance against the persons erecting any such nuisance, or may erect his own ground and affirm it. 9 Rep. 58. 1 Med. 54. If a man has a vacant piece of ground, and builds thereupon a house, with good lights, which he fells or lets to another; and he after builds upon ground contiguous, or lets the same to another person, and also builds upon the nuisance of the lights of the first house, the leftee of the fifth house, or any other person of the cafe against such builder, &c. and therefore 1stly they were to be lights of an ancient mealtess, that is now altered. Mod. Ca. 116. 314.

Lights and Lamps, Householders in Middlesex and Surrey within the bills of mortality, at what times to set out such lamps, 2 I. M. & S. I.ff. c. 12. 8 I. L. 15. None but British oil to be used for lamps in dwelling-houses, under penalty of 40s. 8 Ann. c. 9. 17. 318.

Liguarium, The right which one hath to cut fuel in his woods; Sometimes 'tis taken for that tribute or payment which due cutting wood.

Ligumum bicornis, Where exempt from duties, 1 Geo. 2. i. 2. c. 17. 5. 46. Ligummatia, Timber fit for building, Do Fr. 80. Line and lemon juice, To what duties liable, 4 Will. & M. c. 5. 5 f. 23. Ligula, An exempted, or a transcript of a curt-ooll or deed. Council, edd. 1727.

Liguro, A flatterer. Liguriones, mendaces, rapaces, Dei gravamen habant. Leg. Canut. 29. Mr. Sonnot is of opinion that it signifies a glutton, from the Saxon licor, a water-drinker. Ed. 27.

Limitation, (Limitatio,) is a certain time preferred by statute, within which an action must be brought; and time of limitation is two-fold; first, in writs, by divers acts of parliament; secondly, to make a title to my inheritance, and that is by the Common law. Co. Litt. 114. 11.

It seems, that by the Common law there was no stated or fixed time as to the bringing of actions; for tho' it be said by Bradten, that Omnino actions in mundo infra certam tempus limitationem habent; yet my Lord Coke saies, that the limitation of actions was by force of divers acts of parliament; and he, this general position of Bradten's admitted of several exceptions. Bradten, 12. 2. f. 128. 2 I. Sc. 95. Co. Litt. 115. 4 Co. 10. 11.

But we find by the ancient statute law there was a hard time for the heir of the tenant to claim after the death of his ancestor, or else he lost his land, according to the feudal tenure, ut si quis indegua nunc minor, ut quod semper a non inuerit? sive legato, si dicat hodie potestatis aut famae petere, aut servium, aut servituti, aut patres, aut domino suum utius, trahantur his statvis, feudum amissit adominum suum. Spelun. Gloss. 32.

The finding upon this period of a year and a day, upon several other matters hath been deduced from his ancient rule, and on this occasion was pitched upon because the services appointed seem to be annually comnum.

Vol. II. No. 103.
of his or their ancestor or predececor, and declare and allege any further feisin or possessio of his ancestor or predececor, but only of the feisin or possessio of his ancestor or predececor, which hath been, or now is, or shall be feised of the said fervices, rents, and other hereditaments, within three years next before the tofe of the fame writ, or next before the faid precription, title or claim, fo hereafter to be fuied, commenced, brought, made or had.

And it is further enacted, by the faid flautre, par. 2.

"That no manner of perfon shall sue, have or maintain any affife of morta' annexus, cofegage, ayle, write of entry upon diffcifin, done to any of his ancestors or predececor, for any manors, lands, tenements or other hereditaments, of any further feisin or possessio of his or his predececor, or of the feisin or possessio of his or their ancestor or predececor, which was or hereafter shall be feised of the fame manors, lands, tenements or other hereditaments, within fifty years next before the tofe of the original of the fame writ hereafter to be brought.

It is further enacted, par. 3. "That no perfon shall hereafter make any plaint, cognizance or entry upon a fuit, fuit or service, and allege any feisin of any other, whose effate he fhall pretend or claim to have, above fifty years next before the making of the faid awory or cognizance.

And it is further enacted, by the faid flautre, par. 5.

"That all fermons in reverster, fermons in remainder, and faires facias upon fines of any manors, lands, tenements, or other hereditaments, at any time hereafter to be fuied, shall be fued and taken within fifty years next after the title and caufe of action fallen, and at no time after the fifty years.

And by the faid flautre, par. 6. it is enacted, "That if any perfon do fue any of the faid actions or writs for any manors, lands, tenements or other hereditaments, or make any awory, cognizance, precription, title or claim, of or for any rent, fuit, fervice or other hereditaments, and cannot prove that the fervices or other pretentions were in actual feisin or fefion of and in the fame manors, lands, tenements, rents, fuits, fervices, annuities, commons, perfonions, portions, corodies or other hereditaments, at any time or times within the years before limited and appointed in this pre- feint act, and in manner and form as if the fervices or other pretentions were in actual feisin or fefion of and in the fame manors, lands, tenements, hereditaments or other the premises, or any part of the fame, for the which the fame action, writ, awory, cognizance, precription, title or claim, hereafter fhall be at any time had, fued or made.

Note: This flautre hath the usal faving for infants, feme covertes, perfons in prifon and beyond fea.

In the conftruction of this flautre it hath been holden, That in a fermon in reverster or remainder, or on a faires facias, on a fine of fuch nature, the demandant need not mention the flautre in order to make out his title, but he may pretend, if he would take advantage of it, muft plead it. Dyer 315. b. pl. 101. So in an awory for rent. Mos. 31. pl. 102. 1 Rel. Rep. 50.

It hath been held, that this flautre beeing in refraint of the Common law, ought to be confrained ftrictly; and that therefore it does not extend to a fermon in defenden, effcifin nor reficin. 4 Co. 8. 4. And. 16. Lit. Rep. 342.

If A. by deed indented, made a feefidm in fee in B. and his heirs, rendering 100. per annum, to A. and his heirs, of which rent A. or his heirs, have not been feised within forty years, yet the heirs of A. may dilain, and tenant, for that he brought the flautre, whereby before the flautre the awovant was obliged to allege a feisin; and that was where the feisin was fo material, and of such force, that though it was by incrcemenient, yet it could not be avoided in an awory. 8 Co. 64. a. Copper and Fisher adjudged. 1 Chet. 169. S. C.

That predececor, to be relieved touching a rent-charge upon lands by a will, the defendant pleaded the flautre of limitations, and that there had been no de- mand or payment in forty years; and it was held, that this flautre concerns only culmory rents between landlord and tenant, and not any rent that commences by grant, whereas the composition may be granted. 2 Jur. 235. Callis v. Godsell.

The flautre does not extend to the fervices of eufcage homage and fealty, for a man may live above the time limited by the aul; neither doth it extend to any other service which by common poiffibility may not happen or become due within fifty years, as to cover the hall of the lord, or to attend the lord in the war, &c. Lit. 115. a. 2 Inf. 95. 4 Co. 10. Brev's cafe. 6 Co. 3. Lev. 21.

And where the tenure is by homage, fealty and eufcage uncertain, and by fuit of court or rent, or any other annual fervice, by the flautre of the fuit or rent, or other fervice, is a good feisin of the homage, fealty or eufcage, or other accidental fervices, as wardship, heriot fervice, or the like. 2 Inf. 96. 4 Co. 8. 1 Winch. 32. Hutt. 50. 2 Rel. Rep. 352.

By the 1 Mar. cap. 5 it is enacted, "That the 32 Huns. c. 2. that not extend to any writ of right of advowson, mere impleaf, or adleaf of darrefon premium, nor fust patronatus, nor to any writ of right of ward, writ of avow in fervice of ward for the wardship of the body, or for the wardship of any caffles, honours, manors, lands, tenements or hereditaments holden by knight-fevice, but that fuch fuits may be brought at the making the flautre.

By the 21 falc. 1. cap. 16. for quieting men's effates and avoiding of suits, it is enacted, "That all writs of fermon in defenden, fermon in remainder, and fermon in reverster, at any time hereafter to be fued or brought of or for any rent, fuit, fervice or other hereditaments, whereby any perfon or perfonal now hath or have any title, or caufe to have or pursue any fuch writ shall be fued and taken within twenty years next after the end of this present fellefion of parliament; and after the faid twenty years expired, no perfon or perfonal, of any of their heirs, may make any writ of action, if the fervices or other pretentions of the faid manors, lands, tenements or hereditaments, be traverfed or denied by the party, plaintiff, defen- dant or awovant, or by the party, tenant or defend- tant; that then, and after fuch trial therein had, all and every fuch perfon and perfonal, and their heirs, fhall from thenceforth be utterly barred for ever of all and every the faid writs, actions, awories, cognizance, precription, title or claim, hereafter to be fued or made, and for the fame manors, lands, tenements, heredita- ments or other the premises, or any part of the fame, for the which the fame action, writ, awory, cognizance, precription, title or claim, hereafter shall be at any time had, fued or made.

Note: This flautre hath the usal faving for infants, feme covertes, perfons in prifon and beyond fea.
be time of the said right or title first defended, accrue
d, come or fallen, within the age of one and twenty
years, or of a lunatic in like manner, or be
the seas, that then such person and persons, and
his and their heir and heirs, shall or may, notwithstanding
the said twenty years be expired, bring his action,
or make his entry, as he might have done before this Act,
for such person and persons, or his or their heir
and theirs, within ten years next after the
and all age, discovery, coming of found mind, enlarge-
ment out of prison, or coming into this realm, or death,
ake benefit of and for the same, and at no time
during the said ten years.
In the construction of this statute it hath been holden,
that no one joint-tenant is the posses-
sion of the other, so far as to prevent this statute. 1 Sal. 285.
That a claim of entry to prevent the statute of limita-
tions must be upon the land, unless there be some special
action to the contrary. i Sal. 285.

That if a person be barred by

to be enfeined, he is not
thereby hindered to pursue his right of entry which after-
wards accrues to him, no more than a person, who has
several remedies, and discharges one of them, is exclud-
ed thereby from pursuing the others. 1 Lant. 781.

If A. has had poiffession of lands for twenty years
without interruption, and then B. gets poiffession, upon
which A. is put to his ejectment, though A. is plaintiff,
et the poiffession of twenty years shall be a good title in
him, as if he had been in poiffession; because a po-
iffession is like a debt, and repays one interest,
y, and gives a right of poiffession, which is sufficient to
maintain an ejectment. 1 Sal. 421. said to have been
wise to rule by Hylt.

That if one tenant in common receives the whole
of the lands for twenty years, or more, yet this does not bar
other companions for the statute of limitations never runs
t against a man, but he is actually ousted or defièd,
ai. 422.
It has been ruled, that copholds are within the statute
me limitations, because an act made for the preservation of
the public quiet, and no ways tending to the preju-
dice of the lord or tenant. 1 Leon. 37.

But ecclesiastical persons are not bound by any
of these statutes of limitations, because it would be a fide-
evade to evince the statutes made to prohibit their alien-

2. Of the limitation of time in regard to actions on penal

By the 31 Eliz. cap. 5. par. 5. it is enacted, "That
all actions, suits, bills, indentments or informations,
which shall be brought for any forfeiture upon any statute
canal, made or to be made, whereby the forfeitures is or
shall be limited to the Queen, her heirs or successors
only, shall be brought within two years after the offense
committed, and not after two years; and that all actions,
suits, bills or informations, which shall be brought for
any forfeiture upon any penal statute, made or to be
the statutes of titluge, the benefit and the
whereof is or shall be by the said statute limited to the
Queen, her heirs or succession, and to any other that
shall prosecute in that behalf, shall be brought by any
person that may lawfully sue for the same within one
year next after the offense committed; and in default of
such pursuit, that then the same shall be brought for
the Queen's Majesty, her heirs or successors, any
time within the two years after that year ended; and
if any action, suit, bill, indentment or information shall
be brought after the time limited, the same shall be

And it is provided, that where a shorter time is
limited by any penal statute, the prosecution must be
within that time."

By the 31 Eliz. cap. 5. par. 1. it is enacted, "That
upon every information that shall be exhibited on any
penal statute, a special note shall be made of the ver
day, month and year of the exhibiting thereof into
any office, or to any officer which lawfully may receive
the same without any antedate thereof to be made; and
that the same information be accounted and taken to be
of record from that day forward, and not at any此后
that no process be issued or given upon such information, until
the information be exhibited in form aforesaid, &c.

And it is also further enacted by 21 Jac. 1. cap. 4. that
no officer shall receive, file or enter of record, any
information, bill, plaint, count or declaration, grounded on any penal statute, (being within the provi-
sion of this said statute of 21 Jac.) until the informer or
relator hath first taken a corporal oath before some of the
judges of the court, that he believes in his conscience the
offence was committed within a year before the informa-
tion or suit within the county where the said information
or suit was commenced, &c.

In the construction of these statutes it hath been hold-
ess, that the 21 Jac. 1. cap. 4. does not extend to any
offence created before that time; so that prosecutions on
subsequent penal statutes are not restrained thereby, but
that statute is to them as it were repealed pro tante. 1 Sal. 372—3. 5 Mod. 425.

That if an offence prohibited by any penal statute be
also an offence at Common law, the prosecution of it as
of an offence at Common law, is not restrained by
any of these statutes. Hyl. 220. 4 Mod. 144.

That if an information tam quem be brought after the
year on a penal statute, which gives one moiety to the
informer, and the other to the King, it is naught only
with the information, but the informations, and by
any of these statutes. Cas. 331. Cro. Jac. 366. 
and 
Dail. 690.

That if a suit on a penal statute be brought after the
limited time, the defendant need not plead the statute,
but may take advantage of it on the general issue. 1 Sco. Rep. 353.

That the suit is in law not within the restraint of
these statutes, but may sue in the same manner as before.
Cas. Eliz. 645. No. 71. 3 Leon. 237.

It feems doubtful, whether a suit by a common infor-
mation on a penal statute, which first gives an action to
the party accused, and in his default, after a certain time,
to any one entitled thereto, is within the restraint of
these statutes. 1 Sco. Rep. 353. 354.

It has been held by three judges, that suing out a la-
tetiat within the year was a sufficient commencement of
the suit to free the limitation of time on a penal statute,
because the statute is original of B. R. and may be
continued on record as an original. But Hylt held other-
wise, for the action being for a penalty given by a sta-
tute, the plaintiff might have brought an action of debt
by original in B. R. because the statute gives the action;
and he held, that there was a difference between a civil
action, and an action given by a statute; for in the first
case, the suing out a latetiat within the time, and conti-
nuing it afterwards, will be sufficient; but in the other
case, if the party proceeds by bill, he ought to file his
bill within time, that it may appear so to be upon the

In debt post tam on the statute the 1 H. 5. cap. 4. for
practising as an attorney during the time he was under-
sheriff, and the point was on the 31 Eliz. which limits
informers and plaintiffs in popular actions to a year; the
defendant in this case was taken upon a titulum cap.
that bore the mark of the day of January, when his office ex-
pired in November was twelve-month before, and so a
year and two months after his offence; but by ante-
dating the original, and making it of Mich. term be-
fore, it was brought within the year; and North and
Wyndham said it was well warranted by the practice of
the court, that therefore they would make no rule to
stop the filing of the original; but Atkins was against it,
and said it was nothing but a practice to evade the statute
of 31 Eliz. 3 Car. 3. C. B. Greenwood v. Sen.

Fitzjames
Serjeant Hawkins makes it a question, whether the clause in 31 Edw. par. 4. by which it is enacted, That nothing in the said act contained shall extend to chancery cases in equity, &c. but that every such offence may be laid in any county; any thing in the said act to the contrary notwithstanding; doth except the said offences out of the above recited clause, relating to the time within which fines on penal statutes must be brought; for the words also mean that, &c. That every such offence may be laid in any county, &c. to reinstate the generality of the precedents, which say, that nothing in the act contained shall extend to such offences.

2 Hawk. P. C. 272.

3. Of the limitation of time in regard to personal actions, viz. actions of assault and battery, actions of slander, and actions arising upon contract and trespasses; and whether a sufficiency of equitable demand be within the statute.

By the 21 Jac. 1. cap. 16. All actions of trespasses, of assault, battery, wounding, imprisonment, or any of them, shall be commenced and fixed within four years next after the cause of such actions or suits, and not after.

It seems, that if a man brings trespasses for beating his servant, per quod feritum amitst, this is not such an action as is within this branch of the statute, being founded on the special damages; 1 Sul. 206. 5 Mod. 74. But an action of assault, battery, or false imprisonment, the defendant pleads, as to the assault and imprisonment, the statute of limitations, without answering particularly to the battery, otherwise than by using the words transfregess praedicta, it is sufficient, for these words are an answer to the assault and imprisonment. 1 Bland. 76. 74. 1 Lev. 31.

In trespasses for assault and battery, the defendant pleaded non culpa infra fato annis by misslake, and not according to the statute, which is but four years; and upon demurrer it was adjudged an ill plea; for if it be considered as at Common law, there was no such plea; if on the statute, then it was not well alleged and the defendant could not take issue on it, for quod eft culpa infra fato annis is an idle immaterial, because it may be the jury might find him Not guilty infra quattuor annis, but guilty infra fato annis. 2 Sul. 423. Blackmore v. Tildesley. 6 Mod. 240. S. C. 420. 5 Mod. 74.

By the 21 Jac. 1. cap. 16. par. 3. it is enacted, That all actions on the causes for words shall be commenced and fixed within two years next after the words spoken, and not after.

In the construction of this branch of the statute it hath been held, That an action of feronallum magnum is not within the statute. Lit. Rep. 342. 3 Rob. 645. That an action for false or rogue's title, for that is not properly slander, but a cause of damages, and the slander intended by the plaintiff is to the person. Cr. Cor. 141. Lev. v. Harwood, adjudged.

That the words are of themselves actionable, without the necessity of alleging special damages, also a loss ensuing, yet in this case the statute of limitations is a good bar; but if the words at the time of the speaking of them are not actionable, but a subfrequent loss ensues, which intitles the plaintiff to his action, in such case the statute is no bar. 1 Sul. 95. Saunders v. Edwards, Raym. 61. 6 S. C. and see 3 Mod. 111. S. C. cited.

As for calling a woman Whore by which the like her marriage seven years afterwards, the statute is no bar; for it is not the words, but the special damage, which is the cause of action in this case. 1 Sul. 95. 1 Sulb. 206. S. F.

That for calling a man Thief, and procuring him to be indicted and imprisoned for larceny, the defendant is found guilty of the whole, the statute in this case seems no bar, for the action is not for words but, is an action upon the cause in nature of a conspiracy. Cr. Cor. 163. Tophal v. Edwards, adjudged on the branch of this branch of the statute, says, that for slanderous words the plaintiff shall have no more cestuis qua viam, &c. that if an action for words be founded upon an indecency, or other matter of record, it is not within the statutes, but such action may be brought at any time. 1 Sid. 93. 2 Sid. 95. For actions for words, the defendant pleaded non culpa infra verbis praedictis infra duos annos; and upon a special demurrer it was objected, that it ought to have been non culpa infra duos annos; for as it is may be, the defendant spoke the substantial words of the slanderer, and yet did not speak all the words; and yet the plaintiff could not, by any possibility, in thought, or spirit, have become liable to the penalty of debt for 10l. if the defendant says non debit the 10l. without adding nec aliquem inde deminatur, it would be naught, but the court held the causes not alike; for in an action of debt, every penny that stands in demand is of equal weight; but here the action is founded upon the sub- \footnote{\textbf{An.}}
L I M

And to this purpose it hath been adjudged, that an ac-

tion of debt on the 2 Ed. 6. for not setting out title,

is not within the statute, the action being grounded

on an act of parliament, which is the highest record. 

Cra. Con. 513. 4 T. R. 332. 3 T. R. 336. 1 Sound. 1 Sound. 

4 Stat. 305. 415. 1 K. B. 100. 2 K. B. 462.

So it hath been adjudged, that an action of debt for

the arrears of rent referred on a lease by indenture is
define, the lease by indenture being equal to a


368.

Alfo it hath been adjudged, that an action of debt in

an efeate is not within the statute, not only because it is

founded in malfeasitis, and arifes on a contract in law,

which is different from those actions of debt on a lend-

ing or contract mentioned in the statute, but also because it

is grounded on the 1 Rich. 2. cap. 2. 2 Sound. 224.

In an action of debt for an efeate, there being no remedy

or creditors before but on action by the cafe. 1 Sound.

7. Jones v. Pope. 1 Lev. 191. 8 C. S. adjudged. 2

Kb. 903. S. C. and 8d. 3035. S. C.

So it hath been adjudged, that this statute cannot be

led to an action of debt brought against a furrif for

money by him levied on a furrif facias, because the action

fofounded in malfeasitis, as also upon the judgment on

which the furrif facias issued, which is a matter of ac-

cord. 1 Med. 245. Cochran v. Willy 212. 2 Sound.

234. 246.

It hath been adjudged, that an action of debt on an

award under the hand and feal of the arbitrators, though

the submission was by parol, is not within the statute;

or though in fuitcrefs the award cannot be faid to be

fuch as perjury in witnesses, and the op-

position of defendants when their witnesses are dead, or

owedes left; allfo it was never intended that the fuitote

would extend to all kinds of actions of debt, but only to

the fuitors in fpecialty, which being often in praftice, is the
definite plainly tended by the statute, and not this, which being

founded on a cunning feldom happenings; and as the fuitote in

fugation of the Common law, it ought to be confrued


45. S. C. adjudged. 1 Sound. 37. 2 Sound. 64. S. C.

Iwed and admitted to be law.

An action of debt for a fine of a copyholder is not

within the statute. 1 K. B. 536. 1 Lev. 273.

If a man recovers a judgment or feentence in France

or money due to him, the debt must be confrued here

only as a debt by fimple contrat, and the nature of il-

lufions will run upon it. 2 F. & F. 340. per curiam.

It feems that to an affumfit brought by the affignees

for a bankrupt for a debt due to the bankrupt, this statute

is a good bar; for though the affignement is by force of an

act of parliament, yet the affignees fand only in the

place of the bankrupt, and can have no other right nor

interest but they have. 2 Lev. 166. 3 K. B. 645. Com-

mon Law.

It hath been adjudged, that this statute is a good plea

in bar to an affumfit brought by an attorney for his fees

though the attorney be of record, yet his fees are

not 3 Lev. 357. Oliver v. Thomas.

It hath been adjudged, that this statute is a good bar to

an action brought against the defendants for a debt in ex-

change; and that fuch bill is not of as high a nature as

specialty, neither is it within the exception in the statute

relating to merchants accounts. Cartb. 3. Renou


Vox. II. N°. 123.

It feems clearly agreed, that though the statutes of li-

mitations bind the courts of equity, that yet a truft is

not within thefe statutes. March 129. 2 Sal. 124.

And therefore where the plaintiff, who was the fon and

executor of Ch. J. Heath, who was made Ch. J. at

Oxon, differing in many points between the King and par-

liament, but never fat at Westminster Hall, exhibited a bill

against the defendants, prothonotaries of K. B. at that

time, to have an account of the money, &c. received

by them during that time by an implied truft virtute esset

which the defendants plead the statute of limitations;

but upon argument the plea was over-ruled. Chan. Ca.

20. Sir Edward Heath vet Hody et al.

So where the plaintiff exhibited a bill to have an ac-

count of money received by the defendant from his fa-

ther (whofe executor he was) who gave it to him to

take care of for his son, and it was requested that he

should be adjudged to the statute of limitations; and

that the court declaring it a truft, and therefore not

within the statute of limitations. 2 Chan. Ca. 26. Sheldon

v. Weid-

man.

So where my Lady Hollis lent 100l. and in the note

which was given for it, mention was made, that it

ought be disposed of in my Lady Hollis life-time; and a

bill being exhibited for it, the court held it a depo-

fitum or trufl, and decreed payment of it; tho' other-

wife it had been barred by the statute of limitations.

2 Vern. 345. S. C.

A charter is not barred by length of time, nor within

the statute of limitations. 2 Vern. 399.

So it hath been held, that a legacy is not within the

statute of limitations. 1 Vern. 256.

It feems to be the doctrine of courts of equity, that

mortgages are not within the statute of limitations; yet

where a man comes in as an old bad, it hath been some-
times decreed, that the poiffeffor shou'd account no fur-

fer than for the profits made in his own time, to difcour-

age the ftring in fuch dormant titles; alfo the courts

have allowed length of time to be pleaded in bar, where

the mortgagee was not delinquent, and the mortgagee

as a fee without entry

or claim or the mortgagee; and where the poiffeffor

for would be intangled in a long account; and in these

cases the statute of limitations has been mentioned as a

proper direction to go by. 1 Chan. Ca. 102. But now

by the 7 Geo. 2. the redemption of mortgages is ex-

plicitly limited to twenty years. See Mortgage.

4. At what time the right of action shall be faid to have

accurred, before which the statute can be no bar; and what

courts are bound by the statute.

This statute cannot be a bar unless the six years are

expired, after there hath been complete cause of action;

as if a man promise to pay 10 l. to ft. S. when he came from

Rome, or when he marries, and ten years after J. S. marries,
or comes from Rome, the right of action accruing from the

happening of the contingency, from which time the statute shall be a bar, and not from the

time of the promise. Godt. 437.

So in an action of the cafe wherein the plaintiff declared,

that in confradation that he would forbeare to fue the

defendant for fome flleep killed by his the defendant's dog,

the defendant promifed to make him fatisfaction upon re-

queft, and that fuch a promifion was required, &c. it was

held, that the right of action accrued from the requief,

and not from the time of killing the flleep; and that

therefore the defendant could not plead the statute of

li-limitations, the requief being within fix years, though

the killing the flleep, and promife of fatisfaction was long


So in affumfit, in confradation that the plaintiff

would deliver to the defendant fuch a deed, the def-

endant promifed, that he would re-deliver it to him on re-

queft, and alfo in confradation that he had, upon re-

queft, delivered to him another deed, the defendant pro-

mifed to pay him 40 l. and all allegations that he had deliv-

ered to him the fift deed, and although at fuch a day after-

wards he made requief, yet he had not re-delivered the

2 F. & F. 505.
I. I. M.

first deed, nor paid the 40 l. the defendant pleads the statute of limitations, and that he did not promise within six years before the action brought; whereupon the plaintiff demurs; for the cause of action, as to the first deed, did not arise upon the promise, but upon the refusal after request; and the request was within six years; and so held the court. 1 Lev. 48. Webb v. Martin. 1 Sid. 66. 1 Keb. 177. S. C. 11 Arith., that the defendant, upon consideration that the plaintiff, at the defendant's request, would receive A. and B. into his house at bostier, and diet them, the defendant promised, &c. non affirmavit infra fea annos was pleaded; the plaintiff demurred, and held no plea; for the defendant cannot in such case plead non affirmavit infra se annos, but affirmavit infra se annos; for it is not material when the promise was made, if the cause of action be within six years, and the dieting might be long afterwards. 2 Saith. 422. Gould v. Johnson. For this see 1 Font. 191. 2 Keb. 613.

An executor several years before the action brought, left some bond-hold-stuff in the house, by the consent of the heir, who used them after; and within six years of the action brought, the executor demands the goods, and the heir refused to let him have them; whereupon trover was brought, and the statute of limitations pleaded; and per curiam. The utter before the demand was not converted, to be as a matter of course, until then, and the demand being within six years, the refusal which ensued it, is the only evidence of a conversion in the case, as within the six years; and if a trover before six years, and a conversion after, the statute cannot be pleaded. But for this see Gros. Car. 245-6, 333. 1 Jam. 253. 3 M'd. 111.

An action upon the cafe against an executor; the plaintiff declares, that upon a marriage-treaty it was agreed between the plaintiff and testator, that he should pay the plaintiff 100l. and whilst that should be unpaid he should pay the plaintiff 101l. per annum, which agreement in affirmavit, he cannot plead; and the action was brought for all the arrears by the face of twenty-eight years. The defendant pleaded the statute of limitations; and on demurrer it was held, that all could not be barred by the statute; and therefore the plaintiff had judgment. Allen 62. Harvey v. Thorne, adjudged, no body appearing for the defendant.

Trespass for imprisoning him, and detaining him in prison from 32 Car. 2. till the 3d of April, 4 Ear 2. The defendant pleaded as to all till 33 Car. 2. such a day, non culp. infra quaratum annos, and as to the rest, a plainit, and a capias issued; the plaintiff demurred; and per curiam. The imprisoned is not the plaintiff, but one continued imprisonment, yet the defendant may divide the time, and plead the statute as to part; and the plaintiff may reply the continuance; therefore as to this judgment was given against the plaintiff upon his demurrer, but for him as to the rest, because the capias was awarded by the court ex officio, and it did not appear that this defendant meddled in it. 2 Saith. 420. Coventry v. Asley, and see 3 M'd. 110. Camb. 26.

In case of a seaman, the duty does not arise from the contract, but from the service done, and therefore the contract were above six years, and any part of the service within that time, it is out of the statute. 6 M'd. 26.

It is clearly agreed, that the statute of limitations is a good plea in a court of equity; but it seems the safest way for him who pleads it, in his answer, also to say, that he has paid the money, because otherwise the court should look for evidence of the payment between the court plaintiff and defendant, and that the money is a depositum in the hands of the defendant for the benefit of the plaintiff; and the statute of limitations, as has been observed, does not reach trusts. March 129. 1 Saith. 424.

But it seems to be agreed, that the power to plead the statute of limitation is only in the court of Admiralty, or Spiritual court, where they proceed according to their law, and in a matter in which they have cognizance. 6 M'd. 25, 26. 2 Saith. 424. 3 Keb. 356, 392.

Therefore it hath been adjudged, that for a suit upon a contract simper alius mare, no prohibition should go upon their refusals of a plea of the statute of limitations. M'd. 26.

So it has been held not to be pleadable to a proceeding in the spiritual court, pro violenta naturam aequitatis in clergio, because the proceeding is pro reformatione morum, and not the Law. 1 Saith. 372.

It hath been doubted, whether to a suit in the Admiralty for mariners wages, this statute is a good plea; because it is said, that this is a matter properly determinable at common law; and the allowing the Admiralty jurisdiction therein, only a matter of indulgence. 2 Saith. 474. 6 Adm. 307.

But this is now settled by the 4 & 5 Ann. cap. 16. by which it is enacted, That all suits and actions in the court of Admiralty for seamen's wages, shall be commenced and fuel within six years next after the cause of such suits or actions shall accrue, and not after.

5. Of the exceptions in the statute 21 Jac. 1. c. 16, and what will save a bar thereof.

As to this it hath been adjudged, that the last proviso in the statute not only extends to those actions therein enumerated, but also to an affirmavit, the not mentioned, and to all other actions on the cause being of equal mischief, and plainly within the intention of the legislature. Gros. Car. 245, 333. 2 Sund. 120. 2 M'd. 71. 1 Sid. 451.

1. Exception in relation to infants. As to this it hath been held, that the statute being general, infants had been included, had they not been particularly excepted. 1 Lev. 31.

It hath been held, that if an infant, during his infancy, by his guardian bring an action, the defendant cannot plead the statute of limitations; altho' the cause of action accrued six years before, and the words of the statute are, after his coming of age, &c. 2 Sund. 121.

It hath been held in Chancery, that if one receives the profits of an infant's estate, and six years after his coming of age, he brings a bill for an account, the statute of limitations is as much a bar to such a suit, as if he brought an action of account at Common law; for the receipt of the profits of an infant's estate is not such a trust, as being a creature of the court of equity, the statute shall be no bar to; for he might have his action of account at law, and therefore no necessity could come into this court for the account; for the reason why bills for an account are brought here, is from the nature of the demand, and that they may have a discovery of books, papers, and the party's oath, for the more safely taking of the account, which cannot be so well done at law; but if the infant lies by for six years after his coming of age, as he is barred of his action of account at law, he shall be of his remedy in this court. Act. Eq. 350.

Lackey v. Lackey.

2. Exception in relation to merchants accounts. As to this exception, it hath been a matter of much controversy, whether it extends to all actions and accounts relating to merchants and merchandize, or to actions of account open and current only; the words of the statute being, That all actions of trespass, &c. all actions of account and upon the cafe other than such actions as concern the trade of merchants; so that by the words, other than such actions, not being fals actions of account, it has been inferred that all actions concerning merchants are excepted. 1 Jef. 451. 2 Sand. 124, 125. 1 Lev. 287. 1 Keb. 622. 1 Lev. 293. 1 Font. 90. 1 M'd. 270. 2 M'd. 312. 2 Vern. 450.

But it is now settled, that accounts open and current only are within the statute; and that therefore if an account be stated and settled between merchant and merchant, and a firm certain agreed to be brought in such case he, to whom the money is due, does not bring his action within the limited time, he is barred by the statute. Vide the authorities supra.

So it hath been adjudged, that by the exception in the statute concerning merchants accounts, no other actions are excepted but actions of account. Cartb. 212. 445.
also it hath been adjudged, that bills of exchange for
value received, are not such matters of account as are in-
tended by the exception in the statute of limitations.
Carr. 226.
3. Exception in relation to persons beyond sea.
It seems to be well agreed, that the exception as to persons
being beyond sea, extends only where the creditors or
plaintiffs are so absent, and not to debtors or defendants,
because the first only are mentioned in the statute; and
this construction has the rather prevailed, because it was
reputed the creditor’s folly, that he did not file an original,
and the plaintiff might be prevented the bar of the statute.
Ora. Cr. 245. 332. 1 Jon. 252.
1 Lev. 143. 3 Med. 311. 2 Lotus. 950. 1 Salt. 420.
But as the creditors being beyond sea is favored by the
21 Jac. 1. so now by the 45 05. am. cap. 16, it is en-
acted, That if any person or persons, against whom there
shall be any cause of action of trespas, detinue, action for trover or replevin, for
taking away goods or chattels, or of action of account, or
upon the case, or of debt grounded upon any lending or
contract without specialty, of debt for arrears of rent,
or for battery, wounding and imprisonment, or any of them, be,
or shall be, at the time of any such cause of suit or action given or accrued, fallen
or come, beyond the seas; that then such person or persons,
who is or shall be intitled to any such suit or action,
ought to sue against such person or persons within the
year, and sue for such suit and action after their return from beyond the
seas, within such times as are limited for the bringing of
he said actions by the 21 Jac. 1.
4. Where no executor or administratrix to sue or be sued.
A receives money belonging to a person who afterwards
and intermate, and to whom R. takes out administration,
and brings an action against A. to which he pleads the
tatute of limitations, and the plaintiff replies, and filthy
that administration was committed to him such a year,
which was six years since; theo six years are expired since
he receipt of the money, yet not being so since the ad-
ministration, that such action is not barred by the statute.
It is said in general, that where one brings an action
before the expiration of six years, and dies before judg-
ment, the six years being then expired, this shall not
incur the creditor’s or plaintiff’s title; but
But if an executor sues upon a promissory note to the
effactor, and dies before judgment, and six years from
the original cause of action are actually expir’d, and the
executor brings a new action in four years after the first
executor’s death, the statute of limitations shall be a bar
against the personal action, for the time is then save-
orable, by an abatement of the action after the fix years
slapped by the plaintiff’s death; yet the executor should
make a recent prosecution, to which the clause in the
lature, that provides a year after the renewal of a judg-
ment, Gl. may be a good direction, or flew that he
may sue as early as he could, because there was a consid-
ert about the will, or right of administration; for the statute
was made for the benefit of the defendants, to free them
from actions when their witnesses were dead, or their
If there be no executor against whom the plaintiff may
bring an action, he shall not be prejudiced by the statute
of limitations, nor shall any lack in such case be im-
puted to him. 2 Ver. 695.
5. Where no jurisdiction to sue in, or where hindered
by some authority.
It seems agreed, that there being no
courts, or the courts of justice being, no suit
will lie against the creditors of such a fuit as it is en-
abled, That from the 10th of December (which was
the day that King James departed, till the 24th of March
1688, when King Wilkins affirmed the government) shall
not be accounted any part of the time within which any
person by virtue of the statute of limitations might bring
his action, but that he shall not be prejudiced in obtaining
the same time as is from the cooks of December to the 12th of
March for bringing his action. 3 Lev. 283.
It is clearly agreed, that the defendant’s being a member
of parliament, and intitled to privilege, will not have
a bar of the statute; because the plaintiff may have filed
his original suit without being guilty of any breach of privilege.
1 Lev. 311, 111. Car. 256.
It is said, that if a man sues in chancery, and, pend-
ing the suit there, the statute of limitations attaches on
his demand, and his bill is afterwards dismissed, the mat-
ter being properly determinable at common law; in such
case the court will preserve the plaintiff’s right, and will
not suffer the statute to be placed in bar to his demand.
1 Vern. 73. 74.
If the statute of limitations be pleaded to an action, the
plaintiff to fave his action may reply, that he had com-
menced the suit in an inferior court within the time of
limitations; that it was not then barred, and that such suit
began before the bar, and shall be acknowledged by a favourable
construction of the statute of limitations; altho’ in (irth-
nenf the suit is commenced in the court above, when it is
removed by habeas corpus; and this shall be allowed by a favourable
construction of the statute of limitations, because it is
brought in a good place, but that the plaintiff might reply the fut below, and flew that to have been in the
within fix years; not that this fut was a continuance of the
fuit below, but that the plaintiff had rightfally and legally purfued his right; and it should not be in the
power of the defendant, to defeat or hinder him of a re-
6. Where the fuing out a writ will give bar of the sta-
tute. It is clearly agreed, that the fuing out an original
will give a bar of the statute of limitations, and that thereupon the defendant may be outlawed; and that if
the plaintiff come to the court within the time of the order,
then it shall be reversed after his return, yet the plaintiff may bring
another original by journeys accounts, and thereby take ad-
vantage of his fritt writ. Carr. 256.
3 Med. 311.
Also it is agreed, that the fuing out a latitati is a suffi-
cient commencement of a fuit, to fave the limitation of
time, because the latitati is the original of B. R. and may
be continued on record as an original writ. 1 Sid. 53. 60. Carth. 233. 1 Salt. 421.
Also it hath been ruled, that to a plea of the statute of
limitations the plaintiff may reply, that he fued out a
latitati, and continued the writ or suit, and that a relinnas non fitett brew, without concluding pront per recordum; for the
latitati roll is only for the private use of the court, and
no record. 2 Keb. 46. Bottle v. Wood.
So it seems the plaintiff may reply, that he fued out
a latitati of such a term, without setting forth the day of
the suit; and that it is not necessary to insert the
But tho’ the fuing out an original, or latitati, is a sufficient
commencement of a fuit, yet the plaintiff, in order to make it effetual, must fiew that he hath con-
tinued the writ to the time of the action brought. Carr. 12. 2 Salt. 245. 334. 213. 53.
That the attorney’s writing the continuances on the writ in his
chambers is sufficient. 1 Sid. 53. 1 Keb. 140.
Alfo it hath been ruled in equity, that if a man hath a debt due to him by note, or a book debt, and has made no demand of it for fix years, fo that he is barred by the statute of limitations; yet if the debtor, or his executor, after the fix years, puts out an advertisement in the Gazette, or any other news-paper, that all persons who have claims against him, may appear to the bar, and that they shall be paid; this (tho' general, and therefore might be intended of legal fulfilling debts only,) yet amounts to fuch an acknowledgment of that debt which was barred, as will revive the right, and bring it out of the statute again. 

**LIN**

6. Of the manner of pleading and taking advantage of the statute of limitations.

It feems to be admitted, that the statute of limitations must be pleaded positively by him who would take advantage thereof; and that the fame cannot be given in evidence, eafterially in an affirmaff, because the statute speaks of a time past, and relates to the time of making the promife. 


In replying the defendant pleaded Not guilty *De copi* providit *infra* fex annus iam ultimae clapsa; and though it is faid the statute speaks of the fame as *non* epi, and if he did not take, he could not be guilty of the detention; and if this way of pleading were not allowed, the statute would be entirely evaded as to this action; yet the plea was held ill, becaufe he ought to have answered to the defendant, as well as to the taking; also a thing may be lawfully deprived, although unlawfully kept; as being put into a cattel, by which means it could not be reprieved. 1 *Sid.* 81. Arundel v. Trevel. 1 *Keb.* 279. S. C.

In trefpaifs, for a trefpaifs done thirteen years before, the defendant pleaded, that *infra* fex annus, &c. non *of* rude culpabilis. Plaintiff replies, that he brought his action fuch a term, and that within fix years before that time the defendant did the trefpaifs; and upon this the defendant takes iffue, and is found guilty; And it was held, 1f. That the defendant's plea was good in bar, without pleading the statute. 2dly. That the plaintiff's new plea is not a continuance; but although the foregoing action was not epi, and if he did not take, he could not be guilty of the detention; and if this way of pleading were not allowed, the statute would be entirely evaded as to this action; yet the plea was held ill, becaufe he ought to have answered to the defendant, as well as to the taking; also a thing may be lawfully deprived, although unlawfully kept; as being put into a cattel, by which means it could not be reprieved. 1 *Sid.* 81. Arundel v. Trevel. 1 *Keb.* 279. S. C.

LIM

As in affirmaff for fees due to an attorney, the defendant pleaded non affirmaff infra fex annis; the plaintiff replied, that on a day two years before, he had fett out an attouchment of privilege against the defendant; upon which writ *taliiter proceffum futi*; that the defendant (on a day) *Habere term ante annum 2°*; appeared, and the plaintiff declared against him modo & forma, &c.

And upon demurrer to this replication it was held ill; becaufe the plaintiff did not fet forth any continuance of this writ of attouchment, (for *vix non mist broce,) which was fix out two years before; for 'tis impoffible that the defendant could determine *Habere term ante annum 2°*; to a writ returnable two years before, and no other writ is fet forth by the plaintiff; but if the plaintiff, after the *taliiter proceffum futi*, had fhewn the last attouchment, and the return thereof, upon which in truth the defendant did appear, it had been well enough, without fhewing any of the continuances. 

*Carb.* 144. *Rudd* v. *Bartenhaf. 2* *Salk.* 420. S. C.

An indebitatus affirmaff laid several ways; the defendant pleaded alio non, qui dicit quod billa pridet fiut 20 die post, & non anteac, & qui ipfe ad aliquip tempus infra fex annis ante exhibitionem billa pridicit non affirmaff. 

The plaintiff replied a bill of *Middlefeft* took the defendant's hand; then the defendant, on the fame day, whereupon was returnet non efi inventus, and continued down by *vix non mist broce & praecept fitalia;* to this it was demurred, and judgment given for the defendant; for there cannot be a fuch a bill of *Middlefeft* as this, which is returnable the very day of the trefpafs; and the statute of limitations is therefore of no force, if the term expires, it is to be favoured. 1 *Salk.* 421. *Green* v. *Rivera.*

7. Where a debt barred by the statute fiuit is to be revived. It is clearly agreed, that if after the fix years the debtor acknowledges the debt, and promifes payment thereof, that this revives it, and brings it out of the statute; as if a debtors promiffory bill, or fimple contracff, promifes within fix years of the action brought that he will pay the debt; tho' this was barred by the statute, yet it is revived by the promife; for as the note iffwe was at first but an evidence of the debt, fo that being barred the acknowledgment and promife is a new evidence of the debt, and being proved, will maintain an affirmaff for recovery of it. 1 *Salk.* 28, 20, *Carb.* 476. 2 *Mod.* 425, 426. 2 *Shaw.* 126. 2 *Fent.* 151.

Alfo it hath been adjudged, that a conditional promife will revive a debt barred by the statute of limitations; as where to an affirmaff by an executor for goods sold and delivered, by the testator, the defendant pleaded to the statute, and upon evidence it appeared, that the defendant within fix years, being applied to by the executor for the debt faid, If you prove that I had the goods, I will pay you; which being fully proved at the trial, it was held that this conditional promife revived the debt; and that theo' made to the executor, after the death of the testator, was fufficient to maintain the iffue; because the promife did not give any new caufe of action, but only revived the old caufe, and was of no other ufe, but to prevent the bar by the statute of limitation. 


So hath it been held, that a bare acknowledgment of the debt within fix years of the action, is fufficient to revive it, and prevent the statute, tho' no promife was made. *Carb.* 470.

But if an indebitatus affirmaff for goods fold, be brought against four persons, who plead the ftaie of limitations, and it be found that none of them promife within fix years, there can be no judgment againft him; for the contracff being intire, it muft be found that they all promife. 2 *Fent.* 151.

It feems to be the doctrine of the courts of equity, that if a man by will or deed foljefct his lands to the payment of his debts, debts barred by the statute of limitation, shall be paid, for they are debts in equity, and the duty remains; and the statute hath not extinguifhed that, tho' it hath taken away the remedy. 1 *Salk.* 154. 2 *Fent.* 141.
Lit, 8. Afts c. and Co;n. f/w., 9. 8. 3. c. 21. Provided that no ship break bulk till notice to the go-

vem, 3 of 4 on. 8. 2f, 2. 6. Six pence duty on 40 ells of linen cloth exported, 18 Geo. 6. c. 6. 3. Provided that no ship break bulk till notice to the go-

duty. 12 Ann. f. 2. 9. 18. Permitted, and part of the general fund, 3 Geo. 1. c. 7. Penalty of 100 l. and pillory on telling. 10 Ann. c. 15. felt. 97. 12 Ann. f. 2. 20. 13 Geo. 1. c. 26. 4 Geo. 2. c. 31. Exemption of European linen, 3 of 4 from the two thirds subsidy, 7 Ann. c. 7. 12 Ann. f. 2. c. 21. Laws and fripped white linen, not to be char-

red off in Great Britain, 3 Geo. 1. c. 7. felt. 38. But仍 printing from home to pay the duties first, 1 to. c. 1. 36. felt. 21. Linen may be exported to the plantations, 3 Geo. 2. c. 21. Stealing linen from bleeding grounds, felony without 4 Geo. 2. c. 16. repealed, 18 Geo. 2. c. 27. felt. and judge impofder to transport offender. 12 Ann. f. 2. c. 25. According to the laws of Great Britain and Irish linen exported, 5 Geo. 2. c. 20. 18 Geo. 2. c. 25. Penalties on counterfeiting the flamps on linen, 17 Geo. 2. c. 30. Penalties on fraudulent entries of British or Irish linen, 17 Geo. 2. c. 31. felt. 4. Directions for preventing the fraudulent exportation of British or Irish linens, 18 Geo. 2. c. 24. The bounty on exported linen to be paid out of the subsidy, and replaced out of the next supplies, 2 Geo. 2. c. 36. felt. 31. 22 Geo. 2. c. 42. felt. 28. The duties on foreign linen yarn altered, 24 Geo. 2. 46. taken off for fifteen years, 29 Geo. 2. c. 15. felt. 33. Grant of 3000l. annually for nine years for encour-
ing the manufacture of linen in Scotland, 26 Geo. 2. c. 20. Bounty on British and Irish linen exported, 29 Geo. 2. c. 25. Penalty of making a false oath, 29 Geo. 2. c. 15. felt. 11. Litigious, A duty of two-pence Scots upon ale here, 9 Geo. 1. c. 10. 6 Geo. 1. c. 18. Litigato, How exempt of the third-fumblides, 7 Geo. 2. c. 24. may be imported duty free, 3 Geo. 37. 8. To what duties liable, 2 W. & M. sess. 4. c. 4 felt. 43. 44. 45. Litiga, (from the Fr. litigier, al. litiere; and that sum litiem, a bed), even the King’s bed—Firmum societatis In pairs quos ad licitum utraque tenet—esse formatum inveniendi in sum lectionem cum Hambergela per diem in Anglia, & inveniendi literam ad lectum regis, sum ad pellicium regis quando Jakecer apud Brabander, s. Fines Term. Hill, 1 Ed. 2. in Com. Wilts. VoL II. No. 9. Tres carcerata litera, for three cart loads of straw or litter. Mon. Angl. 2 par. fol. 33. b. Literature, Ad literatam ponere, signified to put our children to school, which liberty with our consent of the lord, was denied to those parents that were fertile tenants. So in the lands at Burefett, which were held in villenage from the priories of Marb-le. —Quidlibet curtesmarius non debet filium suum ad literatum ponere, nisi filium suum maritariu five licen-
tia a voluntate suae. Pard. Antiq. p. 401. This prohibition of educating sons to learning, was owing to this reason, for fear the son being bred to letters, might enter into religion or sacred orders, and fto fop or divert the services which he might otherwise do, as here or fuch places.

Literae ad facendum attentat arm 50 seda littis,


agenet, Ibid. fol. 205, 206. Litera Regia depraecationis pro annuas penfiones, Ibid. fol. 307. See these in their proper places.

Literae solutrices, Were magical characters, sup-

posed to be of such force and efficacy, that it was im-

possible to bind those men who carried them: Comes qui cum tenet mirai capit quare ligari non possit, an vero literas solutrices, de quibus fabula furuent, apud sa bekeret. Bede, ib. cap. 22. Lith of the wedding, in the county of York, i. e. the liberty, or a member of Puckering, from the Sax. lid. i. e. membrum. Livius, To what duties liable, 4 Will. & M. c. 5. felt. 2. Literae, As tres carcerata litera, three cart loads of straw or litter. Mon. Angl. 2 par. fol. 32. b. Littleton, Was a famous lawyer in the days of King Edward the Fourth, as appeareth by Staunf. Prior. cap. 11. fol. 72, he wrote a book of great account, called Littleton’s Tenures. Liverpool, For building a church there, and lighting the fires, Ibid. 21 Geo. 2. c. 24. See Parliaments.

Liberty, Liberatur, Is derived from the French livres, that is, infinita, gift, or else from livrer, id est, trave-
des, and accordingly hath three significations. In one it is used for a suit of cloth or fluff that a gentleman gives in clothes and other gowns, with cognizance or without, to his servants or followers, foreign men were mentions in 20 R. 2. 1, 2. 7. H. 4. 14. 8 E. 4. 2. 13 E. 4. 3. 8 H. 6. 4. 3 H. 7. 12. 11 H. 7. 19 H. 7. 14. 3 Car. 1. cap. 4. In the other significations, it betokened a delivery of pollfection to those tenants which held of the King in capite, or knight’s service; for the King, by his prerogative, hath prima sejum of all lands and tenements so holden of him. Staunf. Proros. fol. 12. cap. 3. Every in the third significations, is the writ which lies for the heir, to obtain the pollfection or sejum of his land at the King’s hands, which fee in P. N. B. cap. 155. But by the statute 12 Car. 2. cap. 24. all wardships, literes, are utterly taken away, and abso-

lutely discharged. Formerly great men gave livieres to several who were not of their family or servants, to engage them in their quarrels for that year: This was prohibited by the statute 1 Hen. 4. 4. that no man of whatsoever condition should give a liberry but to his dis-

melts, to his officers, or to his counsel learned in either law.

No yeoman shall wear the livery of any lord, unless he be menial with him, 16 R. 2. c. 12, 20 R. 2. c. 12. General prohibition of giving and wearing livieres, 13 R. 2. f. 3. 14 R. 2. f. 3. 13 H. 4. c. 3. 8 H. 6. c. 4. 8 Ed. 4. c. 5. 19 H. 7. c. 14. The Prince may give his livery, 2 H. 4. c. 21. 12 Ed. 4. c. 14. The King’s servants not to be retained in livery with others, 3 H. 7. c. 12. 5 G. Adu
Ac concerning giving of liversies repealed, 3 Car. 1. c. 2.
Livery of land. See Tudiat.
Livery of seisin. (Dehervatis seisine) is a delivery of possession of lands, tenements, or other corporeal things, (for of things incorporeal no liver of seisin may be) to one that has right, or a probability of right thereto. 3. Edmund (in coats, 97. fol. 3.) Treditio deific off vestilia, & non nata. It is a ceremony used in conveyance of lands or tenements, where an estate in fee-simple, fee-tail, or a freehold palfeth: And it is a testimonial of the willing departure of him, which makes the livery, from the thing wherein livery is made, after the delivery of the thing, in a willing acceptance by the other party of all that whereof the other hath devised himself. The common manner of delivery of seisin is thus: If it be in the open field where is no house nor building, and if the estate pass by deed, one openly reads it, or declares the effect of it, and after that is sealed, the vendor takes it in his hand, with a cloud of earth upon a twig or bough, which he delivers to the vendee, in the name of possession or seisin, according to the effect of the deed: But if there be a house or building upon land, then this is to be done at the door of it, (some being left at the time within the house, and others outside) and then the vendee, who enters alone, shuts the door, and presently opens it again. If it be a house without land or ground, the livery is made, and possession taken by delivery of the ring of the door and deed only. And where it is without deed, either of lands or tenements, there the party delivers by the ring of a mace before wittouch the estate to parts with, and then delivers seisin or possession in manner aforesaid: And so the land or tenement palfeth as well as by deed, and that by force of the livery of seisin. See Wilt. Symbol. part. 1. lib. 2. sect. 190. and Coco on Litt. fol. 43. a. There was anciently a pair of gloves, a pair of lavers ear of wheat, &c. delivered in sign or token of livery and seisin. Quaemdonationem, per unum cultellum super altares Sanctiss Mariae supplicii, aponi Priores, &c. Charts Rob. Comitis Nottinghamian, an. 1142. See Friston.
Livery and dutter le maine. Is where by inquest before the escheator, it was found that nothing was held of the King; then he was immediately commanded by writ, to put from his hands the lands taken into the King’s hands. Stat. 29 Ed. 1. 28 Ed. 2. c. 4. See Dutter le maine.
Liverymen of London. In the companies of Land. liverymen are chosen out of the freemen as affitants to the masters and wardens in matter of council, and for better government; and if any liveryman refuse to take upon him the office, the lord mayor and aldermen may fine him, and bring an action of debt for the sum. 1 Add. 10. 10. See London.
Lobbe, A large kind of North-Sea fish. Stat. 31 Ed. 3. 9. 3. 2.
Lobsters, May be imported by natives or foreigners, and in any vessels, notwithstanding 10 & 11 Will. 3. c. 24. 1 Geo. 1. 9. 2. c. 18. sect. 10. Penalty on taking lobsters ear of wheat on the coast of Scotland between May and September, Geo. 9. 2. sect. 4. 6. 9. 9.
Local, (Locatis) Significhes in a legal sense as much as tied or annexed to a place: For example. The thing is local, and annexed to the freehold. Kichelin, fol. 180. And again, in the same place, an action of trespas by a freehold. Fro. 4. &c. Is transfery, not local, that is, not newto the place of the place of the thing of the place would be left down as material in the declaration, or if it be set down, that the defendant should traverse it by saying, he did not commit the battery in the place mentioned in the declaration, and so avoid the action. And again, sect. 320. the thing is not local, that is, not material to be set down in certain. The purpose of the perfon, and of the land differ in this, because the person being transfery, the lord may have his ravishment de Lond, before he be selle of him, but not so of the land, because it is local. Perkins’s Granis 30.

LOCH
Lochmaben. In the ille of Man, the lochman is an officer of the execution of the governor or deemers, much like our under butler. See King’s Description of the ille of Man, pag. 26.
Lochmuh, A word mentioned in Simeon Daniell, cap. 6. 10. and it signifies a coffin, Cofius corpus in loculo phenoco transtulit orit. 1727. It signifies a division made between two towns or counties to make trial, in which of them the land or place in question lies. Flata, lib. 4. cap. 15. num. 1.
Locutory, A locutory or parlor. The religious, after they had dined in their common refectory, had a with- drawing place, where they did meditate, or con- fession, which room for that sociable use, they call locutory a lompena, and parlor, from the Fr. paroler. They had another room which was called locutorium foris, where they might talk with laymen. Interim riholid cum insignitis clavis ingredientes de locuto in foris ripiden malleis levensinum. Walthamby, p. 257.
Locum-manage, Is the hire of a pilot for conducting a veffel from one place to another. Cowell, edit. 1727.
Locum-merget, Mentioned in the laws of Olros, is expounded to be the bill or art of navigation. Cowell, edit. 1727.
Locum-part, A kind of fishing-veffel, mentioned in flat. 31 Ed. 3. cap. 2.
Longers and lodgings. Stealing furniture from lodgings, 32 & Will. M. c. 9. sect. 5. See Jams. Larceny.
Logaring, An unlawful game, mentioned 33 H. 1. c. 6. so much defaulc.
Logia, A little house, lodge or cottage. Cowell, ed. 1727.
Logwood, Otherwise called Blackwood, brought from Campeche, and divers other remote parts, and prohibited by the statute of 23 Eliz. cap. 9. and 39 Eliz. cap. 11. but since by 14 Car. 3. sect. 11. the importation and use of it is allowed. See Dyer.
Loch or Lochf fih, A large North sea-fish, mentioned in flat. 31 Ed. 3. flat. 3. cap. 2.
Lollaros, (lo called from Walter Lollard, a German, first author of this sect, living about the year 1315.) Were certain heretickes (at least in the opinion of those times) that abounded here in England in the days of Edward the Third, and Henry the Fifth, whereas Wicchiff was the chief in this nation, according to Siow in his Annals, fol. 425. they are mentioned flat. 2 Hen. 5. cap. 7. against thefe Lollardes, much was decreyed by the synod of Constance in a council holden at Oxford. See their tenets in Spavdun’s History of Scot- land, fol. 61. The high sheriff of every county was anci- ently bound by his oath to suppress them.

—You shall (tays the oath) do all your pain and diligence to destroy, and make to cease, all manner of hereby and errors, commonly called Lollardes, within your bailihood, from time to time with all your power, &c.

The intention of thefe Lollardes was, to subvert the Christian faith, the law of God, the church, and the realm: to foid the statute of Henry 5. cap. 7. which was repealed 1 Edw. 3. cap. 12. See 3 H. 7. fol. 41. and Cowen’s Hist. fol. 75. &c. The Lord Keeper allummed the al judicet, and conceived that clause in the oath, touching suppressing Lollardes, should be omitted, because appointed by statutes that are repealed. Cowell, edit. 1727.


Lombardos. The company shall be answerable for their actions, even in Lord’s cases, 9. Civ. 3. 43.
Lombic, Sir Thomas, How recommended for discovering the arts of making and working the three capial Italian engines for making organike filks, 5 Grot. 2. e. 8.

London. The city of London shall have their old liberties and customs, 9 H. 3. 9. &c.

Proceedings
LONDON

Damas shall be affixed by the affix in novel differen, and amercements shall be affixed before Barons of the Exchequer, St. Glnc. 6 Ed. 1. c. 14.

Wines sold contrary to the affix shall be preferred to the Barons, St. Glnc. 6 Ed. 1. c. 15.

None shall walk in the streets armed at curfes, unless almenen or on their servants with lights, St. Civ. Lond. 13 Ed. 1. f. 5.

Taverns and alehouses shall be shut at curfes, St. Civ. Lond. 13 Ed. 1. f. 5.

Fencing schools for buckler shall not be kept in London, 13 Ed. 1. f. 5.

None but freemen shall keep inns in the city, St. Civ. Lond. 13 Ed. 1. f. 5.

The manner of proceeding for arraies of rent and services, Stat. de Genovelo, 10 Ed. 2.

The mayor, &c. of London, &c. shall be tried by for- gery, and an affidavit for not redressing errors, 28 Ed. 3. c. 10.

Visits may be freely sold in London, 31 Ed. 3. f. 1. c. 10.

The mayor, &c. shall have the rule of fishmongers, butchers and poulterers, 31 Ed. 3. f. 1. c. 10. 7 Ric. I.

Privilege granted to those of London to sell visits by retail, 42 Ed. 3. c. 7.

The mayor shall have the confervation of the Thames and Medway for preventing the salmon, 17 R. 2. c. 9.

Of the breaches in the Thames, 4 H. 7. c. 15. 27 H. 8, c. 18.

The aldermen shall continue in their offices, till re- moved for reasonable cause, 17 R. 2. c. 11.

The mayor, &c. not liable to the penalty of 28 Ed. 3. c. 10, for an erroneous judgment, 17 R. 2. c. 12.

The ward of Westminster divided, and to have two al- dermen, 17 R. 2. c. 12.

The penalties in 28 Edw. 3. c. 10. for not redressing defaults in government repealed, 1 H. 4. c. 15.

Merchants of London free to pack their cloths, 1 H. 4. c. 16.

Any freeman may put his child apprentice in London, notwithstanding the statutes, 8 H. 6. c. 11.

Freemen of London may carry their goods to any fair or market, notwithstanding their by-laws, 3 H. 7. c. 9.

The challenges of Reins deim lard taken away, 7 H. 7. c. 5.

Power to the mayor, &c. where they find springs, to lay pipes, &c. for the convenience of water, 25 H. 8. c. 10.


Attains of untrue verdicts in London shall be tried in London, 27 H. 8. c. 5.

No new buildings to be erected within three miles of London or Westminster, 35 Ed. c. 5.

For bringing the New River to London, 3 Jac. 1. c. 18.

4 Jac. 1. c. 12. 12 Geo. 2. c. 32.

A. 3. power of judiciary cowered to determine differences touching houses burnt in the fire of London, 19 Car. 2. c. 2. 22 & 23 Car. 2. c. 14. 25 Car. 2. c. 10.

Directions for the rebuilding of London, 19 Car. 2. c. 3. 22 Car. 2. c. 11.

Houses built otherwise to be deemed public nuisances, 19 Car. 2. c. 3. &c. 10.

Dangerous trades prohibited in the high streets, 19 Car. 2. c. 3. fett. 21.

Aldermen in London to have the fame power as justices of peace, 22 Car. 2. c. 1. fett. 15.

Rates for wharfage and craneage, 22 Car. 2. c. 11. fett. 21.

LORDS
Dimensions of wharves from London-Bridge to the Temple, 22 Car. 2. c. 1. fett. 14.

The maintenance of the clergy in London settled, 23 & 24 Car. 2. c. 15.

For discovery of concealment of charities given during the plague, 22 & 23 Car. 2. c. 16.

A court of judicature to determine differences con- cerning houses burnt in the fire at Smithwick, 29 Car. 2. c. 4.

The judgment against the city on the qua warrants va- cated, 2 W. & M. c. 8.

Houses, &c. may carry inland provisions within the port of London without coopers, 1 Ann. f. 1. c. 26.

Commissioners for the defence water-works to be incor- porated, 8 Geo. 1. c. 26.

For regulating elections, &c. in London, 11 Geo. 1. c. 18. fett. 1.

Oath, &c. to be taken, ibid. Penalty of false oath or affirmation, 11 Geo. 1. c. 18. fett. 2.

The aldermen negative in common council established, 11 Geo. 1. c. 18. fett. 15. Repeal'd, 19 Geo. 2. c. 8.

Freemen empowered to dispose of their effects, not- withstanding the custom, 11 Geo. 1. c. 18. fett. 17.

All persons inhabiting in London, to be bound to the juris- diction of the court of conscience, 14 Geo. 2. c. 10.

The presenting the Lord Mayor at Westminster to be on the 9th of November new style, 24 Geo. 2. c. 48. fett. 11.

The submission and swearing of the mayor to be on the day preceding Good Friday, 24 Geo. 2. c. 30. fett. 4.

The passage over and through London-Bridge to be widened, 29 Geo. 2. c. 40.

Penalty of laying rubbishes in the streets of London, &c. 32 Geo. 2. c. 15. fett. 13.

London assurance. See Insurance.

Longfellow's word used in Thure's Chronicle, and it signifies fieemen fragulis, a coverlet. Cowell, edid. 1727.

Longitude. A reward for discovering the longitude at sea, 12 Ann. f. 2. c. 15. Directions for ascertaining the longitude and latitude of the ports and head-lands, 14 Geo. 2. c. 39. Further directions for discovery of the longitude, 26 Geo. 2. c. 25. 9 Geo. 3. c. 18. Encour- age ment given to John Harrison to make known his in- vention for discovery of the longitude, 3 Geo. 3. c. 14. For explaining and rendering more effectual the said acts of 12 Ann. and 26 Geo. 2. 5 Geo. 3. c. 20. L, 1727.

Lords. (Dominus, Sax. Hlaford, signifying a breth- giver, bountiful or hospitable) Is a word of honour with us, and used diversely. Sometimes being attributed to those who are noble by birth or creation, and are other- wise called Lords of the parliament, and peers of the realm: Sometimes to thole so called by the curtesy of England, as all the sons of a Duke or Marquess, and the eldest son of an Earl: Sometimes to persons honourable by office, as Lord Chief Justice, &c. and sometimes to an inferior person that hath fee, and consequently the homage of tenants within his manor; for by his tenants he is called Lord, and in some places, for dillinage-fake, Landlord: In which last signification, it is most used in our law- books, where it is divided into Lord paramount, and Lord myne. Lord myne is he that is owner of a manor, and by virtue thereof hath tenants holding of him in fee, and by copy of court roll, and yet holds himself of a superior lord, called Lord paramount, over him. Old Nat. Ercis. fol. 79. We likewise read of very lord and very tenant: Very lord is he who is immediate lord to his tenant; and very tenant, he that holds immediately of that lord: So that if there be lord paramount, lord myne, and tenant; the lord paramount is very lord to the tenant, Brecks, tit. Herit, numb. 1.

Lords engaged to procure the King to observe the statute, 14 Ed. 3. f. 1. c. 21.

The peers of the land to redress by judgment things done against Magna Charta, 15 Ed. 3. f. 1. c. 1 & 4.

Lords
L O W

Lords to be judged by their peers, 15 Ed. 3, c. 1, s. 2. 1 Ed. 6, c. 12, sect. 15. 1 Ed. 3, c. 1, sect. 34. For the placing of the lords, 37 Hen. 8, c. 10. Lords to have privilege of clergy without burning, 1 Ed. 6, c. 12, sect. 19. See Privy Parliament. Lords High Admiral. See Admiral. Lord of a manor. See Copyhold. Lord in groths, F. N. B. fol. 3. Is he that is lord, having no manor, as the King in respect of his Crown, Ibid. fol. 5, and fol. 8, where is a case wherein a private man lorded in groths, viz. A man makes a gift in tail of all the land he hath, to hold of him, and dieth; his heir hath but a fee tailory in groths. Lords Marchers. See Wales. Lutinetts, or Lutinetts, May well be deduced from the Latin drum. There were one of the companies of London that makes bits for bridles, foars, and such like small iron ware. 1 R. 2, c. 12. Lofsangia, A flatterer: We read it in Brompton's Chronicle, pag. 991. Herbertus losfanga, that is, Herbert the scephtan, episcopatium, &c. Emit de Reg. Godwin writing of the bishops of Norwich, mentions this Herbert; forfet in ecclisa monstrar geniture losfanga. See Mowt. 2 tom. pag. 218. Lot, Contribution or duty. See Scoer. Lot, or Loth, Is the thirteenth dish of lead in the Derbyshire mines, which belongs to the King. Cocell, edit. 1727. Lutherwite, or Lwerwite, Is a liberty or privilege to take amends of him that defieth your bond-woman without licence, Raffell's Exposition of Words; so that it is an amends for lying with a bond-woman. Cocell, edit. 1727. Lott, A lottery for one million on the duty on sale and an additional excise, 5 W. & M. c. 5, sect. 34. Lotteries declared public nuisances, and prohibited, 10 & 11 W. 3, c. 17, 9 Ann. c. 6, sect. 56. 10 Ann. c. 26, sect. 109. 5 Geo. 1, c. 9, sect. 43. 8 Geo. 1, c. 2, sect. 36. Owners to pay costs to prosecutor, 9 Ann. c. 6, s. 5. 8 Geo. 1, c. 9, sect. 37. Selling chances of tickets in public lotteries prohibited, 5 Geo. 1, c. 9, s. 43. Sales by way of lottery prohibited, 8 Geo. 1, c. 2, s. 36. Penalty on publishing foreign lotteries, 9 Geo. 1, c. 19, sect. 4. Of selling or procuring chances in foreign lotteries, 6 Geo. 2, c. 55, s. 29. Additional penalties on lotteries, 12 Geo. 2, c. 28. Sale of lands by lottery void, and the lands forfeited, 12 Geo. 2, c. 28, sect. 4. Sale of lands by the King, and the lands attached in lands, &c. held by allotment, 12 Geo. 2, c. 28, sect. 11. Not to extend to Royal palaces where the King re sides, 12 Geo. 2, c. 28, s. 10. Lottery annuities, 16 Geo. 2, c. 13, sect. 10. 28 Geo. 2, c. 15. 29 Geo. 2, c. 7. Laws against private lotteries extended to Ireland, 20 Geo. 2, c. 2, sect. 26. 30 Geo. 2, c. 5, sect. 32. See Gaming. Love, Provoking unlawful love was one species of witchcraft punishable by flat. 1 Jas. 1, c. 12. See Witchcraft. Lourandus, A ram or bell-wether, Cocell, edit. 1727. Lourangyl, (Fr. Lourardie, inhumanitas, incivilitas.) In Flatus pro fratris London, printed anno 1573. art. 45. Calling any corrupt thing, or oppressing the water, is lurgery and felony. Some think it a corruption of burglary. See Bugg, in a. Scriptores, vero Burgaria, man Burgaria, and Quirites. See Buggard. Lobarlettes, (mentioned in 22 Eliz. cap. 10.) Are such as go with light and a bell, by the sight whereof birds sitting on the ground, become somewhat stupified, and so are taken with a net. This name is derived from the word lobar, in the Scotch, or old English, signifies a flame of fire. See the Antiquities of Warwickshire, pag. 4.

L Y N

Louboute, A recompense for the death of a man killed in a tumult, or, as we say, by the mob. Cocell, edit. 1727.

Ludi be Rege & Regina, Playing at cards, so called, because there are Kings and Queens in the pack. Cocell, edit. 1727.

Luminare, A lamp or candle set burning on the altar of any church or chapel, for the maintenance of which, lands and rent-charges were frequently given to religious houses and parli churches. See Kennet's Glastow in Parochial Antiquities.

Lunatikth, Is defined to be a person who is sometimes of good and found memory and understanding, and sometimes not: Also quosqur sanctis lucidis intellectus. And so long as he hath not understanding he is non campus mus, 1 Inf. 247.

By flat. 15 Geo. 2, c. 30, in case any person found a lunatick, by any inquisition taken by virtue of a commission under the Great seal of Great Britain, or any lunatick or person under a phrenly, whole person and estate by virtue of any act of parliament shall be committed, shall marry before he or she be declared of sane mind by the Lord Chancellor, or such trustees as aorefraid, or the major part of their, or with, which marriage shall be void. See Deets and Lunatikths.

Lunda, A weight formerly used here. Lunda angulorum confat de 10 foec. Pluta, lib. 2, cap. 12, p. 17. Lunds, A feeling or exalting in a refrained fain, signified nothing but a silver penny, which at first was so heavy as a penny is now, and was once called a lundefish, because it was to be coined only at London, and not at the country mints. See Londani's Effay upon Coins, p. 17.

Lupanattity, A bawd or trumpet. Rex majori & vici. London faltis, Quia intellimus quod placere robur & murus porporatus per receptors & receptacles publicos laparantias in diversa latis in eavm diea praedita, &c. Claful 4 Ed. 1 p. 1. m. 16, dofo. Lupium raput serere. To be outlawed, and so have one's head exposed like a wolf's, with a reward to him that shall bring it in.——Hugo filius Waleri probiijerti attigatus non comparut, unde dictum feit quia ex quo Hugo nullus comparare ad pace Regis, quod gercet lupium caput, fientius peces.——Plutarchus Corone 4 Jho. Rot. 2. in dorfo.

Lupullitutum, A place where hops grow, a hop-garden. Co. 1 lefts. 4. 8. Lutensburgh, or Luttenburghs, Were a base sort of money coined beyond sea, to the likeness of English money, in the days of Edward the Thirde, and brought in to deceive the King and his people; to avoid which, it was made treason for any man willingly to bring in any such. Stat. 25 Ed. 3, stat. 4, cap. 2. 3 part Inf. 1. Luntia, anno 1437, tells us, that in eodem anno deferior in Anglise per allatiquem & inegantes mercatores dixit manum, qua lufburn appellata est, unde ad Londinum multi mercatores & aliis plures sunt tracti & flatufcri. Lutstreings, See Ditto. Lye-prift, Left-flitter, A small fine or pecuniary composition paid by the customary tenant to the lord for his services, &c. See Some of the most.

Lymputta, A line-pitt. Cocell, edit. 1727. Lyndebode, Was a doctor both of the Civil and Canon Laws, and dean of the Arches. He was embas- fador for Henry the Fifth into Portugal, anno 1423, as appeareth from the Preface to his Commentary upon the Pro- vinciales. Cocell, edit. 1727.

Lyn, For rebuilding the houses there, 26 Hen. 8, c. 9.
Magna Charta, was either for that it contained the sum of all the liberties of England, or else because there was another charter, called Charta de Forfili, establised with it, which was the left of the two; or because it contained more than many other charters, or more than that of King Henry the Fifth, or of the great and remarkable solemnity in the denounced excommunication, and direful anathema's against the infringers of it. We read in Henry's time, that King John, to appease his barons, yielded to them laws or articles of government, much like to this Great Charter: But we have now no ancienier written law than this, which was thought to be so beneficial to the subject, and a law of so great equity, in comparison of those which were formerly in use, that if King Henry the First had left the fifth penny of all the moveable goods, both of the spirituous and terrestrial throughout the realm. Spelman in his Gliiff, on this word, calls it, Augsfifium Anglicarum libertatum diploma & sacra anchora. It is magnum in peora, and hath been above thirty times confirmed, Taya Coke upon Littleton, ed. 8. It is recorded, that when Hen. 3, confirmed it, he swore, 'On the word and faith of a King, a Christian, and a Knight to observe it.' Cowell, ed. 1727.

Anathemata against the infringers of Magna Charta; Sententia lata, 28 Hen. 3. St. Conf. Cart. 25 Ed. 1. 3. 4. Writs shall be granted against the infringers. St. 12 Hen. 3. c. 5. Magna Charta shall be sent to all sheriffs, &c. St. Conf. Cart. 25 Ed. 1. c. 1. Judgments against the Great Charter shall be void, St. Conf. Cart. 25 Ed. 1. c. 2.

The charters shall be publickly read in the cathedral churches, St. Conf. Cart. 25 Ed. 1. c. 3. and by the sheriffs, Art. fuper Cart. 28 Ed. 1. b. 3. c. 4. Three knights to be elected in each county, to hear complaints of offenses against Magna Charta, Art. fuper Cart. 28 Ed. 1. c. 3. & 4. See Charta magna. Magna praetoria, A great or general reap-day, is the lord of the manor of Harrow in cam. Middlesex, had (in 1627 R.) a curfew, that by summons of his bailiff upon any general reap-day (then called magna praetoria) the tenants should do 159 days work for him; every tenant that had a chimney was to fend a man. Phillips of Purveye, pag. 145. Magnum centenum, The great hundred or six-score. Cart. 20 Hen. 3. m. 1. Mulhemeria, The temple of Mahomet, so called by Matt. Paris, and because the guffles, noise and songs there used were ridiculous to the christians, therefore they called antick dancing, and every ridiculous thing, a marerie.

Maiden aitches, Is when at any aitches no person is condemned to die. Malheri regis, Is a noble paid by every tenant in the manor of Bolith in Cam, Radnor, at their marriage, and it was anciently given to the lord for omitting the curfew of Malmesbury, whereby some think he was to have the first night's lodging with his tenant's wife: But I rather suppose it to be a fine for the licence to marry a daughter. See Wippen, 1.

Majestatum, (from the Fr. Majestas, i. e. mater anitum) A brazier's shop; but some are of opinion that it signifies an house, guis majestatum. Cowell, ed. 1727.

Majestatem, or Magistatibus, (from the French word magistature) Magnifity; or word or honor, by which a man loathes the use of any member, that is or might be any defence unto him in battle: As if a bone be taken out of the head, or broken in any other part of the body or foot, or hand or finger, or joint of a foot, or any member be cut, or by wound the fins be made to shrink, or if an eye be put out, fore-crotch and any other thing hurt in any man's body, whereby he is disabled to defend himself, or offend his enemy. Glanville, lib. 14. cap. 7. See Braden at large, lib. 3. trat. 2. cap. 24. mom. 3. Britton, cap. 25. and Steadward, pl. cars. lib. 1. cap. 41. and the Mirror of Juroc, cap. De Humanis. But the cutting off an ear or nose, the 5 H breaking
MAI

breaking of the hinder teeth, or such like, was no may-
be, it being rather a deformity of body, than dimin-is-
ning of strength. But now by the statute of 22 & 23
Car. 2. c. 1., the cutting off a nose, or cutting off or
disabling any limb, is a common blemish of body;
whether done in the act of Murder, or otherwise, is
considered as a blemish of body: Mayhem is commonly tried by the jus-
tices infecting the party; and if they doubt whether it
be a mayhem, or not, they use to take the opinion of some
able chirurgeon in the point. The Grand Cogni-
mastery of Normandy, cap. 6, calls it malaignium, and the
Cassims, Mem bri matilliam, &c. and all agree, that it is
the los of a member, or the los thereof; and Membrum,
Caffan, de Coef, Burg. pag. 168. defines thus, Est pars
corporis hanc deftimation operationem in corpore. See Skene
De verborum Significatione, verbo Machinam. See Co.
on Litt. lib. 11. cap. 11. feb. 191. Henu Malaidentum, a
man of bad reputation. By this statute, the party off-
ending may lay an appeal for mayhem or wifful wounding: When
it was laid to the charge of the defendant or appellee, that
he did it nseuer in felonia, i. e. maliciously, and with
an evil or felonious intention: And the appellant did offer Dif-
rinatione verfai eum, quia bona malamentum, prouit curia De-
n. l. 2. Cowell, edit. 1797.

Mayhem is by others defined to be an hurt done to
a man's body, whereby he is rendered les able in fighting,
either to defend himself, or annoy his adversary; such
as the cutting off, disabling, or weakening a hand or finger,
thumb, or toe, with a sword, knife, fist, &c. and
there be properly fail to be maihemis, and to come under
the notion of felonies; but the cutting off an ear or nose
are faid not to be properly maihemis, because they do
not weaken a man, but only disfigure him. Cit. Litt. 126.
128. 3 fiJft. 62, 118. 1 Hatvok. P. C. 111.

By the old Common law, cautious was punished with
death, and other maihernis with the los of member for
member; but of latter days maihern is punisbiable only
by fine and imprisonment. Bratt. 144. 3 3ft. 62.

And by the statute 22 & 23 Car. 2. cap. 1. it is en-
acted, That if any person shall on purpose, and of
malice forethought, and by lying in wait, unlawfully cut
out, or disable the tongue, put out an eye, slit the nose,
cut off a nose or lip, or cut off or disable any limb or
member of any subjicr of his Majesty, with intention in
fo doiing to main or disfigure, in any the manners before
mentioned, such his Majesty's subjicr, then that, and
in so doing, the person or persons offending their
counsellors, ser ues and abettors, knowing of and
privy to the offence as aforesaid, shall be and are by
the said statute declared to be felons, and shall suffer
death as in cases of felony without benefit of clergy.

Provided, that no attinier of such felony shall extend
to any person committing the same, or for the first
or fottler of the wife, or the sons, or goods or chattels of
the offender.

If a man, attack another of maihern fore-thought, in
order to murder him with a bill, or any other such-like
instrument, which cannot but endanger the maiherning
him, and in such attack happen not to kill, but only to
main him, he may be indicted on this statute, together
with all those who were his abettors, &c. and it shall be
left to the jury on the evidence, whether there was a deign
to murder by maiherning, and conventufently a malicious in-
tent to main, as well as to kill; in which case the of-
ference is within the statute, tho' the primary intention
was murder. State Tr. vol. 6. p. 294. So ruled in Cook's
trial, who together with Woodburne was condemned and
executed at Suffol k assize. 8 Gen. 1. for the killing of
the nofe of Mr. Crispe.

Bali intibus, An old may-game or ludicrous custom
for the priest and people in procession to go to some
aforenamed church on a holy-day morning, under a
fort of triumph, with a may-pole, boughs, flowers, gar-
lards, and such like tokens of the spring. There
was thought to be so much heathen vanity in this practice,
that it was condemned and inhibited within the diocese of
Lincoln, by the good old exemplary bishop Gregofian. —
Bali intibus, bellofermus, claridem, intibus, 
ducitgnum mai, & fitum autumni, & laici statuab, gaud
nullo modo vos lateres pefiti. Si ufera prouidentia super bii

MAI

discontent and disfiguration.

Robert Groseffep, Episcopale Line.

Epit. apud Appendix, ad Facieulum, p. 382.

Stall, (Moscula.) A coat of mail, it is called mail,
from the French maille, which signified a square figure,
or the Square. Mail is made without any joints, or
with a coat of mail, because the links or joints in it resembled
the squares of a net. Maile, with a double l., signifies
a round ring of iron; firm hence the play of Pall-mail, from
palio a bull, and the round ring through which it is
worn, Cowell, edit. 1797.

Maile, A scientifically a kind of money. Id. ib. See
Black-mail.

Mailis, Silver half-pennies. In 5 Hen. 5. by in-
denture in the mint, a pound-weight of old turling was
to be coined into three hundred and fixty feetings or
pennies, or four hundred and twenty mailes, on one
thing; and the silver mailis was not only good forty farthings. See Londond. Epifeg on Coins, p. 38.

Mailfing, Cutting out tongues, making, &c. made
feoly, 5 Hen. 4. c. 5. Cutting off the ears of a man,
or the tongue of a beast, punis hbled with treble damages,
and tol. ficc. 37 Hen. 8. c. 4. ftJ. 4.

Mailthe, A false oath, perjury. Si nofis abhorrer,
emendit ipsum malum, id eft, perjurium dupliciter. —
Leg. Iam Regis, c. 34.

Maine-poite, (In manu portantium,) Is a small tribute,
commonly of leaves of bread, which in some places the
parishioners pay to the rector of their church, in recom-
pensation of the small wages they receive there.

Maineur, or Maineur, or Mainueur, (from the French
mon, i. e. hand,) In a legal fenee denotes the
thing that a thief took away, or stealing. As to be
taken with the maineur, Pl. Car. fol. 179. is to be
taken with the thing stolen about him: And again, fol.
194. it was pretended, that a thief was delivered to the feer
or vicfon, together with the maineur: And again, fol.
186. If a man be indicted, that he feloniously flote
the goods of another, where, in truth, they are his own
goods, and the goods be brought into the court as the
maineur; and it be demanded of him, what he faid to
the goods, and he delfrain them; though he should be
found guilty of the felony, he shall lose the goods: And again, fn.
149. If the defendant were taken with the monaur, an
the monaur be carried to the court, they, in ancient times
would arraign him upon the monaur without any appeal o
indictment. Cowell, edit. 1797.

This may be let to bail, bailable and what people are bailable appears in the statute o
Wism. 1. cap. 15, made anno 3 Edw. I. See Bail.

Mainpernos, (Manucoperares.) Are those performers to
whom a perform is delivered out of custody or prifon, and
they become security for him, either for appearance or
his good behaviour. A person called Mainpfer is what
they do it as it were monae captus & ducere capitum = &c. cap-
vul prisone. And the prifoner is forbidden to be delivered to
bail from the words of the bail-piece, viz. A. B. &c. traditum
in bailiwm j. D. & R. R. &c. See

Mainpote, (Manuportantium.) Is compounded of the
French words, viz. main, mainns, pris, captura. It signifies
in our law, the taking or receiving a man into friend-
cfy custody, that otherwise is or might be committed to prifon,
upon security given for his forthcoming at a day af-
figned: And they that thus undertake for any, are called
Mainporners, because they do receive him into their
hands, Stannard, Pl. Car. fol. 178. from hence come the
word mainporeable, which designes him that may thus be
balled; for in many cases a man is not mainporeable
whereof see Bre. tit. Mainpote pr. tatum, & F. B. fol.
249. Mainwod in his Forly Laws, pag. 107, make
a great difference between bail and mainpore; for he the
latter must be given by the person who is to return must
be given by the person who is to return must return not in
fort of triumph, with a may-pole, boughs, flowers, gar-
lards, and such like tokens of the spring. There
was thought to be so much heathen vanity in this practice,
that it was condemned and inhibited within the diocese of
Lincoln, by the good old exemplary bishop Gregofian. —
Bali intibus, bellofermus, claridem, intibus, 
ducitgnum mai, & fitum autumni, & laici statuab, gaud
nullo modo vos lateres pefiti. Si ufera prouidentia super bii

3
MAI

by the law to be at large, or at his own liberty; hus for Maintenance. The Mirror of Justices differing with
between pledges and mainperns, faith, that pledges are
more general, and that mainperns, are body for body, ih.
2. cap. De Treffpis Venial, and lib. 3. cap. De
Pledges & Maintainers. When mainpern may be granted
and when not, see Crump. Juif. of Peals, fol. 136, and
443. and Lamb. Eiren. lib. 9. cap. 2. pug. 337; 339.
240. See also Britten, fol. 37. cap. De
Pledges & Maintainers. Lastly, the Mirror of Justices
find, that pledges are those that bail or redeem any thing
out of the body of a man, but mainperns are those that
see the body of a man, and therefore that pledges belong
not, but mainperns exclusive to personal.
Cowan, edit. 1.727. See Maï.

MAINTENON, In the North, signifies as much as for

Maintain, he that supports or secures a cause de-
pending in suit between others, either by disputing money,
raking making friends for either party. Stat. 10 Hen. 7.

Maintenance, (Maintenion, and mantuementia,) Sig-
nifies the upholding of a cause or person, either by word,
writing, countenance or deed; metaphorically drawn from
accouring a young child, that learns to go by one’s hand:
the word signifies, the world felf, or the world’s ma-
kin, but in a man’s act in this kind is by	
accounted maintenance, and when, not that, see Britte,
2. and Cremp. Jurifld. fol. 38. The writ that lies
pain a man for this offence, is called Maintenance.
In special maintenance, Kitchin,
d. 204. feemeth to be maintenance, most properly so
acconed. Cowell, edit. 1727.

Maintenance in general, is defined by others an un-
uful taking in hand, or upholding of quarrels, or sides,
the defendant, or the parties, to the cause, and the
fright of, and hinderance of common right, and
should be understood. Cot. Lithe. 385. b. 2. 208, 341.
Hawk. P. C. 249. First, Raralis, or in the country;
in which one sitteth another in his pretentions to certain
rights, by taking or holding the possession of them for him
by use or fubfity; or where one fifts up quarrels and suits
in the country, in relation to matters wherein he is no
any concerned; and this kind of maintenance is punifh-
able at the King’s fuit by fine and imprisonment; what-
er the matter in dispute in any way dependent in plea or
but it is faid not to be offencive. Cot. Lithe. 385.
Baf. li. 213. 2 Roll. fir. 115. Secondly, Corali, or
in every county, where one officiously intercedes or
a suit depending in any fuch court, which no way be-
ng to him, by affifting either party with money, or
ervice, in the prosecution or defence of any fuch fuit.
Baf. li. 2. Roll. fir. 115. Of this fghaned kind of
maintenance there is not faid to be the like in the
a court of judicature, but as an officious intermedial
the King’s fuit by fine and imprisonment, in
right, or for which see Champerty, on
Where one laboureth a jurry, which is called em-
fray, and for which see Emfbray. 3dly, Where
one maintains another without any contrat to have part
the fuit in fuit, which generally goes under the com-
mon name of maintenance.
1. What fhall be deemed acts of maintenance; and in
what refefts fome fuch acts fhall be justified.
2. How maintenance is reftained and punished by the
Common laws, and by Statute.
3. Offence of buying or felling pretended titles.
1. What fhall be deemed acts of maintenance; and in
what refefts fome fuch acts fhall be justified.
It is faid, that not only he, who affifts another with
money in his caufe, as by retaining counfel for him, or
otherwife bearing him out in the whole, or part of the
cause, be maintainer, and therefore liable to mainte-
ance; but he that expence, which otherwife he may be put
to, is guilty of maintenance; as where one persuades, or
otherweise endeavors to persuade a man to be of counfel for
1 Hawk. P. C. 249.
Alfo it fees to be an act of maintenance to open
goods, to the jury, or to give evidence officiously with-
out being called upon to do it, or to speak in a caufe as
one of counfel with the party, or to retain an attorney
for him; and some have faid, that it is maintenance even
barely to go to him where he has been called upon for his
1 Roll. fir. 593. 2 Roll. fir. 118.
It fees to be maintenance for a man of great power
and interest to fay publickly, that he will expend 20l.
on one side, or of great power to do it in fecret; and it
has been faid to be maintenance for fuch a perfon to
come to the bar with one of the parties, and fand by
him while his caufe is tried, without faying any thing:
But a promife to maintain another is not maintenance,
unless it be in replete of the publick manner in which it
is made, or the power by which it is made. 1 Hawk.
P. C. 250. and several authorities there cited.
It is faid to be maintenance for a juror to folicit a judge
to give judgment according to the verdict; but it fees to
be no maintenance for a juror to exhort his companions
with to join him in such a verdict as he thinks right.
1 Hawk. P. C. 250.
It fees to be no maintenance for a man to give an
other friendly advice what action is proper for him to
bring for such a debt; or what method is fafest to free
him from such an arreft; or what counellor or attorney
is likely to do his busines most efficaciously; for it would
be extremely unfeemly and improper to affit, in a
nefs, which feem rather commendable than blame-worthy,
to come under the notion of maintenance; which always
fees to imply a contemptuous and over-baly intermeddling
with other men matters, in which replete it is highly
abhorrent; and in which it may be, that a publick
learned in the law, may be guilty of maintenance, by
telling another, who asks his advice, that he has a good
title.
1 Hawk. P. C. 250.
It is no maintenance to give a man money, who has
not fuit then depending, unless it plainly appear that it
was given with a design to affist him in a suit intended,
which suit is afterwards actually brought. 1 Hawk. P.
C. 250.
It is as much an act of maintenance to support a man
after judgment given, as to do it hanging the plea.
1 Hawk. P. C. 250.
It fees clear, that not only thofe who have a affualnt
intered in the thing in varience, as thofe who have a
reversion expeftant on an effatee-tail, or on a lease for
life or years, &c. but alfo thofe who have a bare conting-
cency of an intered in the lands in quefjon, which
poofibly may never become an intered, are thofe who
by the act of God, have the immediate poffibility of fuch an
intered, as heirs apparent, or the husband of fuch heirs,
who’th be in the power of others to bar them, may law-
fully maintain another in an action of trefpass, concerning
fuch lands; and if a plaintiff, in an action of trefpass,
alien the land, the alience may produce evidence to prove
that the inheritance, at the time of the action, was in
the plaintiff, because the title is now become his own. 2
Alfo he who is bound to warrant lands may lawfully
maintain the tenant in the defence of his title, because
he is bound to render other lands to the value of thofe
that shall be evaded. Brac. Maint. 51.
Alfo he who has an equitable intered in lands or goods,
or even in a caufe in action, as a reftian guer truf, or a
vende of lands, &c. or an affignee of a bond for a good
confideration, may lawfully maintain a fuit concerning
the thing in which he has such affiance; and from the
same ground it fees plainly to follow, that the grante of
a reverfsion for good confideration might, without any ar-
tornment, maintain the tenant of the land, before the
Statute 4 & 5 Ann. which makes fuch attornment needless.
No 73, 1000. 1 Hawk. P. C. 251.
Wherever any perfons claim a common intered in the
fame thing, as in a way, church-yard or common, &c.
by the fame title, they may maintain another in a fuit
concerning
concerning such things; and a man's bail may take care to have his appearance recorded; but, as some say, they cannot safely intermediate, for it is said in P. C. 252.

"Mover of him, or godfather to either of the parties, or related by any kind of affinity still continuing, may lawfully stand by at the bar and counsel him, and pray another to be of counsel for him; but cannot lawfully lay out his money in the cause, unless he be either stepfather, step-mother, or husband of such an heritor."

2 Iewk. P. C. 252.

Not only the actual lord, but also the cấuiur "quip" of a seignory, may come with the tenant to a trial in an affile against him, and stand by him, and assist him, and also pray the sheriff to return an indifferent jury; and it is held, in our law, that he need not additionally lay out his money in defence of his tenant's title: Alfo the lord of a town may maintain the inhabitants in an action, wherein the right to their common burying-place is questioned, by flewing authentic evidence of it to the jury. Cor. Lit. 101, 384. 2 Rad. Ab. 116, 7.

A tenant may lawfully come with his lord, and stand with him at a trial. 1 Hawk. P. C. 253.

A matter may go along with his servant, or with his domicilic chaplain, to retain counsel; alfo he may pray one to be of counsel for him, and may go with him, and stand with him, and aid him at the trial, though he may not have the benefit of his service; but the matter cannot falsely lay out money for the servant in a real action, unless he have some of his own. 2 McW. 39; But thofe, with the servant's consent, he may falsely dubbe. Br. Maint. 449 52. Herlt 79. Mor 814.

A person retained generally as a servant, and not for a particular occasion only, may lawfully ride about to further his master's business, and may go to counsel for him, and flew his evidence to the counfel, or to the jury, and stand by him at a trial, but cannot lawfully lay out his own money in the suit. 1 Hawk. P. C. 253.

Any one may lawfully give money to a poor man to enable him to carry on his suit; alo any one may lawfully go with a foreinger who cannot speak Englifh to a counfeller, and inform him of his cafe. Br. Maint. 314.

A counfeller having received his fee, may lawfully fet forth his client's caufe to the best advantage; but can no more unjustly give him money to maintain his suit, or threaten a jury, than any other perfon. 2 Ifly. 564.

2 De 1695.

Alfo an attorney specially retained may lawfully profece or defend an action in the court wherein he is an allowed attorney, and lay out his own money in the suit, and maintain an action against his client for the money so laid out by virtue of the retainer, without any special promife; alfo an attorney so retained may in like manner maintain his client in a court wherein he is an allowed attorney; but, as some fay, cannot have an action for the money laid out in the suit, without a special promife; but an attorney who maintains another is no way justified by a general retainer, to prosecute for him in all cafes, or, in an action against his own client, carry on the caufe for another at his own expence, with a promife never to expect a re-payment; and it is questionable, whether folicitors who are not attorneys can in any cafe lawfully lay out their own money in another's caufe. Ker. 342. 2 Wobk. 52. 1 See. 208. 

Gr. Car. 159. 3 Moi. 59.

But counfelors and attornies using deceitful pracife in maintenance of their client's caufes are punifhable by the Common law, as well as by the ftrafute of Willm. 1, cap. 28, which enacts, "That if any ferjeant, pleader or other, defe, by any manner of deceit or confusion in the King's court, or confent unto it in deceif of the court, or to beguile the court or the party, and thereof be attain- ted, he fhall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he fhall be imprisoned in like manner by the face of a year and a day at the leaf; and if the trifpafs require greater punish- ment, it fhall be at the King's pleas. 2 Ifly. 215.

But if the matter be pleaded in the King's court, the feue will be 249. 84. 2 Ifly. 215.

Alfo it is an offence within the flatute to bring a pra- ce or caufe in the King's court, or purpose nothing in the King's court, or purpose to ouft the true tenant; or to procure an attor- ney to appear for a man, and confefs a judgment with out any warrant; or to plead a false plea, known to be utterly groundless, and invented merely to delay justice, and to abuse the court. 2 Ifly. 215.

2. How maintenance is restrained and punished by the Common law, and by statute.

By the Common law, all unlawful maintainers are not only liable to render damages in an action at the suit of the party grieved, but may also be indicted and fined and imprisoned, &c. and it seems that a court of record may commit a man for an act of maintenance in the face of the court. 2 Rel. Ab. 114. 2 Ifly. 208.

But by the 1 Ed. 3, cap. 14, and 20 Ed. 3, cap. 4, it is enacted, That none of the King's miners, nor great man of the realm, by himself nor by other, by lending of letters nor otherwise, nor other none great nor small, shall take upon them to maintain quarrels and suits in the country to the disturbance of common right. And that none of the King's miners, nor great man, shall maintain suits, or any person whatsoever shall take or sustine any quarrel for maintenance in the country or elsewhere, on great or small; that is to say, the King's counfelors and great officers, on a pain that shall be ordained by the King himself by the advice of the lords of this realm and other officers of the King, to lose their offices, and be imprisoned, and ransomed, &c. and all other persons, on pain of imprisonment and ruin, &c.

In the construction of these statutes the following points have been held.

That null tidi record is a good plea to an action of maintenance, and it appears, that they extend not to the taking out an original, which is never returned but they extend as well to maintenance in a court baron as to maintenance in a court of record; neither is it material whether the plaintiff in the action, where there was such maintenance, was nonsuit or receive red; but it is said, that none of the statutes of maintenance extends to the spiritual court. 1 Hawk. P. C. 160-7.

He who fears that another will maintain his adversary, may, by way of prevention, have an origin grounded upon these statutes, prohibiting him to do it. 1 Hawk. P. C. 156.

By the 32 Hen. 8, cap. 9. No perfon shall unlaw- fully maintain or caufe or procure any unlawful main- tenance in any suit in any of the King's courts, when any perfon shall have authority by the King's com mission, patent or writ to hold ple a of lands, or to carry on, bear or determine any title of lands, &c. and no person shall unlawfully maintain, for maintenance of an ait or plea, any perfon or persons, or embrace any fee holders or jurors, or suborn any witnesses by letters, rewards or promises, or any other sinister means, to main- tain in any matter or caufe, or to the disturbance of judgment, &c. on pain of 10 l. one moiety to the King, the else to the informer. In an information thereon it is not sufficient to say that the defendant maintained the party, without adding that he did it unlawfully; neither is it sufficient to say that a bill was exhibited, with further shewing that plea was depending. 1 Hawk. P. C. 258.

3. Offence of buying or selling pretended titles.

It feemis an high offence at Common law, as plainly tending to oppression, for a man to buy at an under-
a doubtful title known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do; and it seems not material whether the title be good or bad; or whether the seller were in possession or not, unless the possession was lawful and uncontested.


Alio by the 1 R. 2. cap. 9. recting, that many persons having true title to lands, &c., were wrongfully delayed, by means that the defendants did make gifts and feoffments of their lands in debate, and of their goods to others, by false pursuivant; and make their pursuivants; and also that many persons used to diffe it, and anon to make seoffments sometimes to great men to have maintenance, and sometimes to persons unknown, to the intent to delay the said difficile, &c., and therefore it is sliced, that no gift or seoffment of any thing or thing be made to for that maintenance, and that if any be so made, they shall be void for none; and that the said difficile shall recover against the first diffire the lands and damages, without having regard to such alienations, so that they commence their suit within a year after the difficile.

It is further enacted by 32 Hen. 8. c. 9. That no person shall bargain, buy, sell, or by any means obtain any pretended rights or titles, or take promises, grant or covenant to have any right or title to any hereditaments, unless the seller, &c., his ancestors, or they from whom he claims, have been in possession of the same, or of the rents and profits thereof, or take the rents or profits thereof for one whole year next before the suit shall be brought; &c., or, on pain that such seller shall forfeit all whole value of the hereditaments so sold, and the buyer or taker, knowing the same, shall forfeit the value of the hereditaments so bought by him or taken; the same to be a good defeasance of any title to the King, the power to which he will give the same, whether freely or by any old. 4 Ca. 26. a. Ca. Lit. 369. b. Mor 655. and the plaintiff in this action must have the value of the time of the bargain. Cro. Cor. 233.

But it is provided, That it shall be lawful for any person, being in lawful possession, by taking of the yearly rent, or by profits of any hereditaments to buy or sell, by any reasonable means, the pretended right or title of any other person to the same.

Provided, That no one shall be charged with these peccacies, unless he be found within one year after the offence.

In the construction of this statute the following opinions have been held.

That the statute being publick, there is no need to recite it in an action brought upon it; but if you take it to recite it, a material misrecital will be fatal, &c. Rep. 305. Piso. 84. Cro. Cor. 233. Dyer 74.

An action will not lie wherein the author of a title, it must expressly appear, that the defendant knew that the seller had not been a year in possession; but in such an action by the buyer, the contrary must expressly appear; for otherwise it may be intended that he was particeps crimin. 1 Leon. 107. Lit. Rep. 369.

A contract for a lease for years, unlesss fairly made to the title in occupation, is within the statute, whether it were made off the land, or upon the land by a person in or out of possession; and in an action on the statute for making such a lease, there is no need to shew is commencement or end, because the plaintiff is supposed to be a stranger to it. Ca. Lit. 359. 1 Leon. 166.

No conveyance by one who has an uncontested possession and absolute undisputed property of lands, as by a difficulty having obtained a release from the difficulty who ad the true right not contested by any other person whatsoever, or by a mortgagee having redeemed his goods, is within the meaning of the statute; because it no way favours of maintenance, and can be prejudicial to no one; neither is a lease for the usufruct of any one who recovers lands by virtue of an ancient title, within the meaning of the statute, though he had the absolute property and possession of the land; for the intent of the statute was to restrain all persons from transferring any disputed right within two years. Ca. Lit. 359.

Whoever has a reverence with respect to the laws of God, may lawfully take any conveyance which will strengthen his estate; but cannot take a covenant from a stranger for a conveyance from him, when he shall have recovered the land. Ca. Lit. 359.

For more learning on this subject, see 15 Vin. Abr. tit. Maintenance.

Majority. The only method of determining the acts of many is by a majority; the major part of members of parliament enact laws, and the majority of electors choose members of parliament; and the act of the major part of a corporation, is accounted the act of the corporation; and where the law is the whole. Br. Corporations, pl. 63. See 15 Vin. Abr. page 183, 184.

Majt, A mayor, doth not come from the Lat. major, but from an old English word mayor, i.e. eptage. Cowell, edit. 1727.

Malsunda, A family, quasi manufactura. Ld. lb.

Maison vies, (Fr.) An hospital or almshouse. See Manton dicr.

Malltara, A house, manor, or farm. Cowell, edit. 1727.

Maltsuits, Is a writ or proceeding in some customary matters in order to a trial of right to land. Cowell, edit. 1727.

Makte, (Paterre,) Signifies to perform or execute; as to make his laws, is to perform that law which he hath formerly bound himself to: That is, to clear himself of an action commenced against him by his oath, and the oath of the next of kin. Old Nat. Breu. fol. 161.

Kitshin, fol. 192. Si pliacebat dixisse ut transferretur, aliquid pliacebat fuirt inter vicinos, & defendantes negaverint & venderint legem verbus Quaerentes, fidelius facere legem cum tertia manu, &c. (Ing. de Confutatis. Maneri de Sutton Cofield a temporo Abbati Regini.) i.e. The defendants were to bring three persons to swear with them. Which law feeme he borrowed from the Platichs, who call those men that came to swear for another in this case sacramentals. Of whom Hatman faith thus, In verbis Feudal. Sacramentales a sacramentis, id est, juramenta dicendarum it, qui quosvis rei de qua ambejogatur, flegis non fuipratis, tamen cu eos, cujus res augebatur, animi dominat, in eadem aut illi curia jurandos, illius vacatis indicari probata & innocentia confit, &c. The formal words us'd by him that makes his law are commonly these, Hears, O ye jurites, that I do not own this sum of money demanded, neither in all nor any part thereof in manner and form declared to be due to me, and the contents of this book. To make services or custom, is nothing else but to perform them. Old Nat. Breu. fol. 14. to make oath is to take oath. Cowell, edit. 1727.

Mala, A male, or part-naut, a bag to carry letters, &c. Ld. lb.

Malamandra, A thief or pirate: This mentioned in Wallingham, pag. 338.

Malurbe, (Nunc placiti.) A hill where the people assembled like our afizees, which by the Scott and Jfkh are called Palsi-Hills. Di Canse.

Mallerivius, One who is suspected, who cannot be trusted; i.e. in Pius, i. cap. 38. par. 21. Recettis indes appellatuis praeripuius, dum tamen a se supebimus non fuerit inaccuratus, &c.

Maliodiation, (Malodisius) A curfe, which was of old usuall annexed to donations of land made to churches and religious houses.—Si quis autem (quod non optamus), hunc nostrum donationem infrigere temporeveri, pertineat fit gelidius glaucomus fulcetusque spiritum; territorum terrentem cruciatus conflictus, nullam in rigus poveritiem geminatum, & para accendace interdem. Charra Regis Abellianit Monat. de Walturn. Anno 933.
MAL

MALTESEMENTS, (from the Fr. maltses, to offend or transgress), A doing of evil, a transgressing. Coke's Rep. 2. par. 126.

MALTOY, In the north signifies as much as for association, for the sake of and for the benefit of. Hobart's Rep. 8.

MAUL, or MALTOLE, (Mutation vel indebitum te-


louium) In the future called, The confirmation of the liber-
ties, &c. 25 Ed. 1. cap. 7. is interpreted to be a
toll of forty shillings for every lack of wool. Stew in
his Annals calls it a malter, pag. 461. See also the Sta-
tutes, &c. 36 Ed. 1. Nothing from henceforth shall be taken of facks of wool, by co-


or occasion of malter. In France they had an extraordinary tax called malteyfe, first exacted by Philip the


Fair.

MAULTE, is a formed design of doing mischief to an-
other; it differs from hatred. 2 Inst. 42. In murder, 'tis made single, and in the crime, & a man having a mal-
cious intent to kill another, in the execution of his malte kill a person not intended, the malte shall be con-


ected to his person, and he shall be adjudged a murderer.

Plege, 474. The words ex malitia praeguitata are ne-
cessary to an indictment of murder, &c. See Dejmitate,

Murdert.

MAULMART, Signifies the same as to main any one.

Qui ordinatum occidit vel malignament emitat et fict

vellet ait. Leg. Hen. 1. cap. 11.

MAUL GRACIO. Unwillingly. Libertatem ecclesiae quam

ta mulctam emit, sed magnifici anteceeciis tali mulcto gra-

tum fiat illibarium, i. e. be being unwilling. Matt. Parit.

ane. 1245.

MALT, Sent from Huntingtongshire, &c. to London shall

be well cleansed, 17 R. 2. c. 4.

The quantity to be made in a year by any brewer in

Kent limited. 33 H. 6. c. 4.

Directions for the true making of malt, 2 & 3 Ed. 6.

cap. 18.

Billets and confabales may view malt, 2 & 3 Ed. 6.
cap. 10. sel. 4.

Making of malt refrained, 39 Eliz. cap. 16. repealed

9 & 10 W. 3. cap. 22.

The malt-tax imposed, 13 W. 3. cap. 5. 12 Ann.

f. 1. cap. 3. continued annually.

Measure to be according to Winchester bushel, 12 Ann.

f. 1. c. 2. sel. 7.

Drawback on exportation, 12 Ann. fl. 1. cap. 2. f. 23.

Deduction in rent payable in malt, 12 Ann. f. 1. c. 2.

f. 25. 33 Geo. 2. c. 7. f. 19.

Imposition of malt prohibited, 12 Ann. f. 1. c. 2.

f. 26.

Penalty on mixing other corn with malt, 1 Geo. 1.

f. 2. c. 2. sel. 13.

Malt not to be wet on the floor, nor aerespired, 6 Geo.

1. c. 21. f. 1 & 2. repealed 3 Geo. 2. c. 7. f. 13.

Malt to be mixed with unmalter corn for exportation,

6 Geo. 1. cap. 1. f. 4.

Twenty-four hours notice to be given of shipping

malt, 6 Geo. 1. c. 21. sel. 6.

Penalty on forcing malt in the ciftern, 6 Geo. 1. c. 21.

f. 8.

Juries at quarter-seessions to amend orders appealed

from relating to the duties on malt and leather, 6 Geo.

1. c. 21. f. 10.

Allowance to proprietors of malt damaged in barges,

6 Geo. 1. c. 3. f. 35.

Malt for exportation not to be charged, 12 Geo.

f. 4. sel. 45.

Allowance on exported malt, 12 Geo. 1. c. 4. f. 59.

3 Geo. 2. c. 7. sel. 14.

Penalty of mixing malt of different wattings, 2 Geo.

2. c. 1. f. 11.

Perpetual duties on malt, &c. 33 Geo. 2. c. 7.

Regulation for securing the payment of malt duties, and

to prevent mixtures, 3 Geo. 3. c. 13.

MALTNUMA, A queen or malt mill. The word oc-

MALTLOT, Malt-fist. Some payment for making malt.

Sommer of Gavelkind, p. 27.
MAN

before termed a prerogative writ, being granted only here the publick justice of the nation is concerned.

Bar. Ast. 577; 4 Adl. 281.

And in this sense and use of it, it is said by some to:

of modern date; and to owe its original to Baggs’ cafe

C. 9:2.), but others hold it for more ancient, and

therein, the effect of which, without such writ, they are in duty, and

virtue thereof, obliged to do; and is a writ of

which the superior court is obliged to issue in the

inary form, without imposing any terms on him who

mandamus, and therefore to the due course of law.

11 C. 93, Baggs’ cafe.

But it must appear what the office is; and therefore a mandamus to swear one, who was elected to be one of the

eight men of the Aldermen court, was denied; because

it was not specially interred, what the nature of the office

was, so as the court might be able to determine, whether it

was such a place for which a mandamus will lie, or not.

2 Adl. 316.

A mandamus lies to reform a town-crier, being an

office of a publick nature, and such as relates to the ad-

ministration of justice; but if a corporation have a power

by their charter to have a town-crier, who shall con-

tinue during the life of the mayor and aldermen;

by this they have an arbitrary power of turning him out at

pleasure, and need not, to the return of a mandamus, af-

sign any reason or cause for their comical herein.

Ney 78. Sild. 457. 1 Vent. 577. 1 Sld. 541. 1 Lev. 294.

Digjtah v. Mayor of Stratford upon Avon.

So a mandamus lies for a recorder and a clerk of the

peace; for these are officers of a publick nature, and re-

late to the administration of justice.

Sild. 432. 1 Vent. 145. 153. 4 Mad. 311.

It is admitted by all the books which speak of this

matter, that a mandamus lies to reform a fellow of a

court; but some hold, that a mandamus does not lie to

reform a fellow of a court, because a private,

office, and such as does not concern the ad-

ministration of justice; but others hold that it does; because he

is judge of that part of the court which concerns copy-

holds, and is therefore an officer concerned in the ad-

ministration of justice.

2 Sld. 112. Roym. 12. 1 Sld. 47. 1 Vent. 153. 4 Mad. 334. Comb. 127. 2 Lev. 18. 5. P. express by Hale C. J.

It hath been adjudged, that a mandamus lies to reform one to an attorney’s place, in an inferior court; because

his is an officer concerning the publick justice; and is

compellable to be an attorney for any man, and has a

freehold in his place. 1 Lev. 75. 1 Sld. 152. 1 Kib. 549.

So a mandamus was granted to the mayor of Reading,

for an attorney B., who was prohibited to practice in

an inferior court in Reading. 1 Vent. 11. 1 Sld. 440. 1 Med. 23.

It hath been adjudged, that a mandamus lies to reform a

fellow; so as to this the court at first doubted; be-

cause he was rather a servant to the parson than an officer,

or one that had a freewill of his place; but upon a

certificate from the minister, and divers of the parson that

the copman was to chuse a fellow, and that he held it for

his life; and that he had 2d. a year of every house within

the parish; they granted a mandamus directed to the

churchwardens.

1 Vent. 143. 153. 2 Lev. 18. 2 Kib. 820. 1st. of his place.

A mandamus lies to reform a churchwarden, being a

temporal officer, and an office concerning the publick;

and therefore where to a mandamus to swear a church-

warden, chosen according to the custom, the archdeacon

returned, that the perfon presented was a poor dairy-

man who had no estate, was prorsus minus habuit & i

debat (for that the court granted a prerogative mandamus.

2 Sld. 112. 1 Vent. 143. 3 Mad. 335.

Comb. 417. Carth. 392. 1 Sld. 156. The King v. Refi.

only errors in judicial proceedings, but also extrajudicial

errors and misnomers, tending to the breach of the

peace, oppression of the subject, to the raising of faction,

controversy, debate, or any manner of misdemeanor;

so that no fort of injury, whether publick or private, can

be committed, but what may be reformed and punished

according to the due course of law.

So a mandamus hath been granted to a parson clerk, chosen according to the custom, being a temporal office. Stile 457. 2 Sid. 112. 1 Vent. 143. 3 Mod. 335. 

So a mandamus was lately granted, to admit one Robert Lott to the office of a parish-clerk of Clerkenwell, being elected by the parish; it being shewn that the official had usuallly admitted to this office. King v. Duffet Heneman, affidavit of the Gowniffies court of London.

So a mandamus lies for a scholemaster, or the officer of a school, if he be elected for life, altho' he be not a sworn officer; for this is a temporal office, in which the party hath a freehold. 2 Sid. 112. 1 Sid. 457. 144. 1 Edw. 151. 

Mandamus lies to admit, to reform, or discharge a constable; for he is a publick officer, and one whole office relates to the administration of justice. 2 Roll. Rep. 82. 1 Roll. Abr. 535. 1 Saith. 175. 

Mandamus to proceed to election where a claque for holding over. Stran. 555. 

Mandamus may be granted to go to an election, tho' there is a mayor de facto. Stran. 1002. 

Granted to go to election, notwithstanding a dubious election de facto. Stran. 1157. 

Granted to elect corporation officers, where there were wrongful officers in possession. Stran. 1180. 

Granted preemiptory on the refusal of a judgment for the defendant. Stran. 557. 

Mandamus for a prebend. Stran. 1082. To admit a prebendary. Stran. 159. 

Lies for a chaplain where there is no visitor. Stran. 797. 

To a universtity, to reform to degrees. Stran. 557. 

To reform a scholemaster. Stran. 58. 

For a parish clerk, sexton, scavenger. Stran. 59. 

To swear an ale-taster. Stran. 608. 

To swear a director of the amiable assurance. Stran. 696. 

Mandamus for yeoman of the wood wharf. Stran. 834. 

Mandamus to admit a deputy regifter. Stran. 893. 

A principal may have a mandamus to admit his deputy. Stran. 895. 

To allow constables their expences of carriages for the troops. Stran. 42. 93. 

To reimburse a surveyor of highways. Stran. 217. 

2. Where mandamus lies to inferior courts and magis-
trates, to oblige them to do justice.

The court of King's Bench, having a superintendency over all inferior courts and magistrates, will oblige them to perform that which the party is intituled to, and which they are enjoined by law to do; and of this there are multitudes of instances, as where the ordinary refers to grant the probate of a will to an executor, or to grant administration to the next of kin, he may be compelled thereto by mandamus; for these being things enjoined by statute, the temporal courts will take care that due obedience is paid to them. Stil. 7, 8, 1 Lec. 180. 1 Sid. 293. Com. 159. 450. 

But a mandamus will not lie to oblige the ordinary to grant administration durante manu iustae of an infant to the next of kin, this being a matter out of the statutes, and therefore discretionary in the ordinary to whom to grant it; and if in such case he grants it to an improper person, or infilts upon unreasonable securitie, the refreeds must be by appeal or, if in the last instance there be any remedy at Common law, it must be by prohibition. Hill. 4. Ges. 2. Smith's case in B. R. 

So if the tellator makes his s. his residuary legatee, who by the ecclesiastical law is intituled to administration upon the execution remuneration by the spiritual court, refuse to admit him thereto, they cannot be compelled by mandamus; for this is a matter purely of ecclesiastical consuewes, and out of the statutes; and therefore the party's refreeds must be by appeal, Mich. 7 Ges. 2. in B. R. King v. Buttfford, 2. 

If by the custom of a corporation, &c. a person for exercising an apprenticeship there, is at the end of his term intituled to his freedom, and the mayor, &c. refuse to frame them such letters, they may be compelled by mandamus; for this is an act of public justice, which the superior court will see executed. 1 Liv. 41. 1 Sid. 107. 5 Mod. 402. 6 Mod. 227. 260. Cash. 448. 

So it hath been held, that a mandamus lies to the justices of the peace, to oblige them to admit a person to the oath of allegiance, and to subscribe according to the act of toleration, in order to qualify him to teach a dissenting congregation; and herein it is said, that the party ought to sue for such whatever is necessary to induce him to be admitted; and if that be not done, or if it be done, and the fact be false, that will be a good matter to 6 Mod. 310. Peat's case, and vide 2 Saith. 572. 6 Mod. 222. 151. 

So a mandamus lies to the justices of the peace, churchwardens and overseers of the poor, to oblige them to make rates for the relief of the poor. Comb. 423. 478. 

To a justice of the peace to figu a poor-rate. 5 Mod. 275. 

So mandamus have been granted to oblige justices of the peace to discharge prisoners, pursuant to act of parliament made for the relief of inferior debtors. 2 Show. 74. Comb. 203. Vide 6 Mod. 557-9. 

So where by the statutes 15 & 16 Car. 2. for erecting Newgate market, power is given to the mayor and aldermen of London to impanel a jury, who shall affec. and adjudge, whohe, and what, the money to be paid to the owner of the ground and the verdict be of such jury, on that behalf to be taken, and the judgment of the said mayor and court of aldermen thereupon, be not the payment of the money so awarded or adjudged, shall be binding and conclusive to and against the owners, &c. and there being 15000 feet of the ground of J. S. taken away for this purpose, for which a jury being impannelled, assis. and a way to award two elders foot; but the mayor and court of aldermen refusing to give sentence or judgment thereupon, a mandamus was awarded to compel them to it, 1 Vent. 187. Regm. 214 Alderfy's case. 

And this general jurisdiction and superintendency of the King's Bench over all inferior courts to restrain them within their bounds, and to compel them to execute their jurisdiction, whether such jurisdiction arises from a modern charter, fubjul. by custom, or is created by act of parliament, yet being in subodium jussitia, ha. of law only, by the execution of a variety of instances; as a mandamus granted to the quarter-feasons to give judgment for abating a nuisance.

So a mandamus was granted to the court of Sand-
with, to give judgment in an afflant and battery. Mich. 5 Geo. 1. 1. 

So a mandamus was granted to the sheriff's court in London, to give final judgment upon a writ of inquiry. Mich. 7 Geo. 1. Baffy v. Brum.

So a mandamus was granted to the bailiff of Andover, to give judgment in a cause there depending; but the court in this case required an affidavit of their refusals, or else it should be presumed that the court would do right. Tin. 2 Geor. 3, 1. 

So a mandamus was granted to the corporation of Li-
verpool, to hold an assembly for doing the publick busi-
ness, which was making laws. Mich. 8 Geo. 1. 

But though these kind of writs are daily awarded to judges of courts to give judgment, or to proceed in the execution of their authority, yet are they never granted to aid a jurisdiction, but only to enforce the execution of it; nor are they ever granted where there is another proper remedy, and therefore will not lie to an officer of an inferior court, as to a feignat at maec, an apprentiss. &c. to compel them to execute their duty; for there are proper respective courts, and punis. by the judges of them, and the inferior court to interpose in obliging such inferior officers, would be to usurp the authority of the court, which has a proper jurisdiction over its own officers, and which alone is answerable to the
he superior court for the execution of such authority; and
therefore where a mandamus issued to the vice-maister,
to proceed to the Exchequer, at Cambridge, to have him
to execute a sentence of deprivation, pronounced by the bishop
of Ely, as visitor of the college, against Dr. Bently, the
master of that college: and it appearing on the face of
his writ, and in the course of his argument with the
visitor, the court held, that no mandamus
would lie: for taking the bishop to be general visitor, as
he writ supposes, he is the proper person to carry his
own sentence into execution, having power in capite
sum in membris; and if the vice-maister refuses obedience
to his authority, that the bishop himself or
his deputy shall proceed, he will and shall be immediately
ousted by he judgment; or taking the crown to be visitor, the
vice-maister may be punished by commissioners appointed
by the crown; one of which ways the court held to be the
proper one to compel the vice-maister to do his
office;

A mandamus to deliver up the ensigns of an оffice,
or the papers or records of a publick nature to a ableor;
as a mandamus to deliver the mace, and
other ensigns of majority to the succeeding mayor;
or a mandamus to a town clerk, to deliver several
papers which belonged to the corporation. 1 Std. 31.
Mub. 314. Comb. 102.

A mandamus lies to oblige corporations to choose pro-
er officers, which if they neglected to do, this by the
Common law was a forfeiture of their charter: and this
power to compel an election before the day came round
gave supply to such defects. See Corporation.

Mandamus to a judge in nature of a præcedent. Stran. 67.

To judge of peace to give judgment in an eject
action. Stran. 530.

Granted to commit administration generally. Stran. 52.

To take securitv on articles of the peace. Stran. 335.

Mandamus to the clerk of a company to deliver books.
Stran. 879.

To produce the books at the next assembly. Stran. 145.

Granted to attend a court leet. Stran. 1207.

No mandamus lies for a lector. Stran. 1192.

Lies not to swear in one who has had judgment on an
information of infamy, upon the death of a mayor. 625.

Mandamus lies not to grant a licence to keep an ale-
souse. Stran. 581.

Lies not for an administrato durante ministe etari. Stran. 872.

No peremptory mandamus pending error on action for false
return. Stran. 683.

Refused to make a rate to reimburse the expence of
defending an indictment. Stran. 65.

No mandamus lies to inherit particular persons in a poor's rate.
Stran. 1599.

3. From what court this writ issus; to whom to be di-
rected; and by whom to be returned.

This general jurisdiction and superintendency is now
only exercised by the court of King's Bench, as the supreme
court, of refraining and keeping all inferior courts and
magnificates within their proper bounds, and obliging
them to execute that justice with which they are invited.

3 Bos. Ab. 540.

If a mandamus may issue out of Chancery, yet on a motion to the Lord Keeper, to grant a manda-
ment writ to the Chief Justice of the King's Bench, to
command him to sign a bill of exceptions, and a prece-
dent produced, where in a like case such a writ had issued
out of Chancery to the judge of the sheriffs court in
London; the Lord Keeper denied the motion, for that the
precedent produced was to an inferior court, and he
would not presume but the Chief Justice of England
would do what should be jutt in the cafe. 1 Pern. 175.

But though the court of King's Bench be intrusted
with this jurisdiction of infaining writs of mandamus, yet
are they not obliged to do so in all cases wherein it may
seem proper, but herein may exercise a differenciable
power, as well in refusing as granting such writs; as
where the end of it is merely to try a private right,
where the granting it would be attended with manifest
hardships and difficulties, &c. to even since the following
11 Ges. 1. for obliging corporations to elect officers, it
hath been held, that this court have a differenciable
power of refusing a writ for that purpose, but may full
receive information about the election, and, if dissatis-
fied with the right, may order the parties to try it in an
information. Hill. 3 Ges. 2. The King v. Mayor and
Burghers of Tintagel in Cornwall.

Allo in a doubtful case, the court of King's Bench may
award a mandamus to be considered of further on the
return, which may give more light, and discover more
fully the jufains of granting or refusing it, and on
such return either eflablis or quash the writ. 1 Std.
169. 1 Lev. 23. 2 Levr. 14. 2 Show. 74. Coritb. 169.
Ca. Law. Eq. 49.

The writ is to be directed to him, who by law is obli-
ged to execute the office to which he is appointed,
and therefore where a mandamus was granted to the
mayor, &c. of Newtow, it was moved, that the fene
of the mayor differed from the majorit of the corpora-
tion, and that he would execute the writ; whereas the
corporation were for returning an excute, &c. and they
prayed, that the mayor might be ordered to deliver the
writ to the rett of the corporation. Sed non allocatur
for he is the head and principal, and take your course against him. 2 Salt. 432, 701.

If a mandamus be directed to the two bailiffs of a
town to swear in other bailiffs, and they objecl,
thaving sworn two others, and being ordered to
swear in more, and that the writ not being directed to them
in their natural capacities, they are not obliged to pay any
obedience thereon; the court notwithstanding obliged
them to return the writ; for if the person sworn in by
them had no right to be chosen, they full continue bail-
iffs, and order to obey the King's writ. 6 Mut. 133.
The King v. The Town of Clitheroe.

But where a mandamus was directed to the church-
wardens of W., to reimburse A. to the office of sexton, and
forced upon the late churchwardens, after their office was,
expired; and an affidavit being made that no
attachment should not go, for not obeying the mandu-
mus; and the whole matter being disclaimd by affidavit,
the court allowed as a good reason for their not returning
the writ, that they at the time of the writ delivered to
them were not churchwardens. Tri. 5 Ges. 2. in B. R.
The King v. Churchwardens of Wrexham.

A mandamus to the mayor, aldermen and capital bur-
gesses of D. via, Whereas A. and B. &c. removed the
party complaining from his office of burgesses, comman-
ding them to command A. and B. to refund him, was
quashed, for the party is abscond, and the spirit should be di-
rected to one person to command another. 2 Salt. 439.
The Queen v. The Mayor, &c. of Derby.

The writ is to be returned by him upon it which is di-
rected; and if any other return it in his name, without
his privity and consent, an action on the cafe lies against
him; also it is a great offence, for which the court will
422. 2 Show. 505.

If a mandamus be directed to the mayor, &c. and
the mayor, who is the most principal and proper peron,
returns and brings in the writ; the court upon affidavits
will not except, whether the same was the fene of the
majority, but will receive it, and leave the parties to
punish the mayor for the misdemeanour, if he be guilty;
but a peremptory mandamus will be granted, if the re-
turn be falsified. Carith. 500. The King ver. Mayor,
5 K. &c.
M A N

g. of enforcing obedience to the writs, compelling a return, and what shall be deemed a good return.

On every mandamus there regularly issues an alias and
pluribus, to oblige the party to return the writ; but the court of King's Bench may make a peremptory rule to return the writ, and in cases of disobedience grant an attachment; also by the statutes 9 Ann. and 1 Geo. 1. Perons, who are by law required to make returns to mandamus', in such cases as are within the statutes, must make their return to the first writ of mandamus. 2 Salk. 430, 431. 6 Mod. 35. 2 Sm. 660.

If an attachment issues for not returning a mandamus, and the sheriff, who is to serve the process, takes bail thereupon, this is such a misdemeanour, for which an attach- ment will be granted against him; for there are no like attachments in Chancery, for want of an answer, which are only as attachments of processes, but are writs on contempt in nature of executions, and so not bailable by the sheriff. Mich. 9 Geo. 2. The King v. Bofcervile, sheriff of Shropshire.

If a mandamus is awarded for electing an officer, and there is an equality of votes, so that the electors cannot agree, it is said, that the sheriff must give the return of the election, and it is said, that if the electors cannot agree, this is not to be sufficient to issue such matter as the party may falsify in an action, but also such matter must be alleged, that the court may be able to judge of it, and determine whether the party's conduct be agreeable to law or not.

1 Salk. 432. 1 Vent. 111.

Therefore, if to a mandamus to the Lord President and Counsel of the Marches, to admit a perfon to the exercise of the office of deputy secretary, the return is, that non fuit tempore receptionis brevis deputatus confittuit; this is naught; for if he were made his deputy before, the return was true; unless he made him his deputy at the very instant of the receipt of the writ. 1 Vent. 110. The King v. Clepham.

To a mandamus to admit a perfon alderman, the party may return, that he was not qualified, or that he was not elected; also several causes may be returned, but they must be considered; and therefore if the return admits a good election, and afterward avow by matter repug- nant, this is naught. 2 Salk. 436. The Queen v. Mayor, &c. of Norwich.

A mandamus to swear one into the place of town- clerk; the return was, that upon the election B. had 18 voices, and the party who sued the mandamus but 17; and that they swore in B. and it was held a bad return, being argumentative, when it should be express and direct; that he was not chosen. 6 Mod. 309.

A mandamus was granted to rehearse the recorder of Barneyfield, directed to the mayor of the corporation; and he returned, quod non habet mandatum; that he was ever elected; and the return adjudged insufficient, and the refolution awarded. Regm. 153.

So where to a mandamus, to rehearse a town clerk, it was returned, that he nuncum debito modo admissus; and it was held a bad return, being a negative pregnant, and insufficient to the cause, when the plain fact only ought to be returned, so as to enable the court to adjudge upon it, and the party to bring his action, in case it were false. 1 Sid. 209. 1 Kebr. 653, 716. 733.

But if the mandamus Tuggs, that he was debito electo, a return quod non habet mandatum is good, because it admits of the party's return in the writ. Cartb. 170. Lambert's cafe. 2 Salk. 433. 5 Mod. 11. S. P.

5. Of traversing the return, taking issue thereon, remedy for a false return, and of awarding a peremptory mandamus.

The party to the return of a mandamus could not traverse nor impugn, which is one reason why the utmost care was required in such return. 1 Vent. 111. 2 Salk. 432.

But now by the Stat. 9 Ann. cap. 20. reciting, that divers persons had illegally intruded themselves into, and taken upon them to execute the office of mayors, bailifs, port-receivers, and other offices within cities, town corpora- tions, and other places; and the great difficulties of determining, where the office was annual, the right of the same, within the compass of the year, or where it was not annual, the difficulty of determining the right before the persons had done divers acts prejudicial to the peace and order of such city, &c. and reciting the great difficulty persons illegally turned out, or refused to be admitted, lay under, and the dilatoriness and expense attending the proceedings on writs of mandamus it is therefore enabled, That as often as, in any of the cases aforesaid, any writ of mandamus shall issue out of the King's Bench, the courts of fequisitions of counties palatine, or of any other counties or cities, it shall be lawful for the grand forum in such cases, as a return shall be made thereunto, it shall and may be lawful to and for the perdon or persons, fusing or producing such writs of mandamus, to plead to or traverse at any or any the material facts contained within the said return, to which the perdon or persons making such return thereof, whether per sons, suiting, fuing, writing, shall and may try the same in such place, as an issue joined in such action on the caufe should or might have been tried; and in case a verdict shall be found for the perdon or persons fusing such writ or judgment given for him or them on demurrer, or not diicit, or for want of a replication, or other pleading he or they shall recover his and their damages and costs in such manner as he or they might have done in the action on the caufe aforesaid; such costs and damages to be levied by captas ad satisfacientium, fere facias eligit, and a peremptory writ of mandamus shall be granted for the same, on the return or then such writ shall be given, as might have been, if such return had been adjudged insufficient; and in such judgment he shall be given for the perdon or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in a manner aforesaid.

There is a case that for a false return to a man- damus an action on the cafe lies; as if upon a mandamus to refuse T. S. to his place of burges of P. the mayor &c. return a good cause, the matter of which is an action lies for the false return. 11 Co. 99. Bagg cafe.

Alfo if it hath been adjudged, that where the return made by several persons, the action may be either join against all or several, being founded on a tort or injury, as if made by the mayor and aldermen, the action may be brought against the mayor only; and if upon evidence it appears, that he voted against the return, but was overruled by the majority, the plaintiff hath recovered his and their damages and costs in such manner as he or they might have done in the action on the cafe as aforesaid; such costs and damages to be levied by captas ad satisfacientium, fere facias eligi, and a peremptory writ of mandamus shall be granted for the same, on the return or then such writ shall be given, as might have been, if such return had been adjudged insufficient; and in such judgment he shall be given for the perdon or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in a manner aforesaid.

There is a case that for a false return to a man- damus an action on the cafe lies; as if upon a mandamus to refuse T. S. to his place of burges of P. the mayor &c. return a good cause, the matter of which is an action lies for the false return. 11 Co. 99. Bagg cafe.

Alfo if it hath been adjudged, that where the return made by several persons, the action may be either join against all or several, being founded on a tort or injury, as if made by the mayor and aldermen, the action may be brought against the mayor only; and if upon evidence it appears, that he voted against the return, but was overruled by the majority, the plaintiff hath recovered his and their damages and costs in such manner as he or they might have done in the action on the cafe as aforesaid; such costs and damages to be levied by captas ad satisfacientium, fere facias eligi, and a peremptory writ of mandamus shall be granted for the same, on the return or then such writ shall be given, as might have been, if such return had been adjudged insufficient; and in such judgment he shall be given for the perdon or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in a manner aforesaid.

There is a case that for a false return to a ma- damus an action on the cafe lies; as if upon a mandamus to refuse T. S. to his place of burges of P. the mayor &c. return a good cause, the matter of which is an action lies for the false return. 11 Co. 99. Bagg cafe.

Alfo if it hath been adjudged, that where the return made by several persons, the action may be either join against all or several, being founded on a tort or injury, as if made by the mayor and aldermen, the action may be brought against the mayor only; and if upon evidence it appears, that he voted against the return, but was overruled by the majority, the plaintiff hath recovered his and their damages and costs in such manner as he or they might have done in the action on the cafe as aforesaid; such costs and damages to be levied by captas ad satisfacientium, fere facias eligi, and a peremptory writ of mandamus shall be granted for the same, on the return or then such writ shall be given, as might have been, if such return had been adjudged insufficient; and in such judgment he shall be given for the perdon or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in a manner aforesaid.
and therefore where in an action on the cafe in C. B. for a false return to a mandamus, judgment was given for the plaintiff on demurrer; yet the court of D. B. refused a
exemptory mandamus; because every mandamus rectifies the
fault great nisi obstat per recordum, which cannot be
fied in this cafe, as the court cannot take notice of the
records of the Common Pleas. 2 Sub. 428. 8 Sm. 670.

V^y V^y Y^y V^y

Mandamus, Was also a writ that lay after the year
and day, where in the mean time the writ called Diena
phasis extremum had not been sent out to the executioner,
commanding him to inquire of what lands held by
his cahrges the tenant did rejoice. &c. See F. N. D. 563.

Mandamus, Was also a writ or charge to the sheriff,
take into the King's hands all the lands and tenements
of the King's widow, that, again her oath formerly
given, marrieth without the King's consent. Reg. fol.
No. 82.

Mandatary, (Mandatarius,) He to whom a charge or
commandment is given. Also he that obtains a benefice
by mandamus.

Mandate, (Mandatum,) It is a commandment judicial
made of the King, to enjoin the execute any thing done
for by the Register Judicial, vero Mandatum. We
read of the bishop's mandates to the sheriff, 31 Edw. c. 9.
Cowell, ed. 1773.

Mandati dies, Monday or Monday Thursday, the day
in which they commemorate and praise the commands of our Saviour, in washing the feet of
the poor, &c. as our Kings of England have long prac-
ticed the old good custom on that day washing the feet
of the poor men, in number equal to the years of their reign, and giving them shoes, ficklings and money.

Mandato janes, Leaves or bread given to the poor
upon Monday Thursday. Id. ib.

Manns, Was anciently used for tenantes, or tenants, 21st. Symond, apud Chrenno. Anno 822. qui in aliis alieno
nomen; and it was not lawful for them or their children
to depart without leave of the lord.

Manganese, To buy in the market. Si veniam ad
mercatum qui manegnunt in caffo & buito. Leg. Ethel-
ed. apud Bprompton, cap. 24.

Mannegule, A warlike instrument made to call
fies against the walls of a castle. Cowell, ed. 1773.

Manitpute, Was an handkerchief which the priest
always had in his left-hand. Id. ib.

Manner, (from the Fr. manner, or manner, i.e. manu-
ellers,) To be taken with the manner, is where a
chief having stolen any thing, is taken with the same
fence that the party called facre deputati, dit qui
fragfante delitiis, S. P. C. 179. Such a criminal is not
bailable by law: And anciently, if one guilty of felony or
larceny had been freely purfued, and taken with the
manner, and the goods fo found upon him had been
brought into court with him, he might be tried imme-
diately, without any appeal or indiffance; and this is faid
to have been the proper method of proceeding in fuch
matters which had the franchise of infaffness. H. P. C.

Manning, (Mannor,) A day's work of a man; in
some ancient deeds therefore called of to much rent,
and fo many meanings. Cowell, edit. 1777.

Mannure, Is where one is cited to appear in court,
and fland to the judgment there. It differs from
bannes: for though both signify a citation, yet one is a citation
by the adversary, and the other by the judge. Leg. 41.
c. 1. 17.

Mansipus, (Mansipera,) Goods taken in the hands
of an apprehended thief. Cowell, edit. 1777.

Manut, A horror, a pad or saddle horror. In
the laws of Alfred, we find man-thief, for a horse-stealer.
Cowell, ed. 1777.

Mano, (Manoerum,) Seems to be derived of the Fr.
manower, habitation, or rather from manu, of abiding
there, because the lord did usually reside there. By fett-
dom noble partem tenement (qui tenentes sequuntur) & cito
carmis hodie significatione; patria Domus in iijam famulis funt,
cum jurisdictoni ejusdem hereditatis, ob convenientiam
qui sequeat concessentur, terras diemini tenementales,
qui domino referuuntur dominiciae. Titum vero domini
dominium appellarum, alem baronis; unde curia quo huius
procelli jurisdictonis haec curia baronis nomen retinet.
Sic de venere ( qui in manu manriam quoque
manarium, because it is laboured by handy-work; If a
noble fee of fee granted partly to tenants for certain se-
tives to be performed, and partly referred to the use
of his family, with jurisdicton over his tenants for their
farms. This which was granted out to tenants, we call
tenentacles; those which were referred to the use of
men, enjoining them such services and rents as he thought
good, and so he became tenant to the King, the inferior
became tenants to him. See Perkin's Reforuation 570,
and Harle's Mirror of Judicries, lib. 1. cap. De Reve Ayed,
and Polbeck, 410. According to this our custom,
all lands holden in fee throughout the kingdom,
were free of feft and arrires feft, whereas the former are such as
are immediately granted by the King; the second, such as the King's fendaries do again grant to others.
Gregorius Synag. lib. 6. cap. 5. num. 3.
In these days a manor rather signifies the jurisdiction and duty incor-
poral, than the land or site. For a man may have a
manor in gross, (as the law termeth it,) that is, the right
and interest of a court-baron, with the perquisites there-
unto belonging, and another or others have every foot of
the land, Kitchin, fol. 4. Brake, hoc titulo per tonum.
Breton, lib. 4. cap. 31. num. 2. divideth munirem in capite & $m capitalis. See Fe. A manor may be
compounded of divers things, as of a house, arable land,
patlure, meadow, wood, rent, advowfon, court-baron,
and such like; and this ought to be by long continuance
of time, beyond the memory of man; but at this day a
manor cannot be made, because a court-baron cannot
be made, and a manor cannot be without a court-baron,
and suitors or freeholders, two at the least; for if all
the freeholds, except one, except one, there his manor be gone causa quae
infra, although in common fentence Prince is divided.
Cowell, edit. 1772. See Coppiah, and 15 Viz. Abi-
tir. Mano.

Manafs, (Manafs, vel manafa,) A habitation or farm:
Also an hide of land; and the pollifiers of such were
called manuatory. Specman.

Manful, A buffard. Cowell, edit. 1772.

Manione. (Manio, a manudes,) According to the de-
inition of Brunswick, lib. 5. cap. 28. num. 1. Is a dwel-
ing confiting of one or more houses. It is most com-
monly taken for the lord's chief dwelling-house within
his fee, otherwise called the capital messuage, or chief ma-
nor-place. Brunswick, lib. 2. cap. 26. Manifon, amongst
the ancient Romans, was a place appointed for the lo-
ging of the Prince, or soldiers in their journey; and in
this sense we read visum manomine, &c. It is probable,
that this word manufon both in some conftitution signify
so much land as Beli calles facre delitiis, and in others
in Hiftry. For Lombard, in his Explanation of Saxon
Words, ver. Hida terra faith, that which he cal-
led fethamum, others since called manumitem vel man-
afum. Manafs & manufs, you may read in the Feudifh,
and in Shen, voe manu. See Stave, veo Manufs. The Latins word manufa, in
the charter granted by King Kenulphus to Ruchin, Abbot of
Aiygare.
MAN

Ingham, and mentioned by Sir Edward Cole in his Rep. De faure Regis Exactissifaiia, seems to signify a certain quantity of land. Hic ut mensa Mat. Welfon, in Anno 857. Ag. in a charter of Edward Conf. it is written manfa. Vide Hist. of Pauls, fol. 189. Bracton, lib. 5. trac. 5. par. 1. Mansio sive poteris confcripta ex pluribus dimibus vel unum, que eis habitatia una & sola fines victis, etiam si alia mensia sit vicinata non est victus, quia villa offer ex pluribus manfacturis vel cultum ex pluribus victis. Petle, lib. i. cap. 51. Sometimes manfa signifies a family, as, Terram 50 manumionum, &c. concilium Clifton, anno 800. But that which in ancient Latin authors was called hida, was afterwards called manfa, i.e. as much land as one plough could till in a year. Cowell, ed. 1727.

Manilghter, (Hanicidium) Is the unlawful killing of a man, without a prepened malice. As when two that formerly meant no harm one to another meet together, and upon some sudden occasion falling out, the one killeth the other, Wilt. part. 2. Symbol. tit. Indictments, fol. 44. It differeth from that murder, because it is not done when arising of malice. And from chancemalig, because it hath a present intent to kill. And this is felony, but admitted to the benefit of clergy for the first time. Stannif. pl. eor. lib. 1. cap. 9, and Bracten, cap. 9. yet it is confounded with murder in the statute, Anne 28 Ed. 3. See Homicide.

Manalty. The chief mansa, or manor-house, or court of the Lord. Cowell, ed. 1727.

Manura and Malitura, Are used in Domeyday and other ancient records, for Manures vel habituas villarum. Cowell, ed. 1727.

Manura, Anciently a farm. Selden's Hist. of Tibet, pg. 62.

Manus presbyteri, The manse or house of residence of the parish priest; the parsonage or vicarage house. Porsh. Antiq. p. 431.

Manulatt. The daily distributions, or portion of meat and drink allotted to the canons and other members of cathedral churches for their present subsistence. Cowell, ed. 1727.

Manulat affectishur, Sworn obedience, or submission upon oath. Cowell, ed. 1727.

Manurap. It is writ that murder, because it is not done when arising of malice, and from chancemalig, because it hath a present intent to kill. And this is felony, but admitted to the benefit of clergy for the first time. Stannif. pl. eor. lib. 1. cap. 9, and Bracten, cap. 9. yet it is confounded with murder in the statute, Anne 28 Ed. 3. See Homicide.

Manus libri, A manuscript. (Manuscript) Any thing whereof present profit may be made, or that is employed or used by the hand. Stannif. Pravag. fol. 54. As a thing in the manu.

Manuscripts may be imported from Ireland, 3 Ed. 4. c. 1. 4. fett. 3.

Matters of crafts and magistrates of cities may search manufactures, 3 Ed. 4. c. 7. 4. fett. 4.

Certain manuscripts prohibited to be imported by strangers, 1 R. 3. c. 12.

Pins permitted to be imported, 27 El. c. 11.

Foreign wool-cards to be imported, 39 El. c. 14.

Foreign woolen, cut work, imbroderie, fringe, fable, finet, buttons and needlework, prohibited to be impor-

ted or sold, 13 & 14 Car. 2. c. 9. 9 to 10 IV. 3. c. 9.

Repealed from the taking off the prohibition of the woollen manufactures in Flanders, 11 & 12 IV. 3. c. 11.

Foreign wool-cards, card-wire and iron-wire not to be imported, 3 Ed. 3. c. 2. 19.

All persons may work in manufactures of hemp or flax, or tapestry, 15 Car. 2. c. 15.

Against frauds in the manufactures of woollen, linen and iron, 1 Ann. J. 2. c. 15. 13 Geo. 2. c. 6.

Wages to be paid in money, 1 Ann. J. 2. c. 15. 6. 16 Ann. c. 10. f. 6. 13 Geo. 2. c. 7. f. 6.

Regulations to prevent frauds by manufacturers in woollen, linen or iron, 13 Geo. 2. c. 6.

Wages to be paid in money, 1 Ann. J. 2. c. 15. 6. 16 Ann. c. 10. f. 6. 13 Geo. 2. c. 7. f. 6.

Regulations in the manufactures of woollen, linen, iron, leather, &c. and for the payment of their wages, 23 Geo. 2. c. 14.

Penalty on reducing manufacturers out of the kingdom, 23 Geo. 2. c. 13.

Penalty on exporting utensils of the silk and woollen manufactures, 23 Geo. 2. c. 13. fett. 2.

Penalty shall lie on every utensil, &c. found on board any ship, 23 Geo. 2. c. 13. fett. 4.

Penalty on captains of ships permitting prohibited tools to be put on board, 23 Geo. 2. c. 13. fett. 5.

Penalty of signing certificates for exporting tools, 23 Geo. 2. c. 13. fett. 6.

Manumission, (Manumission) Is the freeing of a vil-

lain or slave out of his bondage: The form of it, in the conqueror's time, Labard in his Archives, fol. 116. feteth down in these words, Sint quis velit faterum libero facere, tradat eum vicinian, per manum destruct in pleno comito, & quitteris ilium servitutum & familliam; & glorieti ei liberat portis & vis, & tradat ei libera arma, felicet lanceam & gladium, & deinde ilie hopo effebrir. Some also were "manumitted by charter. Vide Brede, tit. Vil-

lenge, fol. 325. The terms of the law make two kind of manumission, servus libertus, & servus servitus, the other implied: Adam.

Inferioris manumissionis, is when the lord makes a deed to his vil-

lain, to infranchise him by this word manumittore, the manner of which in old time was thus: The lord, in presence of other persons, took the bond-man by the head, saying, I will that this man be free, and therupon shoved him forward out of his hand. Manumission in this sense is when the lord makes an obligation for payment of money to him at a certain day, or if he should enter without suit; or granteth him an annuity, or leaseth lands to him by deed, for years, or for life, and such like. Cowell, ed. 1727. See Lib. 4.

Man v. opera, Sched. of those goods taken upon a thief apprehended in the field. See Manumipsis.

Manuera, Cattle, or any implements used in husbandry. Men. Ang. toun. t. p. 977.

Manusalus. Sapiens omnium in foro dicta, praef. mula & servorum domitiae, Spehmam. Erit cupidae

sibi vendita, (Manomum) cap. 16. n. 4. A pie. He shall be culpable, as of a thing done by his own hand or by one of his family. Glisc. in x. Scriptor. So the manumipus significat a donum sic: Si manusipus alienus accipetur de fure. Leg. H. i. cap. 66.

Manuer, A foot of full and legal measure. Cowell ed. 1727.

Manus, Was anciently used for an oath, and for him that took it, a compurgator; as we often find in old records, Terius, quatra, decima manu jurase; that is, th. party was to bring to fo many to swear with him, that the believed what he vouched was true; if he were alone it was proper man & witness. So in the visitation of the diocese of London by Rob. Wincelbe, archbishop of Can-
terbury, a woman of Caghgeble in Essex accused of adul-

tery—Malierl hoc negantiurg optato feste manu extitu in dilita, i.e. She was to vindicte her reputation upon the testimonie of five compurgators. Reg. Ecle. Chrift. Cant. 8. 5. &c. 8. Innumerae lumines, Men of mean condition, of the lowest degree—Et plures mea manus quas ex jujjiti & rationabilibus consequa Rex par-


Manworth, The price or value of a man's life; head; for of every old man was rated at a certain price according to his quality, which price was paid to the lord in satisfaction for killing him. Cowell, ed. 1727.
M A R


Marla, is now threesellings and four-pence; but in the reign of Henry I. it was only six sellings and a penny in weight; for the sellings as well as pence were weighed by the solid, which was divided, and some only cut in small pieces. Now those that were coined were worth something more than the other.

Marlborough, or Marchhero. Were the noblemen that lived on the marches of Wales or Scotland, who, in times past (according to Camden) had their private aw, & praetorium viti & necis, like petty Kings, which are now abolished by the statute 27 El. cap. 26. Of these marches, you may read Ann. 3 Ed. 4. c. 18. 26 T. 6. c. 4. and El. 6. cap. 10. where they are called Lords marcheris. And in old records the Lords Marcheris of Wales were called Marchiones de Marchia Wallia. See Parvus, Wattle.

Marchent (Marches, from the Saxons mar, fignum millarium) are the bounds and limits between us and the English, or between England and Scotland; they are divided into wast and middle marches. Stat. 24 Hen. 8. c. 9. Hen. 5. cap. 7. and 22 Ed. 4. cap. 8. The word is fed in the statute 24 Hen. 8. c. 12 generally for the bounds of the King's dominions. Conwell, edit. 1727.

Marcher. (Marchiteum) Contrafactum pecuniarium in margini filiius marchand, lib. 2. tit. 1. cap. 8. um. 2. Marchetum vero pro filio dare non competit illo bono. Extensa Manetie de Wivenho, 13 Dec. 40 dw. 3. & alia 13 Ed. 13. Dom. 1320. Rich. burn tenet unam magnification. E. de tellato, justitiam, fomenta vero & marchetumhoc modo, quod si meritaeris velitteris filiam, cum eam quodam libera homine extra villam, facetis pecunia prinum ad mercatoriam & si eam meriteritis aliqui cæsari alloca illa, nil debit pro mercario. Marchetum, hoc est, quod commerciarius & socius homine vero corrupite, sive defactire. Reg. Abbatieis de Borge, in 1504. ad 16 Ed. 3. lib. 4, wherein there is no difference: it is in three parts of England and Wales, as also in Scotland, and in the isle of Guernsey. See Spelman at large on it. by the custom of the mansion of Dunscar, in the county of C LE M S T A R, every tenant at the marriage of his son pays ten shillings to the lord of the manor, to which the Irish language is called Garb-merchant, and in the north parts of Scotland; but it was abrogated by Malcolm the third, at the inheritance of the Queen; and instead thereof a mark was paid to the lord by the undermentioned. Conwell, edit. 1727.

Marcherly. To adjoin or border upon. Conwell, edit. 1727.

Marchius, A hammer, a mallet. Id. ib.

Mares. See Horses.

Marshall. See Parshal.

Marchtun, (from the Fr. mortun, a fen or marth) was the ground, which the sea or great rivers overflow. Stat. 2 Ed. 3. lib. 5. cap. 9.

Marinariorum, A marinier, a seaman. Marinariorum apudnem, the admirals or wardens of the ports, which offices were commonly united in the same person; the word admiralt not coming into use before the latter end of King Edw. I. before which time the King's letters were sealed with the great seal, captaincy marinariorum & eftion marinariorum jactam. Patric. Antiq. pag. 332.

Mariners. See Seamen.

Marinarii, Is a word used in Domains-Book, and signifies palms, or locus paludatus, a marshy or fenous ground. Vol. II. No. 105.

M A R

Maritages annulis per orbatiam, Is a writ for the tenant in frank-marriages, to recover lands, &c. whereof he is deforced by another. See Statute.

Marriage, That portion which is given with a daughter in marriage. See Gorus; in olim modo acceptionis duos formando leges Romanas, sequnum quos propriis appellatur, ut, id quod in mulieribus datur virit, quod valiatur dimitter maiestas matrimonii. Statute.

Marriage, or marriage, freely taken, is that right which the lord of the fee had to marry the daughters of his vassals after their death; Others tell us, it was that profit which might accrue to the lord by the marriage of his under age, who left his lands of him by Knight's service. The first plain in the statute of Merton, cap. 7. Marriageum ejus qui infra etatem de vi versa judicium ad dominum fecit.

Marriage habere, To have the free disposif of an heirin in marriage, a favour granted by the Kings of England, while they had the custody of all wards or heirs in minority. Conwell, edit. 1727.

Maritima Angliciae, The emolument arising to the King from the sea, which thersis anciently collected; but was afterwards granted to the admiral. Pat. 8 Hen. 5. m. 4. Richardus de Lucye dicitur habere maritimam Anglicam.

Market, (Marca, from the Sax. mare, i. e. jecum,) In ancient time we find mark of gold was eight ounces. Stow's Annals, pag. 32. and was valued at 6 l. in silver. Rot. Magn. pipe de anno 1 Hen. 2. er, as others write, l. 61. 133. 4d. Cahor. Reg. feb. de dote B. Regina (quon- dam x. R. 145. 3 Feb. m. 17. n. 31.) Affregiamus & pro data sua mida mercuriis arenarius, 131. 4d. computato pro marca. See Maricra. 'Tis in certain when it first came fixed to this particular value. Matthew Paris tells us, that it was fo early as the year 574, in the life of Guerinus, abbot of St. Almon. Skew of Verb. Signer. That mark, which is now in Saxon of ponderibus & mensoiris, a mark signifyeth an ounce, or half a pound, whereof the dram is the eight part of a mark, signifying an ounce, or half a pound, of weight or small country, or mark-marriage, viz. pascuus, venales, etc. In this sense the word seems to be first applied to a certain part, as the market or a market of marks, or with the meaning of the word merchant. Hence the word marrow, as in mangy; acquisitum mercatoris, qui mercatus defponsit & exsossibus venales, quibus necessitas erit prolixior maris in mercatur, & tertius pars relinquatur redimendis de mercatur ad propriam, & Lib. 4. cap. 28. feft. Item referi. By the statute 27 H. 6. 6. all fairs and markets are forbidden to be kept upon any Sunday, or upon the fæst of the Ascension of our Lord, Corpus Christi, or the Assumption of our Blessed Lady; All Saints or Good-Friday, except for necessary victuals, and in the time of harvest. It was customary in former times, that most fairs and markets were kept on Sunday; and in many places they are still kept in the churchyard. This custom fo fast obtained, that though it was prohibited by several Kings, yet we see by the statute before-mentioned, it continued till the reign of Henry VI. This custom is mentioned in Mon. Paris. Anni 1260. Nominae veneralium ab ipsis interdixit quod omnia quos diebus dominicos per Anglicam fert, connuimus. &c. See Fairs and markets, and 15 Hen. 4. tit. Markets.

Market-town, Penalty on persons living in the country, and selling by retail in market-towns. 1 E. Phil. M. 7. 3 Ed. Woodstock excepted as to wood and yarn, 18 Ed. c. 21. 5 L. 

Market
parents might be employed in making provision for their children; and that the love and respect of their children might be repaid to both parents, without diffusion or confusion; which could not be well done, if the marriage was to be disjoined, and their interest was to fever after the concern of education was over: Besides, the interest of marriage would be inconveniently carried upon, without a mutual friendship and endearment, which must be lefled and destroyed by the prospect, that the contract might be determined by the humour of either party. Hence it is, that fornication and all other lusts are unlawful, because children are begotten without any care or preparation for their education; and the crime of adultery receives this further aggravation, that it not only instils a furious race on the party, for whom he is under obligation to provide, but likewise destroys that peace and mutual endearment which ought always, to subsist in the marriage state. 3 Bach. 269.

1. What persons may marry within the Levitical degree.

2. Of offspring and marriage-contracts; and of the solemnization and ceremonies requisite to a complete marriage.

3. Of the offence of a forible marriage, and marrying an infant female under the age of 16, without consent or guardians.

1. What persons may marry within the Levitical degree.

Herein first, we must take notice of the statute 32 Ed. 4, cap. 38. by which it is enacted, "That a separation or prohibition, (God's law excepted,) is no trouble or impeach any marriage within the Levitical degrees; and that no person, of what estate, degree, or condition, forever be, shall be admitted by any of the pretended bishops of the King's realms, or any other bishops, of other lands and dominions, to any process, plea or all question contrary to the statute."

Since this statute, it hath been clearly agreed, that the Spiritual court proceeds to impeach or dissolve a marriage out of the Levitical degrees, that then the Tal person may not be convicted; but by that statute marriages, that are out of those degrees, are declared to be good and lawful; and therefore, if the Spiritual court moleft persons in doing that which is declared lawful be done by the statutes of the realm, they are by the Temporal courts to be prohibited, because they execute that prohibition, thus bounded by the Temporal law, but where the law has not bounded them, their jurisdiction still continues; and therefore within the Levitical degrees they are still judges of incest. Vaug. 206, &c.

We must likewise obelize, that if a person marry cousin within the Levitical degrees, yet they cannot be convicted of any of the forible marriages, that have been brought in evidence in the courts of lease, that have been brought in evidence in the courts of law.

Nothwithstanding the law of nature, there are all marriages between the ascending and descending line in infinitum; and this is said to be contrary to the law of nature; because it tends to the defirution of the natural will of rector, which defined the preservation and continuance of such inhabitants of the world as he originally created and all acts of men that tend to the defirution of the spark of life, or any innocent person or any living creature against the law of nature; and therefore, because, between the ascending and descending line, is contrary to the law of nature; for the mother would never have preferred and educated the female issue, if it had been admitted to the father to have access to them; and fathers would have never had and preferred their male issue, if they had not had the issue of their own body.
to another reason why this is called unnatural, and that it is the natural duty between parents and children, because the father for the parent could never preserve or maintain that authority that is necessary for the education and government of his child; nor the child that reverence that is due to the parent in order to be educated and governed, if such indigent unfamiliarities were admitted. Whereas this, as it is the bond and tie of its kind, it is a near intercourse between collaterals, which is rawn from that which is observed in brute creatures, as that it is necessary to croft the train, in order to continue the species. It may be, that there being the same tone and figure in the blood, and a similar conformation of vessels, the circulation of it becomes turpifd and defective; whereas a new mixture of others of the same kind, where there is a different figure and motion of the blood and spirits, may add a new vigour and ability to be an animal economy. Grat. de juris, i. 5. Vang. 221, 42, 43.

Those prohibited by the positive Divine law, are all collateral to the third degree; and tho' this be not contrary to the law of nature, yet it seems established on very strong reasons; for if a connubium between kindred, who might be allowed, or their marriages be tolerated, the necessity is that there is a frequent opportunity they have with each other, would fill every family with lewdness, and create heart-burnings and unexquifite jealousies between brothers and sisters, where the family was numerous; and it would confine every family to itself, and be in nature more like the education of children in loquo parentum; and by consequence it was necessary to propagate the same re-}
cannot be intended of a bastard, because he is of kin to no person whatsoever, &c. But the court inclined not to grant a prohibition. 5 Mod. 168. Cnek. 356. Helen v. Tisfent.

2. Of espousals and marriage contracts; and of the solemnization and ceremonies requisite to a complete marriage.

Swaineburne defines espousals in this manner, spoufalis sunt mutua exprimmens nuptiarum vice inter eos, quibus jure licet, faulta; which comprehends first, That this promise must be mutual; 2dly, That it must be done rites, or duly; 3dly, That it must be entered into by them who may lawfully make and receive of Espousals. 3dly, Such contracts are divided into two contras in presenti, and contracts in futuro.

A contract in presenti, or verbal in presenti, as I marry you, you and I are man and wife, &c. is by the Civil law called Eum matrinimium, and amounts to an actual marriage; which the very parties themselves cannot dissolve by release, or other mutual agreement; it being as much a marriage in the fight of God, as if it had been in facti ecclesiis, with this difference, that if they cohabite before marriage in facti ecclesiis, they are for that punishment by ecclesiastical censures; and if after such contract either of them lies with an other, they will punish such offender as an adulterer. Swain. 74. 2 Salk. 438. 6 Mod. 155.

A contract in futuro, as I will marry you, &c. may be entered in the spiritual court, but such contract either party may dissolve by release; also if either party marry another person, such second marriage dissolves the contract. Swain. fist. 10. 11. But it hath been resolved, that an action will lie at Common law for the violation of such an executory contract per verba de futuro, for the temporal loss to the party; and although the party hath a remedy in the spiritual court, but it seems, that by bringing an action at Common law, and that appearing on record, the remedy in the spiritual court is actually released; for now in lieu of a performance of the contract he shall recover damages: Also the defendant pleading, that he hath been sued for the same matter in the spiritual court, and producing a sentence against the plaintiff, the plaintiff notwithstanding any proof of his, will be nonsuit; because that they were the proper judges in the spiritual court, whether it were a precontract or not. 1 Leon. 147. 1 Rol. Abr. 21. Gr. Eliz. 79. Salk. 295. Carter 233. Dods. vs. Hove. 1 Salk. 24. 5 Mod. 511. 6 Mod. 172. 1 Salk. 120. 121. Such promises are good, though the time of marriage be not agreed on; but in such case it is necessary, to intitute the party to his action, to allege that he offered to marry her, and that the refusal. Carth. 467.

In an action against husband and wife, the plaintiff declared, that he promised to marry the defendant's wife while sole, and that the same promise to take her for husband, and averred, that he tendered himself, and that the refused, &c. it was objected, that marriage was no advancement to a man, though it was a woman, and also, that no time was laid when this agreement was to have been executed; but the court overruled both objections. Carth. 467. 1 Salk. 24. S. P. and the distinction between a man and woman exploded.

This action must be founded on reciprocal promises; and if the promise be on one side only, it does not bind, being only nudum pactum. 1 Salk. 24.

But if a man of full age and a female of fifteen promise to inter-marry, and afterwards he marries another, an action lies against him; for though such promise may be said to be voidable as to the infant, yet it shall be binding on the person of full age, who is presumed to have acted with sufficient caution; otherwise this privilege allowed infants, of reneding and breaking through their contracts, which was inter-deed as an advantage to them, might turn greatly to their prejudice. Trin. 5 Gis. 2. Helt. ver. Word.

If A contracts himself to B. and after marries C. and B. fues A. upon this contract in the spiritual court, it is plain, that A. shall marry and cohabit with B. which he does accordingly; they are kins and femes, without any divorces between them; and C. for the marriage of A. and C. was a mere nullity. 40. 4. Ca. 29. S. C. 1 Sid. 13. S. C. cited, and denied by Trueman; and sids 1 Salt. 120-1.

It is held, that the clause in the statute a frauds and perjuries, 19 Car. 2. relating to marriage agreements, extends as well to a promise to marry, as to the payment of marriage portion. 3 Lev. 65. But Salt. 156. feems cont.'

In order to make the marriage complete, so as to in title defend himself, the in the issue to himself, &c. the same must be celebrated in facti ecclesiis; and therefore the private contract without the priest's blessing, makes no marriage, though such contract may be inforced in the spiritual court. 1 Rol. Abr. 357. Mar 169.

And although the marriage be solemnized in facti ecclesiis, yet if it were without consent, it is void; and therefore if a man takes E. &c. to wife by dote, the same is void, though solemnized in facti ecclesiis. Ref. Abr. 340. Co. Lit. 32. 6 Co. 22. Keilw. 62 Dyer 13. Cro. Car. 488. 493. 1 Sid. 65. A. and B. being fictitious, were married by an in the form of the Conm, Prayer, except the blessing; but the marriage was not valid, as a woman, in wife dying, the husband took out administration in his own name, and upon application of her sister, the letters of administration were repealed, and the sentence of repeal affirmed by the delegates; for the husband, demanding a right to him as husband, must bring himself within the rule prescribed by that jurisdiction to whom he appends; and the confiant form of pleading marriage is, that it is per proponentem factum ordinatis constitutum; and an act parliament was made confirming the marriages contracts during the usurpation. 1 Salt. 119. Hyden v. Gish and Car. 183. 3 Lev. 376. 2 Salk. 300.

A marriage solemnized by a priest, in eject's orders good and binding, though there was no publication banns or licence to dispense therewith; but herein seems agreed, that not only the party performing the ceremony, but also the parties married, being lay persons, are punishable by ecclesiastical censures; and acts contrary to such ancient canons as have been received are allowed in this kingdom; but it seems agreed, that canons of 21. Iac. 1. bind not the laity, now having been universally received, and being made only in our vocation, where the laity are not represented. 5 Co. 5. 344. 1 Lev. 259. 2 Salk. 672. 6 Mod. 18. See Barton and Using.

3. Of the offence of forcible marriages, and marrying an infant female under the age of 16, without consent guardian.

By the 3 Hm. 7. cap. 2. it is enacted in 1 words following: "Where women, as well maidens, widows and wives, having subsidences, fome in good movable, and some in lands and tenements, and for being heirs apparent unto their ancersors, for the lucre of marriage, or the same, be oftentimes taken by such midloes contrary to their will, and after marriage, to fuch midloes, or to other by their affent, or defiled to the gud displeasure of God, and contrary to the King's laws, at disparagement of the said women, and utter heavine and discomfort of their friends, and to the evil enemf of all others; it is therefore ordained, establifhed and ed acted by our Sovereign Lord the King, by the advice the lords spiritual and temporal, and the commons in the said parliament assembled, and by authority of the same, that what perfon or perfon from henceforth that take any woman fo against her will unlawfully, that is to fo affent, to take her, or for the same, that such taking, procuring or abetting the same, or also receiving money of any woman to taken against her will, and knowing the same be felony; and that such midloes, takers and procurers to the same, and receivers, knowing the said offen
in form afofaid, be henceforth reputed and judged as principal felon. Provided always, that this act extend not to any person taking any woman only claiming her as his ward, or bond-woman."

Sect. 3, and by 39 Eliz. cap. 9. "All persons who shall practice, or procure, or occasion, before such offence committed, are excluded from the benefit of the clergy."

In the construction of the said statute of 3 Hen. 7. the following points have been resolved; That the indigence for this offence must set forth, both that the woman had goods or credits; clear and apparent, and that the taking was for love; and also that she was married or defiled, for the ensaing clause, in saying, that what person takes any woman fo against her will, plainly referring the taking thus to be such as is within the preamble; but it needs not set forth that the taking was with intent to marry or defile."


It is said in Hole, that to make the offence felony within this statute, the taking must be against her will; but herein by Hodenius, that it is no manner of excuse, that the woman has taken or consented to the taking. If the woman is married, because if the afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if the had never given any consent at all; or till the force was put upon her she was in her own power; but if she be not to her own power, and under the power of the offender, it is not the case.

That is it not material, whether a woman taken away against her will be at last married or defiled with her consent, or not, for she was under the force at the time; because the offender is in both cases equally within the words of the statute, and shall not be conftrued to be out of the meaning of it, for having prevailed over the woman, whom by false means he got into his power. Cro. Cr. 492. 3 Kel. 192. 1 Cent. 243. Brown's cafe.

That those who after the fact receive the offender, but not the woman, are not principals within this statute; because the words are describing writingly the same woman to make, &c.; but it feemes clearly that they are actions after the offender, according to the known rules of common law. 3 Ies. 61. Dalib. 22. St. P. C. 44. Hole's Hill. P. C. 661.

That those who are only privy to the marriage, but no parties to the forcible taking away, or confenting, are not within the statute. 1 Hole's Hill. P. C. 660.

That where a woman is taken by force in the county of A, and married in the county of B, the offender may be indicted, and found guilty in the county of B. because he continuing the force there, amounts to a forcible taking away within the statute. Cro. Cr. 488. Hole 189. 1 Hole's Hill. P. C. 660.

It hath been adjudged, as is the constant practice at this day, that on an indictment for a forcible marriage, grounded on this statute, the wife may be a witness against the husband; for it being by force, it cannot be done, as in. suits of debt, to make them one person inaw. Cro. Cr. 488. 1 Cent. 243. 4 Mod. 8. But she feely without constraint lived with him that thus married her any considerable time, her examination in evidence might be more questionable. 1 Hole's Hill. P. C. 664.

By sect. 4 & 5 Ph. & Mar. cap. 8, it is provided, "That it shall not be lawful for any perfon to take away any maid, or woman child unmarrried, and with-in the age of sixteen years, from the parents or guardian in feasage, and that if any woman child or maiden being above the age of twelve years, and under the age of fifteen, shall do at any time to such person that shall make any contract of marriage, (contrary to the form of the act,) that then next of kin of such woman child or maiden, to whom the inheritance should descend, return or come, after the decease of the same woman child or maiden, shall, from the time of such Vol. II. p. 195.
For Coake masthead near Greenswic, 37 H. 8. c. 11.
For recovering surcharged mantles, 43 El. 4. c. 11.
For the mantles of Lofes and Fonts in Kent, 4 Jac. 1. c. 8.
For draining the fea of Waldrifey and Cudlham in the isle of Ely, 4 Jac. 1. c. 13.
For the recovery of masthead ground in Nassifall and Suf- falls, surcharged by the sea, 7 Jac. c. 20.
For the draining of Bedford Level, 15 Car. 2. c. 17.
For dividing commons in Bedford Level, repealed, 1 Jac. 2. c. 21.
For opening the ancient, and making new royalties and watercourses in Sedgmore, in Somerby, 10 & 11 W. 3. c. 26.
For draining Hadston Level, 13 Geo. c. 1. c. 18.
For draining Waterford Level, 14 Geo. c. 2. c. 24.
Drained land shall be rated to the nearest parish, as shall be determined at the quarter- sessions, 17 Geo. 2. c. 37.
For draining the wales in the isle of Ely and Blunt- tham, with Eribt in Huntingstone, 29 Geo. c. 21. c. 24.
For draining marlhead lands in the parish of Wiggenhall St. Mary Magdalene in Nassifall, 30 Geo. 2. c. 32. See Fins.
Partial Laws, is the law of war, depending upon the pleasure of the King, or his lieutenant: for though the King in time of peace never makes any laws, but by common consent in parliament; yet in war he wields absolute power, inasmuch that his word is a law. Smith de Repub. Anglor. lib. 2. cap. 4. See Law of arms.
Martillagium, For Martylgium, Monast. tom. 2. pag. 322.
Martymology, (Martylgium, martilium) A calendar or register kept in our religious houses, wherein they set down the donations of their benefactors, and the days of their death, that upon each anniversary they might commemorate and pray for them. And therefore several benefactors made a condition of their beneficence, to be inserted in the martymology. — So Iaffb Gargate required from the prior and canons of Buresfell, for favour done to them by berself and mother. — Cum de his vita magnioremus, factant annus suffra forto in martolio fac. Proch,Antq. p. 193. See Kenne's Conta- fery.
Mafagtium, Anciently used for a meffage. Et unus magesium in villa de Maudone, Gr. Pat. 16 Rich. 2. par. 1. m. 36.
Mas, Papil.
Maff-priest, Anciently in England every secular priest in distinction from the regulars, was called maff-priest, who was to officiate in the mafs, or ordinary service of the church. Hence maff-priest in many of our Savun canon for the parochial minister; who was likewise sometimes called mafs-thyone, because the dignity of a priest in many cases was thought equal to that of a thyone or lay-lord. But when the times of greater superstition came on, the word maff-priest was restrained to those stipendaries, who were retained in charities, or at particular alms to say masses for the souls of the deceased. Cowell, edit. 1727.
Maff, (Glanis,) The acorns and nuts of the oak, or other large tree. Glandis nonius continentus glanum, effumam, caji. The large tree or oak, or quae edit et fructum pastor herbam. Bracon, lib. 4. p. 226. See Pilauna.
Maller and servant. The relationship between a master and a servant, from the superiority and power which it creates on the one hand, and duty, subjection, and as it were allegiance on the other, is in many instances in its natural course of events, led to other relationships, which are in a superior and subordinate degree; such as lord and bailiff, principal and attorney, owners and masters of ships, merchants and factors, and all others having authority to enforce obedience to their orders, from those whose duty it is to obey them, and whose acts, being conformable to their duty and obedience, are also acts of their principal's; but these being treated of under their proper heads, we shall not here consider this relationship, as it more particularly affects masters, and those who are more properly called servants.
waive the Prince's treasure, and extremely weaken the forces, &c. mentioned 2 Ed. 6. cap. 2. and Merchant-
minor general, stat. 33 Eliz. cap. 4.

Walter of the arms, (Mentioned in flat. 2 H. 6.
cap. 14.) is now called The warder or the mint, whose office is to receive the alms and silver devoid, and to pay for it, and to oversee all the rest belonging to his function.

Walter of the queen's (Mentioned in stat. 39 Eliz.
cap. 3.) is a great officer, to whose care all the king's ordnance and artillery is committed.

Walter of the posts, was an officer of the King's court, that had the appointing, placing and displacing of all such through England as provided post-boyes, for the speedy caising of the King's meagles, and other business, in those things, whereby they had to keep a certain number of convenient horses of their own, and when occasion is, that they provide others therewith to furnish such as have warrant from him to take post-boyes, either from or to the fear, or other borders or place within this realm: He likewise hath the care to pay them their wages, and make them allowance accordingly as he shall think meet. This officer is mentioned in flat. 2 Ed. 6. 3. But by a statute made 12 Car. 2. c. 34. one general letter-office or post-office is settled in London, the matter of which is appointed by the King by letters patent, with rates and rules prefixed in the act for the regulation of letters. But the said rates and rules have been since altered by stat. 9 Jan. 106. See Post-office.

Walter of the rebels, An officer to regulate and oversee the diversions of dancing and making, used in the palaces of the King, inns of court, &c. and in the King's court is under the Lord Chamberlain. See

Walter of the Rolls, (Magisty raturum,) is an affi-Siant to the Lord Chancellor in the high court of Chancery, and in his absence hearth causes there, and gives orders. Craite, Jur. sol. 41. His title in his patent is, Clericiae parvae bases, cofas raturum, & demon convserbarum; because the place where the Rolls of Chancery are now kept, was, it is conjectured, the habitation of those Jews, who were converted to Christianity; but these convers gave themselves up to all sensuality and wickedness, and therefore Edu. 3. anno regni sui 51. suppressed them, and gave the house for the safe keeping of the Rolls of all patents and grants which pass the Great seal, and the records of Chancery. He is called Clerk of the Rolls, stat. 11 H. 8. cap. 2. and in Fortescue, cap. 24. and no where Master of the Rolls, until 11 Hen. 7. cap. 20. and yet, cap. 25. ejusdem, he is called also Clerk. In which respect, Sir Thomas Smith, hist. 2. cap. 10. says, he may not unly be called Co/fo archivarium. He hath the betting of the office of the six clerks, and the clerks of the petty-bag, examiners of the court, and the clerks of the chapel. Stat. 14 & 15 Hen. 8. c. 1.

Walter of the Temple, The founder of the order of the Templars, and all his successors, were called Magistri Templi Magistri, and probably from hence he was the spiritual guide and director of the Temple. Ever since the dissolution of that order, he is called Master of the Temple.

Walter of the wardrobe, (Magisty garderob.) Is a great officer in court, who had, till the fire of London, anno 1669, his habitation belonging to that office, called The Wardrobe, near Pudding-House, in London. He has the charge and custody of all former Kings and Queens ancient robes, remaining in the Tower; and all hangings, beddings, &c. for the King's house. He has also the charge and delivery out of all velvet or scarlet allowed for liveries, &c. Of this office mention is made in flat. 39 Eliz. cap. 7.

Walter of the wardrobe, (Mentioned in flat. 39 Eliz.
cap. 7. there is in the great chamber one House of the wardrobe, called The Chest of the mother of chief officer of the household, of the mother of the household, called The Master of the household, of cat authority, as well as antiquity.

Walter of the manors, is a martial officer in royal armes, most necessary as well for maintaining the forces complete, well armed and trained, as also for evening of such frauds as otherwise may exceedingly

M a s

grants and apprentices. 3 Bic. Abr. 544. 545. See
apprentices, and, 15 Fin. Abr. and 3 Bic. Abr.
Mafter and servants.

Walter of the armory, (Magisty armorum & arm-arms, and armor, and mentioned 39 El. cap. 7.
fee is 100 marks per annum.

Walter of the ceremonies, (Magisty admittantium,) one that receives and conducts ambassadors and other great persons to the king, and of the ceremonies of the court: Of these there are some ordinary, and some extraordinary; the masters in ordinary are twelve in number; if some fit in court every day, during the term, and are referred to them interlocutory orders for lodging at

Walter of Chancery, (Magistyancellarii,) in the court there are Masters, who are affidavits to the king in the trials of the several writs, and of the suits of the King: Of them there are some ordinary, and some extraordinary; the masters in ordinary are twelve in number; if some fit in court every day, during the term, and are referred to them interlocutory orders for lodging at

Walter of the court of wards and liberties, was chief officer of that court, named and alligned by the king, to whose custody the seal of the court was committed; and to apply the interest arising therefrom, to augmenting the incomes of the masters of the said court, 5 Geo. 3. c. 28.

Walter of the seal, was the officer under the emperors of Rome, was called Comes faci. fluidi.

Walter of the jewel house, is an officer in the king's household, of great credit, having charge of all plate used in the king or Queen's table, or any great officer in court; and of all plate remaining in the tower of London, chains and loopes jewels not fixed to any garment.

Walter of the king's household, (Magisty bispiti.
is officer called Grand Master of the king's
weld, and is called Lord steward of the king's most

Walter of the king's musters, is a martial officer in royal armes, most necessary as well for maintaining the forces complete, well armed and trained, as also for evening of such frauds as otherwise may exceedingly

M a s
a quantity of ground, containing about four oasangs; in the town called "Amsterdam," or "Oost".

The alteration of any of the maxims of the Common law are most dangerous. 2 Inst. c. 210.

The laws of all nations are doubtless raised out of the Roman empire, and it must be owned, that the principles of our law are borrowed from the Civil law, and therefore grounded upon the same reason in many things; as Poth. Ch. 12 Mod. 482.

It is a maxim, That as no estate can be vested in the King, without matter of record, so none can be devised of a freeholder, for things are disposed by use, if they are contracled. Co. Rep. 1. Chev. 5. An other, that an obligation, or other matter in writing, can not be discharged by an agreement by word, and Argument of the authority of testamentary life in later. Co. on Life pag. 141. It is also a maxim, That if a man have two fans by divers matter, and the one of them partly lands in fee, and die without issue, the other brother for never be his heir, &c.


Quid cadit a falsi cadit a tute causid, the maxim con- demned, Stat. Wili. 12 Ed. 1.

-A qui pro aliis facit non est pontificium, St. Willm. 2 15 Ed. 3.

De transfregimine certae professionis ficta altera professione, commutant aut eundem aut eonsequator, St. de Vall. 20 Ed. 1 ft. 2.

That allegiance is due more by reason of the crown than of the person of the King, condemned, Evil Heas le Defensier, 1 C. 2. 1.

Necessary alliances among the peers to pursue enemies, not to be punished by rigour of law, St. 1 qui seco, prof. 15 Ed. 2. b. 13.

The King cannot pardon the forin of others, statute in voking the pardon, Ed. 15 Ed. 2. ft. 4.

For a marriage in the bough, and the son to the plough in Kent, Prag. Reg. 17 Ed. 2. ft. 1. 16.

None shall be troubled for covenants made in time war, Stat. Regum inure temp. vol. 1. p. 188.

Every man is bound to do the King as bis Liege Lord all that pertaineth, 1 Ed. 3. 1. 1. 5.

Jullies ought not to yield accounts, 1 Ed. 3. ft. 1. 5.

Franchises refraining the freedom of selling merch- dace, are to the common prejudice of the King and his people, 25 Ed. 3. ft. 4. c. 2.

Several condemned opinions relating to the prerogativ and treason, 21 R. 2. c. 9.

Laws without great penalty are more often obeyed 1 Mar. 1. 1. 1.

Pamph. See Pamph. 1. 1. 2.

Nay, in the chief magistracy of a city, and 20Y connected among the Britains called me, which is derive from the Britis word meyr, which signifies rurther, 1 keep and preferre; and not from the Latin major, greater.)

Anna 1389. Richard the First, changed the bailiff to London into a mayor, and by that example 1204. King John made the bailiff of King's Lyn a mayor, while Ne with obtained not that title till the seventh of Henry the Fifth.

See, more of this word in Spain. Gell. Se Corpocratia, Information, Pandanus, &c. 18.
M E A
honour of Ciaum, were paid in meal, to make meal the lords bounds. Cawill, edit. 1727.
Meals, The thieles of sands or banks on the sea-coasts Northul, are called the meals and the malts. Id. ib.
Med, (Medius,) Signifies the middle between two themes, the middle in time or magnitude. For example, the first of the Devil made to him and his recovery, that is, in the prison, or, as we usually say, in the mean time. Of the end, there is Lord Mean or Mine, (mentioned in the Hautes of answering lands, made temperate Ed. 1.) Cowell, edit. 1727. See Median.
Menouette, In French Moign de deiu, Domus Dei; house of God, a monastic, religious house or holy place. The word is mentioned 2 & 3 P. Of M. cap. 23. Ed. e. 5. and 15 Car. 2. 7.
Measurer, (Menura,) is a certain quantity or proportion of any thing fold, and in many parts of England is a bushel. According to the 25th chapter of Magna Charta, and the 17 Car. 1. cap. 10. all weights and measures in this kingdom ought to be the same, and according to the King's standard; which standard is called our historians, menura regalis, and was always kept in the King's palace; and all other measures were to be made after the manner and kind, and in every city, market town and other villages, it was kept in the churches. The measuring men in every city and town of England were subject to fines, and peace shall enquire of measures, 34 Ed. 3. 4.
The measures in the county of Lancaister, larger than other parts, 13 R. 2. fi. 1. c. 9.
The penalty of buying corn at more than eight bushes an acre, 15 R. 2. fi. 6. H. 5. c. 10.
Measures, of cards, galls and elle, shall be according to the ndard, and sealed, Ordin. pro Piiforum. incerti temp. e. 8 9. 25 Ed. 3. fi. 5. c. 10. 16 R. 2. c. 3.
Standards of measures shall be tent in brats to the utmost, 14 Ed. 3. fi. 1. c. 12. 34 Ed. 3. c. 6. 7
3. 4. eyelites and penes peace shall enquire of measures, 34 Ed. 3. 4.
The contents of an acre, 24 H. 8. c. 4.
Wate measure in port towns may be used, 16 Car. 2. c. 19. c. 7.
The respective contents of a barrel of beer and ale, 2 Car. 2. e. 2. 17. fiel. 20. c. 24. fiel. 34. 1 W & 24. c. 4. 24. fol. 5.
The bushel of corn and salt fattened, 22 Car. 2. 8. 22 & 23 Car. 2. c. 12. 5 W & 24. c. 6. 7. 18.
A measure of brass shall be kept in every market, 2 Car. 2. c. 8. fiel. 5.
Contables to search for unsealed measures, 22 Car. 2.
Where there is not a clerk of the market, the mayor, 5e. shall fell measures, 22 & 23 Car. 2. c. 12. fi. 4.
Collectors of the excise to provide quarts and pints of rath for ale in every market town, 11 & 12 W. 3. c. 15. fiel. 3.
Measures of Winchester measure, 1 Ann. fi. 2. c. 3. fiel. 10.
Water measure of fruit accorded, 1 Ann. fi. 1. 15.
Wine measure, 5 Ann. c. 27. fiel. 17.
Measure, or Slier of woolen cloth and of coals, is an officer in the city of London. See Justice Peter.
Vol. II. No. 105.
MEL
Measuring-money. The letters patent, whereby one person execd of every cloth made, certain money, besides alnage, called the measuring-money, may be revoked. Rot. Parl. 11 Hen. 4.
Medici. A mead-houe, or place where mead or meadwine was made, Cawill, edit. 1727.
Medice, is reputed to be a bride or reward; it also signifies that compensation given in an exchange, where the things exchanged are not of equal value. Cawill, edit. 1727.
Mediævi, and intimae manus hominis, Men of mean and base condition, otherwise called men of low fortunes: Et plures mediæ manus quas paucis juxta causas spale, excehendoraverat. Radulphi de Dict. Anno 1112. So, Deus militis medii manus homine, &c. Intima manus bona, is a man of an inferior condition. Id. ib.
Mediavicus. Of a middle fine, medianis homae, a man of a middle fortune; medianis eos, an ox of a middle price. Id. ib.
Mediatores of questions, (mentioned in lat. 27 Ed. 3. lat. 2. cap. 24.) Were six persons authorized by that statute, (who upon a quidem relium amongst merchants touching any unmarketable wool, or undue packing) might before the mayor and officers of the Staple, upon their oath certify and settle the same; to whose order in the parties therein was to give credence without any contradiction. Cawill, edit. 1727.
Medicæns linguae. Signifies a jury or inquest empannelled, whereof the one half consists of natives or denizens, the other strangers; and is used in pleas, wherein the one party is a stranger, the other a denizen. See the Stat. 28 Ed. 3. cap. 13.—27 ejusdem, lat. 2. cap. 8. and 8 Hen. 6. cap. 29. Before the fist of the measures was made, this wont be obtained of the King by grant made to any company of strangers. Shawnd. F. Caroli. 2. cap. 3. 7. and 8. Car. 2. cap. 11. Solomon de Stanfard, a jep, had a cause tried before the sheriff at Norwich, by a jury of Sex pretiosum seu leges hominum & sex leges Judaicæ de civitate Norvicæ, &c. Norval. Pref. Ed. 1. Judicorum Rot. 4 & 5. in dicto.
Medici acquiustaneis, Is a writ judicial, to disfrain a lord for the acquiring a mean lord from a rent which he formerly acknowledged in court not to belong to him. Rot. Jud. fol. 29.
Mediciæan, Is that which paffeth through the house of the great, and after that reaum the sea which ftrecheth itfelf from west to east, dividing Europa, Africa, and Asia, is called the Mediterranean Sea; it is mentioned 12 Car. 2. in the statute of tonnage. Counterfeiting Mediterranean pelisses is felony, 4 Geo. 2. c. 18.
Medit, A sudden scolding at, and beating one another. Breach. 3. 3.
Medpump, A harvest-lapper, or entertainment given to the labourers at harvest-time. Pleaf. 9 Ed. 1. Cawill, edit. 1727.
Meditaua river, Pilots thereon how to be licenced, 5 Geo. 2. c. 20. It was called Fuga by the Britons; the Saxons added Med. See Urne. 3.
Melt, (Merus) Though an adjective, yet is used as a substantive to signify meer right, Old Nat. Brev. fol. 2. in these words. This writ hath but two issue, viz. joining the Mefe upon the More, and that is to put himself in the Great Affay of our Sovereign Lord the King, or to join battle. Cawill, edit. 1727. See Mfbc.
Mepin, (Mepismus, French mufit.) As the King's meiny. 1 Rich. 2. cap. 4. that is, the King's family or household servants.
Meltas, To what duties liable, 2 P. & M. sst. 2. c. 4. fiel. 35.
Melhish. The reward and recompence due and given to him that made the discovery of any breach of penal laws committed by another. The promoter or informer's fee. Cawill, edit. 1727.
Mellius iunctuore, Is a writ that lieth for a second inquiry of what lands and tenements a man dieth seized, where partial dealing was frustrated upon the writ of Diem clausum extremum. Fis. Nat. Brev. fol. 255.
5 N
It was moved for a militia inquisition to be granted to the coroner of Kent, who had returned an inquisition concerning the death of one that was killed within the manor of Greenwich; he had returned that he died of a meagrin in his head, when he was really killed with a coach. Hole laid a militia inquisition is generally upon an officer, and is directed to the sheriff. But Twysden said this cannot be to the sheriff, in 22 Ed. 4, the coroner must inquire only super viujum corporis; and if you will have a new inquiry you must quash this. Indeed a new inquiry was granted in Mile Barrley's cafe. It being prayed, that the court being the supreme court, would hear the living midmeanor of the coroner. Hole Ch. Ju. Bid them make some oath of his midmeanor, because he is a sworn officer. Without oath we will not quash the inquisition. Nowdigate said, that in the cafe of Mile Barrley the inquiry was not filed, and that that was the reason why no new warrants issued. Hole ordered the coroner to attend, who (he said) must take the evidence in writing, and that he should bring his examination into court. Mod. 82. Mich. 22 Cor. 2. B. R. Ann. See 15 Vin. Abst. tit. Miliis inquisitum.

Moneys, Some kind of memorandam or oblique for the dead, in injunctions to the clergy, 1 Ed. 6. Mentatum, A note: Th is mentioned in Trivet's Chronicle, p. 677, and in Wolington, pag. 66.

Merdile, mentioned in Crow. Tities of Peace, fol. 193. Is that which Bradton calleth medulium, lib. 3. tradit. 2. cap. 35. It signifies quarels, scuffling or brawling. Mercurius. A derivant from mercuria, that is, such as live within the walls of their master's house, mentioned in the flat. 2 H. 4. 21.

Mers, Comprehends all patrimony, or goods and necessaries for our livelihood: dominium et propria terra ad mensam assignata.

Mentalia, Were such parchonos or spiritual livings as were united to the tables of religious houses, and were called mensal benefits amongst the canonists. And in this sense it is taken, when we read of appropriations ad mensam famam. Cowell, ed. 1772.

Meritura, Is taken for a butchel, as mensura bladi, a butchel of corn. Cowell, ed. 1772.

Meritura Regalis, The King's standard measure, kept in the Exchequer, according to which all others are to be made. See 36 Ed. 4.

Met, or Mett, Words which begin or end with these syllables signify fenny places. Cowell, ed. 1772.

Mera notis, Midnight. Ed. 11.

Herennianus, A hireling, a servant. Cowell, ed. 1772.

Merce, or Mercia, A market, or bazaar. 2 H. 4. 21.

Merce, A market company. Provisions for relief of their creditors, 21 Geo. 2. c. 22. 24 Geo. 2. c. 14. 25 Geo. 2. c. 7. Three hundred pounds to be paid annually to the Mercers company towards payment of annuities, debts, &c. 21 Geo. 2. c. 19. For the relief of the bond and other creditors of the wardens and commonalty of the mystery of mercers of the city of London, 4 Geo. 3. c. 50.

Merchants. Every one that buys and sells, is not from thence to be denominat a merchant, but only he who trafficks in the way of commerce by importation or exportation; or otherwise in the way of emption, vendition, barter, permutation or exchange, and who makes it his business to buy and sell, and that by a continued aviluity, or frequent negotiation in the mystery of merchandizing; but those that buy goods to reduce them by their own art or industry into other forms than formerly they were of, are properly called artificers, not merchants; but not merchants may, and do alter commodities, and buy and sell, and such enter into the name of pedle of them, but that renders them not artificers, but the fame is part of the mystery of merchants; but persons buying commodities, tho' they alter not the form, yet if they are such as fell the fame at future days of paying for a greater price than they sell them, they are not properly called merchandizers, but are dealers, tho' they obtain several other names, as warehouse-keepers, and the like; but barkers, and such as deal by exchange are properly called merchants. 3 Melly 456. 457. cap. 7. sed. 13.

If a person, who otherwife is no merchant, being beyond fee, takes up money and draws a bill upon a merchant, he cannot in an action brought upon this bill against the person to whom the bill was made, plead that he was no merchant; for the very taking up the money and drawing the bill makes him a merchant to this purpose, and is a merchantizable act. Comb. 152. Mich. 1 W. & M. at Serjeants Inn in Fleetstreet, Surfield v. Witherby. Merchants includes all sorts of traders so as well as properly as merchant adventurers. D. 379. c. Civ. Suet. Guida. A merchant taylor is a common term; per Holt Ch. J. 2 Salt. 445. Mayor, &c. of London v. Willy.

The cultrum of merchants is part of the Common law of the inhabitants of which the judges ought to take notice; and if any doubt arise about the cultrum, they may send for merchants to know the cultrum; per Hobart Ch. J. Wind. 24.

Merchants shall have safe conduct, and may buy and sell by the ancient and right customs, M. C. 9 H. 3. c. 30. 2 Ed. 3. c. 9. 14 Ed. 3. fl. 2. c. 2. 5 R. 2. fl. c. 2. 27 Ed. 3. fl. 2. c. 13. 1 Ed. 3. fl. 3.

Two merchants of London shall be chosen to receive recognizances of statute merchants, Stc de Mercator. 13 Ed. 1. fl. 3.

May freely sell their merchandise without disturbance 9 Ed. 3. fl. 2. c. 1. 1 R. 2. fl. c. 7. 16 R. 2. fl. 21. contra.

Foreign merchants to have redres by the law of the flapple, 27 Ed. 3. fl. 2. c. 20.

Merchantmen who have been robbed, or sold their goods at fea, 27 Ed. 3. fl. 2. c. 13.

In cause of a war, merchants shall have time to with draw their effects, 27 Ed. 3. fl. 2. c. 17.

Shall not lose their goods for the trespas of their fer vants, 27 Ed. 3. fl. 2. c. 19.

Shall have redres by law merchant, 27 Ed. 3. fl. 2. c. 25.

Their ships shall not be compelled to come to anchor, 28 Ed. 3. c. 13.

Engroffing prohibited, 37 Ed. 3. c. 5.

May trade freely, so that English merchants do not export wool, and that some export gold or silver, in place or money, 38 Ed. 3. c. 2.

What wares merchants may sell by retail, and who only in gros, 2 R. 2. fl. c. 1.

Merchants of Italy and Spain may trade to England giving security to carry their exports Westward or to Car. 2 R. 2. fl. c. 1.

Give security to lay out the proceeds of their imports on merchandise of the realm, 14 R. 2. c. 1.

On exchanges made, they shall give security to lay ou to the value in merchandise of the flapple, 14 R. 2. c. 9. 2 H. 5. fl. 2. c. 9. 1 H. 6. c. 6.

Remedy for merchants who have been robbed, or sold their goods at sea, 12 Cor. 2. c. 4. sed. 3.

Merchant aliens shall not fell to one another wine, or seyrie, or other goods, except vinters, 16 R. 2. c. 1.

Shall lay out the whole proceed of their imports on merchandise of the realm, 4 H. 4. c. 15. 5 H. 4. c. 19. 18 Ed. 3. c. 4. 2 H. 3. c. 4. 4 Ed. 3. c. 1. 1 R. 3. c. 9. 3 H. 7. c. 8.

Foreign merchants shall be demenced as English mer chantes are beyond fee, with a penalty on the merchant 5 H. 4. c. 7. 4 H. 5. c. 5.

Merchants strangers shall fell their imports within quin mor, and such of them as shall come to other strangers, 5 H. 4. c. 9. Repealed, except that merchants strangers shall not export the imports of merchants strangers, 4 H. 4. c. 4.

Halls shall be assigned to merchants strangers, 5 H. 4. c. 9. 18 H. 6. c. 4.

Merchants shall sell in gros, notwithstanding the franchise of London, 7 H. 4. c. 9.
The Conqueror shall fend enfeets to the Exchequer of the exchanger, 11 H. 6. c. 7., and none that shall fall to his merchandize strangers but for ready money, and they shall not refuse payment in silver, 8 H. 6. c. 74. may fell cloth at six months credit, 9 H. 6. c. 7. Merchants strangers refented from selling to mer-
chandize strangers, 9 H. 6. c. 5., and no Italian merchants shall not sell any goods after eight months from the importation, nor any thing by retail, 12 L. c. 9. 1 H. 7. c. 10. Merchants of Ireland, Jersey or Guernsy, shall lay out the produce of their imports, 3 H. 7. c. 8. by merchandise in Flanders, &c., without paying any fine to the merchants adventurers of London, 12 H. 7. c. 6.

The trade to Spain, Portugal and France, to be free, 2 Tit. 1. c. 6. Saving of Queen Elizabeth's charter, 4 Tit. 2. c. 9. is. 9d. 31 H. 8. c. 20. and from all merchandise in the Channel, &c., without paying any fine to the merchants adventurers of London, 12 H. 7. c. 6.

Merchants, one of those three laws out of which the Conqueror framed our Common laws with a mixture of the laws of Normandy, and was the law of the Merc-
chandize, when they governed the third part of this realm, at the time of his reign in his Breton, 994. 95. 97. faith, in that year 1016 this land was divided into three parts, whereas the Wilt-Saxons had one, governing it by the law called Wilt-Saxaggio, and that contained those nine hites; Kent, Suffet, Surrey, Berkshire, Hampshire, Wilt-
shire, Somersetshire, Dorset, and Devonshire. The second part, called Wilt-Saxonage, and that contained those fifteen hites, York, Derby, Nottingham, Lincet, Lincoln, Northampton, Bedford, Buckingham, Hertford, Essex, Middlesex, Norfolk, Suffolk, Cambridge and Huntingdon. The third was poiffelled and governed by the Mercians, whose laws were called Mer-
cheage, and held those eight, Gloucester, Worcester, Here-
ford, Warwick, Oxford, Cheift, Sopi and Stafford. Out of which three (which relate not at all to a different law, usum, or usages, but to several forts of amerciaments, malis, and fines, for the trespassing of one and the same s. 7. as we said, with some additions, was framed that which we now call The Common law of England. Cowell, edit. 1727.

Merchett, (Merchant.) A fine or composition paid by i
feynterior tenants to the lord, for liberty to dispose of their
sourriages in marriage. No baron, or military tenant
fide in his right of his wife and heir-male, and no lease
æruched from the King, pro maritanda filio. And,
and many of our feveral tenants could neither fend their fees
3s. school, nor give their daughters in marriage, without
swords licence from the superior lord. See Kemner's Glo-
b. Fin. 2. c. 3. See Merchett.

Merchants are used in many places in the Magnific, for me-
crement.

Mercuriainias Agnoleus, Was of old time used for the
import of England upon merchandise.

Mercurius, (Mercuria.ordina.) Signifies the arbitram or
feution of the King, lord or judge, in punishing any
fange, not directly centred by the law: As to be in
be generous mercy of the King, 11 H. 6. 6. 6. is to be in
in a matter of a great penalty. See Mercurio.

Merger, Is where a letter elate in lands, &c., is
printed in the greater: As if the fee comes to tenant
for eat or life, the particular elates are merged in the fee,
and none that not being in his own right, and the
not in the estate in tail can he extinued, by the accession of
a greater estate to it. 2 Co. Rep. 60. 61. If a letter
which the fee, marries with the fee by years; this is no
wrong, because he fare the inheritance in his own, and
be in right of his wife, 2 Pint. 418. And
a man a hath a term in his own right, and the in-
ance extends to his wife, so far he as he hath a freehold
in her right, the term is not merged or drowned. Cre.
br. 7. 3. 35. See 15 Vin. Ab. tit. Merger.

Mercurius, A lane; from the Sax. merce,
161. 2
on the tenants, for his default in not doing his customary service of cutting the lord's corn. Poroch. Antiq. p. 495.

Map, A mow of corn laid up in the barn. Cowell, ed. 1777.

Middlesexens, Middlesexens. The great councils in the Saxon times of Kings and noblemen, were called Willemsen, and after Mittelfen and Aldimcgen, i.e. Great and general assemblies. Cowell, ed. 1777.

Middlesex. The tenns of the peace how often to be held, 14 H. 6. c. 4.

In actions triable by Middlesex jurors, they shall be called the fourth day, 2 Geo. 5. Ed. 4. c. 3.

Dwellers, and others serving on juries at the tenns for the peace, 7 & 8 W. 3. c. 32. sft. 9.

Deeds and wills to be registered there, 7 Ann. c. 20.

No judgment to be returned at the nisi prius in Middlesex, who has been returned in two preceding terms or vacations, 4 Geo. 2. c. 7. sft. 2.

Leasholders qualified to serve as jurors in Middlesex, 4 Geo. 2. c. 7. sft. 3.

But one county rate to be made for Middlesex, 12 Geo. 7. c. 29. sft. 15.

Militia-marks, see Plate-marks.

Makes, are a kind of canvas, whereof fall-cloths or other furniture for ships are made, 1 Jac. 1. c. 54.

Spite, Militia, is the damage of one thousand paces, otherwise eight furrows, every furrow to contain forty yards or pales, and every lug or pole sixteen feet and a half, 35 Ed. 6.

Militia. Taken by computation for the distance of the seruices of rock-fall from the pits, 8 Geo. 2. c. 12. sft. 2.

Militate, To be knighted, vis. Rex per Anglarg fac-

{tis postulacmt, &c. quia habuerint unde militarent, capit.

Magister, - 

Willemsenrius, &c. Mat. Wetum. pag. 118.

Militia, The tronlandmen, the serving force of a na-

tion, J. Jalef, Clerendon.

None to be compelled to go out of the thire, but on necessity, 1 Ed. 3. fl. 2. c. 5.

Soldiers shall be at the King's wages the day that they depart out of the county, 18 Ed. 3. fl. 2. c. 7.

None shall be commanded to find men of arms, but by tenure, or by suffr of parliament, 25 Ed. 3. fl. 5. c. 8.

Former acts repealed, and the charge of finding horde and arms aterciment, 4 & 5 Ph. & Mar. c. 2. 13 & 14 Car. 2. c. 3.

Armors required shall appear at a muster, 4 & 5 P. & M. c. 3.

The militia of towns corporate shall not be obliged to muster out of their liberties, 4 & 5 P. & M. c. 5. sft. 11.

The command of the militia afforded to the crown, 13 Car. 2. fl. 1. c. 6. 13 & 14 Car. 2. c. 3.

The powers of the lieutennants and deputy lieutennants of counties, and regulations of the militia, 13 & 14 Car. 2. c. 3. 15 Car. 2. c. 4. 1 Geo. 1. c. 14. 7 Geo. 2. c. 23.

Parlills states chargeable, 10 & 11 W. 3. c. 12. fl. 2.

The lieutennacy may direct whom shall contribute to the finding a horse, 4 & 5 10 W. 3. c. 12. sft. 3. 1 Ann. fl. 3. c. 23. sft. 2.

Trophy money not to be levied till the former accounts are paid, 1 Ann. fl. 3. c. 23. sft. 4. 10 Ann. c. 25. sft. 4.

Lieutennants to appoint the size of muskets, 9 Geo. 1. fl. 7.

Qualifications to be left with the clerk of the peace, 30 Geo. 2. c. 25. sft. 9.

Peers or their heirs apparent not compellable to serv-

ices, 30 Geo. 2. c. 25. sft. 11.

A man does not vacate seat in parliament, 30 Geo. 2. c. 25. sft. 12.

Men serving for themselves, exempt from offices, fl-

uate work, 30 Geo. 2. c. 25. sft. 23. 31 Geo. 2. c. 25. sft. 24.

Married men called out, may set up trades in any part of Great Britain, 30 Geo. 2. c. 25. sft. 25.

Substitutes to be hired for quakers, 30 Geo. 2. c. 25. sft. 26.

Conflables to assist in the execution of the act, 30 Geo. 2. c. 25. fl. 44.

In case of invasion, &c. the parliament to be summoned, 30 Geo. 2. c. 25. fl. 46.

Penalty on neglecting, 30 Geo. 2. c. 25. fl. 50.

Conflables to return the names of deputy lieutennants and parft officers in the lift, 31 Geo. 2. c. 26. sft. 14.

Oath to be taken, 31 Geo. 2. c. 26. sft. 18.

Penalty of perfuding contables to make false returns, 31 Geo. 2. c. 26. fl. 23.

Adance of conflable endorsed, 31 Geo. 2. c. 26. sft. 32.

Militia laws extended to Berwick, 31 Geo. 2. c. 26. sft. 42.

The militia laws reduced into one act, 2 Geo. 3. c. 20.

Explained and amended, 4 Geo. 3. c. 17.

Application of the money granted for the charge of the militia, 2 Geo. 3. c. 35. 3 Geo. 3. c. 10. 4 Geo. 3. c. 30. 5 Geo. 3. c. 34.

Mili, (Molendinum) Is a house or engine to grind corn, and either a water-mill, wind-mill, horse-mill, hand-mill, &c. and befits corn and grit mills, there are both flat and fulling-mills, &c. The mill shall be taken according to the strength of the water, Ordin. pro ffor. innt. temp. Pro-
hibition shall not go in fuit for tithes of a new mill, Art. Cler. 9 Ed. 2. fl. 1. c. 5.

Militiag may search mills for adulterated meal, 31 Geo. 2. c. 25. Militar. to make search, &c. not to act as magistrate under this act, 31 Geo. 2. c. 25. sft. 25. 31 Geo. 2. c. 25. 31 Geo. 2. c. 25. See 15 Vin. Abr. tit. Mill.

Millicent, (mentioned in plat. 7 iuf. eap. 19.) A trench to convey water to or from a mill. Cowell, ed. 1777.

Mines, (Minerarcs,) Places or caverns in the earth, which contain metals or minerals. Junijs; Bomy. A mine is not properly so called till it is opend; it but a hole or cold, and all those that are found for are faken, or may go by the name thereof; but if the owner digs there also he may stop his further progres; and fail to be the use in Carmi'll. 2 Vent. 342. per Wilde J. on a case referred to him by Lord Bridgen. 22 Car. 2.

It was said by the Solicitor general, that there was a great difference between pits and mines; for if a mine be opened, he that may work the mine is not obliged to pursue the vein of ore under ground; but he may sink pits in pursuit of it which are necessery to come at the ore, and as many as he thinks proper; and Lord Chand-
cello did, said he had been so resolved before Perdon J. of the Supreme Court, and examining the most able miners, Caffis in Equity in L. Ch. King' time, 79. Nov. 10, 1729. Clavering v. Clavering.

If a man demines land for life or years, in which a coal-mine open, the letteff may dig in it; for the mine being open, it shall be intended by his demising all the land, and as general as any one part of the demesne; but if the mine was not open at the time of the demise, the letfle by lease of the land is not impowered to make new mines; but in such cases if he leaves his land and all mine therein, the leflee may dig for mines there; refelues 5 Rp. 12. Trin. 41 Eliz. C. B. Sawyer's case.

A quello
A question was, if copy-right of inheritance may dig in his land? The case seems to think he might; as that otherwise mines there thould never be opened; s in the case of the glebe of a parson. Sid. 152. Trin. 5 Cor. 2. B. R. in the case of Rutland (Lord) v. Gic. Lands in which are coal-mines not opened are fetled pon A. in tail, remainder to B. for life, but not without permission of the crown, tho' the opened mines and worked them and died without issue; s, the now tenant for life opened the earth to pursue the ld vein of coals, and C. moved for an injunction to stay the opening the earth in any new place; but Ed. Ch. thinking B. might work all mines which were lawly opened by those who had title in tail, tho' subse- quent to the settlement, and so denied the injunction. Wm'.s Rep. 388. Mich. 1726. Clavering v. Clavering. If a person breaks up, or even attempts, or threatens to break up mines which he ought not to do, that is a plea for coming into Chancery to have an injunction; v Lord Chancellor. Burn. Chan. Rep. 497. Psich. 74. in the case of Gibson v. Smith. Mines of copper, &c. shall not be Royal mines, though old and silver may be extracted, 1 Will. & M. c. 30. § 7. 4.

The rates at which the King may take the ore of such mines, 5 W. M. c. 30. § 7.

For relief of the creditors of the company of mine ad- ministers, 9 Ann. c. 24. Entering mines of black lead is then to steel, felony, 25 Geo. 2. c. 10.

Ministers, or Minorities, (Minimatis, from mini- to, to defend,) Are the evidences or writings, whereby a man is enabled to prove the title of his estate. 5 Rich. 2. and 3 Hen. 8. 37. Wentford Fays, this word mini- mits includes all manner of evidence. See Ministries.

Ministers. If a minister is disturbed in the execution his office in the church; the punishment upon con- fession is a fine of 10l. and upon non-payment three months imprisonment, &c., 2 & 3 Ed. 6. c. 1. And if an officer of the church, 1 Will. & M. c. 11. See Service and Sacraments. Ministri Regis, Extend to the judges of the realm, as well as to those that have ministerial offices. Co. 2 Inst. 208.

Minio, One in noneage, minority, or under age, were properly an heir male or female, before they came the age of 21; during which minority, their actions are invalid, &c. yet a minor may prefer, as patron, to ecclesiastical benefice. Cowell, edit. 1727.

Minot, Minotus, The Franks frier, so called the rules of their order. Id. ib. Men. Hyst. 215. Peculiar professions & manners from the Fr. &c. A musician, a fiffer or pipe; mentioned H. 4. cap. 27. pot. 24 April 9 Ed. 4. Such marit- tills & minotii præsidii per fæ forest & selt decertus in sumpus & una communat perpetua, &c. Upon a quo narrans, 14 H. 7. Laurentius Dominus de Duton clamat, im annis ministrilis infra civiliam Cyfrice & infra civitatem Cyfuisse, ad ssumina manus, St. Johannes Baptista annuam, & de habendi dictam ssuminam quattuor lagenis vivi & unam lanceaeu, infert quiuletur cematuri dedit quattuor doem et unam lamen, & abbatiam esse comitati Cyfriace, & infra Cymatium Cyfrise, & ssumina munera, quattuor annos per annum ad ssumnum suum, &c. And where by the statute of 39 Eliz. c. 4. Fiddles are declared to be rogues, yet there is a place therein, exempting those in Cholerc licened by the consent of Duton. The musicians of England, incorporated by King Char. with other mercerem &c. from Clav. 9 Leg. 2. m. 26 Debe, an ordinance Super manufcripta coronum & mercenarium. It was usual for the versus, not only to divert princes, and the nobility, with that, but also with musical instruments, and with flating songs, in the presence of their ancestors, or of a gate, the king, the master of this infatiation, was mentioned in the Magna Charta. 11. pot. 325. Cowell, edit. 1727.

See Uragants. Vol. II. N°. 106.

Mint.

Mint, Is the place where the King's coin, be it gold or silver, which is at present, and long had been the Tever of London, though there are a great number of statutes, that in ancient times the Mint had been also at Galus, 12 R. 2. c. 16. 9. H. 5. stat. 5. cap. 5. The officers belonging to the Mint have not always been alike; at present they are the ; The warden, who is the chief officer of the mint, and by his office to receive the silver of the goldsmith, and to pay them for it, and to oversee all the work belonging to his function; his fee is a hundred pounds per annum. The master-worker, who receiveth the silver from the warden, caufeth it to be melted, and delivereth it to the moners, and taketh it from them again when it is made; his allowance is not any fee, but according to the pound weight. The third is the controller, who is to see that the money be made to the just aife, to oversee the officers, and control them, if the money be not as it ought to be; his fee is a hundred marks per annum. Then is the master of alloys, who weighteth the silver, and seeth whether it be according to the standard; his yearly fee is likewise a hundred marks. Then is the auditor to take the accounts. The purveyor of melting, who is to see the silver cast out, and not to be altered after it is delivered to the melter, which is after the assay- master had made trial of it. The clerk of the iron, who seeth that the iron be clean, and fit to work with. The graver, who figures the money. The moners.

The molers, that melt the bullion before it comes to the coming. The blanchers, who do anneal, and boil and cleanse the money. The forgers, who keep the gate of the mint. The provost of the mint, who is to provide for all the moners, and to oversee them. Lastly, the moners, who are fome to fearch the money, fome to forge it, others to beat it broad; fome to round it, and fome to famp or coin it. Their wages are uncertain, according to the weight of money coined by them. Cowell, edit. 1727. See Money, Privileged places.

Minutia. To let blood; minutes, blood-letting. This was a common cure of blood, upon the advice of the eccle- siastic priests or canons, who were the most confined and fedentary men. In the Register of statutes and customs belonging to the cathedral church of St. Paul's in London, collected by Ralph Baldock, dean, about the year 1500, there is one express chapter De minutiâ. Cowell, edit. 1727.

Minutes, (Minutes five minores decime.) Small tithes, such as usually belong to the vicar, as of wool, lambs, pigs, butter, cheese, herbs, feeds, eggs, honey, wax, &c. See 2 far. Inst. fol. 649. and Udal and Tin- dal's cafe, Hill. 21. 2 fot. where the title of world was adjudged minute. See Rep. fol. 21. See Duties.

Minucula. A superfluous sport in the common pool, the Popish clergy for gain and deceit; prohibited by bishop Grosbeak in the diocese of Lincoln. Cowell, edit. 1727.

Miss: This syllable added to another word signifies some fault or defect; as missijefam, missijerc, i. e. to scandalize any one; mididhere, i. e. to teach amiss; or missijerum suum misijercat. Cowell, edit. 1727.

Missâ, A compact or agreement, a form of peace or compromise. Id. ib.

Misadventure, or Misadventure, (Infortunium,) Has in law a better signification for the killing of a man, partly by negligence and partly by chance. As if one, thinking no harm, carelessly throws a stone, or fooonthet an arrow, &c. whereby he killeth another: in this case he commits not felony, but only loch his goods, and hath pardon of course for his life. Staund. Pl. Cor. lib. 1. cap. 5. Britton, cap. 7. differencibus between adventure and misadventure, and adventure, and misadventure more chance; as if a man being upon or near the water, be taken with some sudden sickness, and so falls in and is drowned, or into the fire, and be burnt to death. Misadventure he maketh, where a man cometh to his death by some untoward violence, as the fall of a tree, or of a gate, the falling of a horse, or sfch like: So that misadventure in Stainsworth's opinion is construed somewhat more largely than Britton.
I mise, unless a collateral point be tried, and there it called an issue. Co. 4. Litt. fol. 294. Litt. fol. 102 and ante. 1. Com. Dig. &c. 2. 37. Ed. 3. 16. To join in with the point in issue. 3. The manner. It is a point so much as to give the issue man upon the clear right; and that in more plain terms is nothing else but to join upon this point, whether had the mere right, the tenant or demandant. Lit. 4. cap. 3. fol. 101. This words is also sometimes used for any participle, signifying as much as self put or put upon. Co. 4. Litt. fol. 295. It is also sometimes used for example, for mease, a measfage or tenement, as a misp place in some manors is taken to be such a measfage or tenements as answers the lord a heriot at the death of its owner 2. Litt. fol. 285. which in our law French is written non Cowell. ed. 1727.

Mis. Lepus perfom. Cowell. ed. 1727. 

Mife money. Money given by way of contract or conbination to purchase any liberty, &c. Id. ib. 

Miferere, is the name and last word of the 51 Psalm, being most commonly that which the ordinaries gives to such guilty malefactors as have the benefit of clergy allowed them by the law, and is usually called the 51 Psalm of Mercy. Cowell. ed. 1727. 

Mifcrorropia, is in law used for an arbitrary amercment imposed on any for an offence; for where the plaintiff or defendant in an action is amerced, the entry is 100 in misericordia. Bradton, lib. 4. tra. 5. cap. 6. 4. 1. &c. nisi quis in tum pro se pauperis nihil pro diflfqno, non remanet mifericordia exigenda si illius aministis quos fuerint constitution. Kitchin, fol. 78. out. Glawil, faith thus. Et aon mifericordia Domini Rem qua quis per juramentum legitimam legalmum hanc vicinii etas natus americanis os non apudique de sua honoreuam comelimn amator. See Glawil. ib. cap. 11. Fitzbercht fay in his Nat. Bray. fol. 75. That it is called misericordia because it ought to be very moderate, and rather left to the offence, according to the tenor of Magna Charta c. 14. Therefore if a man be unreasonably amerced a court not of record, as in a court baron, &c. there is writ called Moderata mifericordia, directed to the lord or his bailiff, commanding them that they take the amercements according to the quality of the fault. Sometimes misericordia is to quit and discharged of the manner of amercements that a man may fall into in their forest. See Cresop. Jur. fol. 196. See Americamens Fines for offenses. Ditto. and Moderata mifericordia. The 51 Psalm be in the great mercy of the King. Ed. 4. cap. 1. 

Misericordia in cibis & potis. Excedinggs, or ove commons, or any gratuitous portion of meat and drink given to the religious above their ordinary allowance. The queus prescriptum, &c. et ubi taxabilis inguritationes in mifericordiam (in quibus pro potis non erat misericordia) accipiebatur, et aliquis cum jure poterit. Ab. 4. 1. 2. 6. 6. 3. 37. gl. 9. thế in some convents they had a grated allowance of the common upon extraordinary days, which were called mifericordia regulares, &c. In minimisbus vero mifericordia regulares duos & duos annos jussu de cælo tant ad prædiam quam ad canem. Monat. Aug. tom. 1. pag. 140 b.

Misericordia communis. Is when a fine is set on the whole county or hundred. Mm. Angl. 1 tom. pag. 976. Of a mordre de or commune mifericordia quæ comiter, obbiclit, comitatus & hundred canoni nobis ad alligandum jurisdictionis figni, &c. See also. To succeed ill, as where a man is so cuted of his name and falls in his defence or purgation Et si compellatio fit &c. in emendando mifericordia, fit eilipso potestatu. Lex Canut. 78. spud Brompton. 


Misericordia humana, cum (comparad of the French miz, in which composition always signifies amisé, and name, nominate.) Signifies the usage of one name for another, or a minimis. Cowell.
The names of men at this day are only founds for distinction, though perhaps they have imported something more, as some natural qualities, or particular situations; but now there is no other use of them, but to mark out the families or individuals we speak of, and to distinguish them from all others; and therefore as they are but marks and indicia of things that are not connected by the laws, they require great certainty in the use of them, to avoid the effects and consequences of mistaking the name, or specifying the party. *Boc., Hist. 615.*

If two names are in an original derivation the same, and are taken promiscuously to be the same in common report, though they are not so; there is no variance; and therefore where Peter Griffin brought suit against Peter Querelle, to which an outlawry was pleaded by the name of Peter Griffin, the plea was allowed; for it appears by acts of parliament, that Peter and Peter have been promiscuously, as-signifying the same person. *Tract. 175.* 2 *Rep. Abr. 135.* *Ralph Griffin v. Hugh Addison.*


But Ralph and Randal, Randolphus and Randalphus, and Ralph and Ranulphus, cannot be held to be different names, and do of others, in which a difference in vowels makes a variance, and common use. 2 *Rep. Abr. 135.* *Palm. 71.*

So Agnes and Anne are different names; and therefore one declare against J. S. and Agnes his wife, and on record of mispronunciation in the name is his wife, this is a material variance not amendable. 2 *Rep. Abr. 135.* *Palm. 71.*

If there are two English names that are different, and a Latin name for both, such name shall serve for both, as *Jacobus for James and Jacob,* although two different English names. *Rep. Abr. 136.* 3 *Keb. 278.* 1 *Keb. 107.*

If the Christian name be wholly misspelled, this is very fatal to all legal instruments, as well declarations of pleadings, as grants and obligations; and the reason because it is repugnant to the rules of the Christian names, that there should be a Christian without a name baptism, or that such person should have two Christian names, since our church allows of no re-baptising; or if a person enters into a bond by a wrong Christian name, he cannot be declared against by the name in the obligation, and his true name brought in an action, for that posesses the possibility of the two Christian names; and he cannot declare against the party by his right name, for he made the deed by his wrong name; for where it is to be made to the wrong person, the King may cause him to be indicted and arraigned of misprision of any deed; and if he be impeached by the name in the deed, he may plead that another person, and that it is not deed. *Civ. Law, 558.* 649. *Owen 107.* *Dyer 279.*

But though persons cannot have two Christian names one and the same time, yet they may, according to the institution of the church, receive one name at their baptism, and another at their confirmation; for though it allows no re-baptising to make double names, yet it will not hinder them from being declared against in their fathers, when they come themselves to make profession of their religion. *C. Litt. 3.* 2 *Rep. Abr. 135.*

The mistake of the surname does not vitiate, because though the person shall have distinct names in this surnames; and therefore if John Gate enters into an obligation by the name of John Gate, he may be impeded by the name in the deed, and his real name thought in by an alias, and then the name in the deed he shall be entitled to, because he is entitled to fay any thing contrary to the declaration made, not the contrary. The declaration must be of the name in the obligation, with an alias of the real name; for the declaration therein shall be void, as it is; therefore it must in all things follow the obligation, and the intent of the alias is only to shew he has been differently called from the name in the obligation; and therefore in a man obliging himself by alias, after wards he is made a knight, the plaintiff shall plead alias against J. S. knight alias J. S. *Eqm.; Dyer 273.* 1 *Bull. 316.*

A person cannot take advantage of a mistaking surname in an inditement, either by plea in abatement or otherwife, notwithstanding, it has no affinity with his true name, and he was never known by it; and in this respect an inditement differs from an appeal, whereof it is certain, that a misnomer of a surname may be pleaded in abatement, as well as any other misnomer whatsoever. 2 *Hand. P. C. 290.* See *Abition, Amendment, *ibid., 1 and 2. *Milman and Add. 615.*

*Misprision.* (Misprision, French misprision, pronouncing signifies in our law, neglect or oversight. As for example, *Misprision of treason or felony,* is a neglect or light account thereof of treason or felony committed, by not revealing it when we know it to be committed. *Staunf.* *Pl. Com. lib. 1.* 109. Or by letting any person committed for treason or felony, or felony of either, to go before he be indicted. *Misprision of clerks,* 8 *H. 6.* 16. is a neglect of clerks in writing, or keeping records: By the misprision of clerks no procès shall be annulled or discontinued. 14 *Ed. 3.* 101. *B. 8.* *Misprision of treason* or felony, or not disclosing of known treason, for which the offenders are to be imprisoned during the King's pleasure, lose their goods, and the profits of their lands during their lives. *Crom.* *Justice of Peace,* cap. *Misprision of felony,* *St. W. Symb., part 1.* tit. *Indictments,* sect. 63. in fine. *Misprision of felony* is only finable by the judges, before whom the party is attained. *Crom. ibid.*

The judicious of the Common Pleas have power to aff its fines and amercements upon persons offending by misprisions, contempts or neglects for not doing or misdoing any thing in or concerning fines. *Wilt. Symb., part 2.* tit. *Fines,* sect. 133. The nature of the thing and the defaults of clerks misprision of a syllable, or letter, or writing. *Crom. Jur. sol. 2.* But here we are to observe, that other faults may be accounted *misprision of treason or felony,* because some later statutes have intituled that punishment upon them, that of old were inflicted upon misprisons, whereas we have an example anno 14 Ed. 3.* 3.* of such coin foreign coin, in our courts of law and equity, and of their procurers, idlers and abetters. *Misprision also signifies a mistaking. 14 Ed. 3.* 101. 109. Here note, that *misprision is included in every treason or felony; and where any man hath committed treason or felony, or any person whatever, it is the King to him be indicted and arraigned of misprision of any deed;* 3 *St. Tr. 36.* & 139. See *Felon, Treason.*

*Miscretal.* If a thing is referred to time, place and number, and that is misprison, all is void. *Arg. Pl. C.* 352. b. *Trin. 13 Eliz.* in the case of the Earl of Leicester v. Heydon.

*Miscretal* in an immaterial point, and where it is only an addition of Bours in things circumstantial, shall not avoid a grant; as where the husband has a term in right of his wife, and this term is recited as made to the husband. *Per Arber F. Cart. 149.* *Mich. 18* *Car.* 2. *216.* In *Pig. 55.* 239.

A miscretal in the beginning of a deed, which goes not to the end of the deed, shall not hurt, but if it goes to the end of a sentence, so that the deed is limited by it, it is vitious. *Per Arber F.* *Cart. 149.* in case of *Post v. Berkley.*

*Miselais,* (Miselais,) is a book containing all things to be daily said in the mass. *Lindau, Provincia, lib. 1.* *Ib. De Eclesiis adidactis,* cap. 2. *Saxo* *Ecclesiis* *inventor inveteri rei divinis fupercellis,* *Du. Antiphonarium,* *Graduale,* *Psalterium,* *Miscellanea,* &c. &c. *See* *Spelman's Glossary.*


*Missla,* Singing the Name dimittim, and performing the many other ceremonies to recommend and dismiss a dying person. In the statutes of the church of *Puell.*
in London, collected by Ralph Balbi, dean, about the year 1295, in the chapter De fratres, of the fraternity or brotherhood, who were obliged to a mutual communicac- icy of all sorts. It offices, it
first consecratio & ffaanta & obitalia vetibus & adjutantia.—Liber Statut. Ecclesiae Pau-
line, MS. fol. 25.

dium, A dish or platter for serving up meat to a table; whence a mife or dish, or portion of any diet.

King Ethelred gave to the abbey of St. Augustine in
A pag. 25. Sirmandar is of opinion, that from hence the
word miffa is derived; and Pufias tell us, "Tis quia dos miffa vult: a principibus.

Mr. J, as his friends, that A. the husband of E, died the 20th of February, 39 Eliz. and that afterwards, viz. the 211 of November, 39 Eliz. B, did marry C, so that the (afterward) is sufficient. Arg. Bridg. 45.


Summons to appear Tulfday the 17th of April, (where Re) and that in it is a good reminder; because, as it seems, every one's deed shall be taken mostly strongly against himself. Br. Faitls, pl. 26. cites 21 Ed. 3. 49.

Refrain for disfrain, if rent be arrear, not being limited to any thing which should be restrained, on the cow, or on the land, and so shall not be taken to mean disfrain. Rob. R. 330, 367. Hill. 31. and Pofbs. 14. Jan. 12. R. B. Carman.

Millarium, for Millarium. Mon. Angl. 3 tom. pag. 102.

Miferial, A fafe or erroneous trial; where it is in a wrong county. Cra. Car. f. 284. Deo's cafe.

Miffer, Is an abuse of liberty or benefit; as, He hath made it his misfor. Old Nat. Bruc. f. 149.

Mifred abbots, Thofe governors of religious houses, who had obtained from the fce of Rome the privilege of wearing the mitre, ring, grooves, and crozier of a bishop.

It has been a vulgar error, that thofe mifred abbots were all the fame with thofe conventual prelates, who were fent to parliament, as spiritual lords; whereas fome of thofe mifred to parliament were not mifred: And fome of the mifred were not mifred; the summons to parliament not any way depending on their mitres, but upon receiving their temporals from the King. Cowell, edit. 1727. See Abbots.

Mift, Is a certain Saxo measure, in ufo before the conquest; its quantity does not certainly appear; some hold it to be the fame with cors, others with mediurn, and others, that it was mensura decem medium. In Wicb, fajna redz, 30 mittas faliis. Domesflay, tit. Wicce Sicular. But miffa or mitcha, was not only a fort of meafure for falt and corn, but rather the place where cabbages were to be kept for falt: Coblitus qui non confidcrat unus propius fidibus, (i.e. the place where they were put) quid vulgo mitcha vocantur. In the Magnific, it feems to be a measure, viz. Dedi cencisredinsum 10 fildirum, & in Domesflay, viz. Reddios victorum 2 mittas faliis. Gale's Hist. Brit. fol. 767.

Mifred monfrum trium piedis fhins, is a writ judicial, directed to the Treasurer and Chamberlains of the Exchequer, to fetch and tranmit the foot of a fine acknowledged before juflices in cirze, into the Common Pleas, &c. Efg. Original. fol. 14.

Mittimus, Is a writ by which records are transferred from one place to another: Sometimes immediately, as appears by the statute 5 R. 2. cap. 15. As out of the King's Bench into the Exchequer, and sometimes by a certiorari into the Chancery, and from thence by a mittimus into another court, as you may fee in 28 H. 8. Pryer, fol. 29, and 29 H. 8. Pryer, fol. 32. This word is also used for the precept that is directed to a gaoler, for the receiving and fale keeping a felon, or other offender, by him committed to a gaol. Cowell, edit. 1727. See Commitments.

Mithridates, 13th B.C. (Debine mixtis,) Are thefts of cheet, milk, &c. and of the young of bratts, Co. 2 far. Inf. f. 649. See Litty.

Mithridata. See Mithridat. This word is mentioned in our Men-
yb his hafrians; it sometimes signifies a breakfast, but al-
ways a certain quantity of bread and wine. Cowell, edit. 1727.

Mithridates, A kind of fluff made in England, and elsewhere, concerning which fee 23 Eliz. cap. 9.

Moderata miftirifratina, Is a writ for him that is
amerced in a court-baron, or other court, being not of recollection or offence or the writing of a fine. It is directed to the lord of the court, or his bailiff, commanding them to take a moderate amercement of the party, and is founded upon Magna Charta, cap. 14. Cowell, edit. 1727. See Mifirifratina.


Moldus terrae vel agri, —Seicundum quod adeo fillias pedem quasuer modiorum omni agri secum omni conu fui ecclesiae Landoviaer. Gr. 3 Mon. fol. 200. This word was much ufed in the ancient charters of the Britis kingdom; it commonly contained the fame quantity of ground as with the Romans, viz. 100 feet long, and as many broad. Moldus vini, a bughead of wine. Cowell, edit. 1727.

Mold & fonna, Are words of art in procefs and pleadings, and namely, in the anfwer of the defendant, whereby he denieth himself to have done the thing laid to his charge, and fona & fonna declare. Kitfion, fol. 231. It signifies as much as that claue in the Civil law, Negat allegatur, propter algetantur, effe vonra. Cowell, edit. 1727.

Where modus et forma are of the fubfance of the ifue, and where but words of from, this diversity is to be ob-
erved; when the ifue taken goeth to the point of the writ or action, there modus et forma are but words of from, as in the cafe of the writ of entry in afo profuit. But otherwife it is, when a collateral point in pleading is traversed; as if a feoffment be alleged by two, and the is traversed modus et forma, and it is found the feoffment of one, there modus et forma is material. So if a feoffment be alleged by one, and it is traversed modus et forma, upon this collateral ifue modus et forma are so effentiaI as the jury cannot find a feoffment without deed. Co. Lit. 281. 4.

In debt by a fervant against his master for his fahy upon a retainer, it is a good plea, that he did not receive the fervant in hubandry, and he fhall not be compelled to lay non retinendi generally; for it may be, he retaines him in other service, and not in hubandry; but non re-
tinait modus et forma is a good plea; for this fhall be re-
ferrred to the declaration by thefe words modus et forma Br. Labourers, pl. 46. cites 38 H. 6. 22.

Modus forma, not put the party not in ifue; but only the mater and subfance lies the plea. Repl. Plac. 188. cap. 5.

Where a traverse is with a modus et forma, Gr. th. that will put the manner, as well as the matter in ifue, where the manner is material, as the time, the fale, and other circumstances, when they are the effect of the ifue. Repl. Plac. 188. cap. 5.

Modus requiem, Is when either land, a sum of money, or yearly penion is given to the parson, &c. by composition or custom, as fatisfaction for his titles is kept. See 2 Boyl. fol. 492, and Littus.

Modat pars. See Manufactures. Mil. mill. (Tereva noctis, corupuo vel medi-
parts,) Signifies the half of any thing. Lit. f. 125. &

Modat pars. 15 Fin. Abr. 419.


Modat. Corn sent to mill, a grist. Cowell, edit. 1727.

Molicius.
Molitura, Molitura, Molitura, Sometimes signified a griff, or sack of corn brought to the mill to be ground; but it was more commonly taken for the toll or molitur paid for grinding. *Parch. Antiq.* p. 120. Molitura, free grist, without paying toll, a privilege which the lord generally referred to his own family. —Sawol mihi & hardissis meis molitura libera familiae mea quies in dicta malendia. *Ibid.* p. 276. This toll for grinding was sometimes called molta, *Fr. anon*. *Cowell, edit.* 1727.


Molta, The duty or toll paid to the lord by his vassals, to grind corn at his mill. *Concl. simii Amandi Molitarum & molitarum & molitarum sensit omnium civitatis St. Amandi.* *Monast.* 2 tom. p. 97.

Molitacies. Patrons of abbeys shall have the custody of them during vacation, *M. C.* 9 H. 3. c. 32.


Molitae, Molitae, The smaller monasteries given to the King, 27 H. 8. 28.

Molitae, Molitae, Religious persons enabled to sue and to be sued, 31 I. 6. 6. 32 H. 8. 29.

Monasteries dissolved and given to the Crown, 31 H. 8.

Abbey lands to continue disfranchised of tithes as before, 1 H. 8. c. 13. *Jell.* 21.

Monasteries come to the King by attainder, revived, 1 H. 8. c. 20. *Jell.* 2.


The knights of *St. John de Jerusalem* suppressed, 32 I. 6. c. 74.

The payment of pensions out of the abbey lands enfranchised, 34 & 35 H. 8. c. 19.

Revoc of the grants of abbey lands, 35 H. 8. c. 20.

Colleges, chantries and hospitals given to the King, 7 H. 8. c. 4. *Ed.* 1. c. 14.

Commissioners to be appointed to inquire of lands given for pious uses, 1 *Ed.* 6. c. 14. *St.* 10.

Religious persons may inherit to their ancestors, 5 & 6 H. 8. c. 20.

The penalty of praemunire inflicted on the disquieting of a person on account of the possession of abbey lands, 1 & 2 M. 8. c. 40.

Senatagium, Was a certain sum of money paid every mid-year by the lord, that he should not change the tenure of the land; for it was lawful formerly to great men to coin money, (but not of silver or gold) which was current in their territories. This was abro- gated by *Hen.* 1. cap. 1. *Monetarium communis quod ex auctoritate in civilibus et comunibus, quod venit tempore regis, nee annuis statunt uniuscunque define.* *Cowell, edit.* 1777.

Money, *Moneta, pecunia,* Is that metal, be it gold or silver, that receives an authority by the Prince's imper- mits to be current: for as wax is not a real without print, so metal is not money without impression. *Ca.* 32 *Edit.* p. 207.

Such as be taken for false money not bailable, 3 Ed. 1. c. 15.

No money shall pass but of British coin, *St. de Monet.* 20 Ed. 1. *fl.* 4. 9 Ed. 3. *fl.* 2. c. 4.

Money shall be viewed at the ports, and shall not be concealed in bales, *Ibid.*

Defective money shall be pierced, and sent to the King's exchequer, *St. de Monet* parae, 20 Ed. 1. *fl.* 5.


Money and plate shall not be exported, *St. de falsis Monet.* 27 Ed. 1. *fl.* 2. c. 17. 17 Ed. 3. 4 *H.* 4. c. 16. 17 Ed. 4. c. 1.

Of the division of the penny into halfpence and farthings, *St. de Debr. Denar. Intercit Temp.* Farles money shall not be impounded, 9 Ed. 3. *fl.* 2. c. 2.

Money shall not be melted into plate on pain of imprison- ment, 9 Ed. 3. *fl.* 2. c. 3. 17 R. 2. c. 1. 17 Ed. 4. c. 1.

Search shall be made for money and plate exported, and false money imported, 9 Ed. 3. *fl.* 2. c. 9. 10. & 11 Ed. 3. *fl.* 2. c. 6.

Counterfeiting money declared to be treason, 25 Ed. 3. *fl.* 5. c. 2.

None to hold a common exchange, 25 Ed. 3. *fl.* 5. c. 12.

The money shall not be impaired, 25 Ed. 3. *fl.* 5. c. 13.

Money shall be delivered at the mint by weight, 25 Ed. 3. *fl.* 5. c. 20.

None shall be compelled to take foreign money, 27 Ed. 3. *fl.* 2. c. 14.


The sixth part of the coin, or of the weight, for treachery, 47 Ed. 3. c. 2. *for* 'too' *truce, 14 R. 2. c. 2.*

Upon exchanges by aliens, merchandise of the staple to be bought, 14 R. 2. c. 2.

Foreign money shall not be current, 17 R. 2. c. 1. 2 H. 6. c. 6. 2 H. 6. c. 9.

Gold and silver found on persons going abroad, forfeited, 2 H. 4. c. 5.

The third part of the silver brought to the mint, shall be coined in halvepence and farthings, 4 *H.* 4. c. 10.

Shall not be sent to *Rene,* &c., 9 H. 4. c. 5.

Gally halvepence blanks, &c., prohibited, 11 H. 4. c. 5.

15 H. 4. c. 6. 2 H. 6. c. 9.

Importing prohibited foreign money made felony, 3 H. 5. *fl.* 1.

Washing, clipping and filing of money made treason, 3 H. 5. *fl.* 2. c. 5. 6.

Justices of peace and the peace to enquire of counterfeiting money, 3 H. 5. *fl.* 2. c. 7.

One ounce of gold shall be brought to the mint for every fourpenny coin bought to be carried Westminster, 8 *H.* 5. c. 2.

The mint to be at Calais, 9 H. 5. *fl.* 1. 6. 6. 5. c. 13.

Gold current only by weight, 9 H. 5. *fl.* 1. c. 11.

Any one shall have money coined at the *Tower* within eight days, and exchanges shall be appointed, 9 H. 5. *fl.* 2. c. 2. &c., 13.

The council may assign the coinsage of money and ex- changes in what places they please, 1 H. 6. c. 13.

The duty of the master of the mint, and of the King's effayer, 2 H. 6. c. 12.

Great part of the price of staple goods directed to be coined at the mint at Calais, 8 H. 6. c. 18. 11 H. 6. c. 13. 14 H. 6. c. 2. 3 Ed. 4. c. 1.

Payment in silver not to be refused, 8 H. 6. c. 24.

None to make exchange without licence, 3 H. 7. c. 5.

*Repeal*. VOl. II. No. 106.
The foregoing foreign money that is current, made treason, 4 H. 7. c. 18. Misprision of treason, 14 El. c. 3.

The penalty of reducing good money, 19 H. 7. c. 5. Diminished money shall not be current, 19 H. 7. c. 5.

Bullion, plate and money, not to be exported to Ireland, 19 H. 7. c. 5.

Regulation of the coinage, 14 & 15 H. 8. c. 12. Gold, silver or money not to be exchanged for more than the value, 5 & 6 Ed. 6. c. 19. sect. 2.

Counterfeiting foreign coin current within the realm made treason, 1 M. fej. 2. c. 2, or importing such counterfeit coin, 2 P. & M. c. 11.

Clipping or defacing of money made treason, 5 El. c. 11.

Wife of person attained not to lose dower, 5 El. c. 11.

It is misprision of high treason to forge money which is not the coin of the realm, 14 El. c. 3.

Melting silver coin prohibited on penalty of double the value and disfranchisement, 13 & 14 Car. 2. c. 31.

Money shall be delivered at the Mint for gold and silver brought to be coined, without discount, 18 Car. 2. c. 5.

Coinage duty imposed upon wine, brandy, &c. imposed, 18 Car. 2. c. 5. & 6.

The coinage duty to be accounted for by the receiver general of the cullions, 25 Car. 2. c. 8.

Gold and silver extracted by refining metals in England, shall be brought to the Mint, 1 W. & M. c. 30.

Penalty of exchanging silver money for more than the value, 6 & 7 W. 3. c. 17.

Penalty of buying or felling clippings, 6 & 7 W. 3. c. 17.

Reward for apprehending counterfeiters of the coin, &c.

6 & 7 W. 3. c. 17. sect. 12.

Pardon for disarming offenders, 6 & 7 W. 3. c. 17. sect. 12.

The clipped money directed to be received, 7 & 8 W. 3. c. 1.

Guineas not to pass at more than 26l. 7 & 8 W. 3. c. 10. sect. 18. Reduced to 22l. 7 & 8 W. 3. c. 19. sect. 12.

The encouragement for coining guineas suspended, 7 & 8 W. 5. c. 13. Reduced, 8 W. 3. c. 1.

Encouragement given to bring plate to the Mint, 7 & 8 W. 3. c. 19.

Clipped money prohibited, 7 & 8 W. 3. c. 19. sect. 11.

Guineas may be freely imported, 8 W. 3. c. 1.

The distinct course of coining gold and silver, 8 W. 3. c. 3.

Hammered silver to be current only by weight, 8 W. 3. c. 2.

Unlawfully making or having instruments of coining, high treason, 8 & 9 W. 3. c. 26.

Colouring false coin, high treason, 8 & 9 W. 3. c. 26. sect. 4.

Clipping tools and counterfeit money produced in evidence, to be cut to pieces in course, 8 & 9 W. 3. c. 26. sect. 5.

Blanching copper, counterfeiting gold or silver, or fraudulently buying or felling counterfeit gold or silver, or false or diminished money, felony, 8 & 9 W. 3. c. 26. sect. 6. Proscriptions may be within five months, 10 El. & 5. sect. 9.

Hammered money prohibited, 9 W. 3. c. 2.

Any person to whom fuch clipped may cut 16, 9 & 10 W. 3. c. 21.

The coining of halfpence suspended, 9 & 10 W. 3. c. 33.

Increase of the allowance out of the coigne duty, 4 Ann. c. 22. 7 Ann. c. 24. sect. 3 & 4. 4 Geo. 2. c. 12.

Deficiency of the coigne duty supplied, 1 Geo. 1. c. 1.

43 sect. 2.

An allowance of 15000l. a year to the Mint, 9 Geo. 1. c. 19. f. 2. 12 Geo. 2. c. 5. 19 Geo. 3. c. 14. f. 2. 27 Geo. 2. c. 11.

Mone.
MON

erion or persons, bodies politic or corporate, are sought to be restrained from any freedom or liberty they had before, or are hindered in their lawful trade, 3 Inst. 181. 214. 182.

And therefore all grants of this kind, relating to any new trade, are made void by the Common law; as well against the freedom of trade, and discouraging of labor and industry, and restraining persons from getting by a lawful employment, the benefit of it in the power of particular persons to fet at prices they please on a commodity; all which manifest inconveniences to the publick. 1 Hawk. P. 231. Tostenson's Collection of Proceedings in Parliament 44. 245.

And upon this ground it hath been resolved, that the king's grant to any particular corporation of the sole importation of any merchandise is void, whether such exclude be prohibited by statute or not. 2 Rel. br. 214. 3 Inst. 182. 2 Inst. 61.

Hence also it seems, that the King's charter, inwaving particular persons to trade to and from such a sea, is so far as it gives such persons an exclusive right of trading, and debarring all others; and it seems we agreed, that nothing can exist a subject from, but an act of parliament. Raym. 348. 2 Chanc. 1. 165. 1 Foss. 227. Sandis ver. East and India Company. 3 Mad. 126.

Also it hath been adjudged, that the King's grant of a sole making, importing and selling of playing cards void; notwithstanding the pretence, that the playing of them is a matter merely of pleasure and recreation, and often much abused; and therefore proper to be restrained; for since playing with them is in itself lawful and innocent, and the making of them an honest and lucrative trade, there is no more reason why any subject might be hindered from getting his livelihood by this than any other employment. 11 Co. 84. Mor 671. Ny 3. 1 Inst. 61.

And for the reason also it hath been resolved, that a grant of the sole ingrossing of wills and inventories a spiritual court, or of the sole making of bills, pleas and writs in a court of law to any particular person, is id. 2 Rel. br. 214. 1 Jan. 231. 3 Mad. 75.

But it seemeth clear, that the King may, for a reasonable time, make a good grant to any of the sole use of any art invented, or first brought into the realm by grant. Ny 182. 1 Hawk. P. C. 231.

Also it seems to be the better opinion, that the King's grant to particular persons the sole use of some particular employments; (as of printing the holy scriptures, and of selling of books) whereas an oftentimes restrained liberty may be of dangerous consequence to the publick. 1 Sel. 256. 3 OSS. 792. 3 Mad. 75.

By the statute 21 Jac. 1. cap. 3. it is declared and enacted, "That all monopolies, and all commissions, grants, licences, charters and letters patents to any person, persons, bodies politic or corporate whatsoever, of any new or future buying, selling, making, working or doing anything within this realm or without, or of any her monopoly, and all proclamation, statutes, warrants of affiance, and all other matters whatsoever, any way tending to the obstructing, hindering, or counteracting of the same, or of any others, to an equal benefit contrary to the laws of this realm, and for the same shall and shall be utterly void, and of none effect, and in wife to be put in use and execution.

Sec. 2. "That all persons, bodies politic or corporate whatsoever, shall be disabled and incapable to use, exercise or put in use any monopoly, or any benefit, advantage, licence or privilege, and putting anything as aforesaid, or any liberty, power or faculty owned or pretended to be grounded upon, or any them.

And it is further declared and enacted, "That all monopolies, and all such commissions, grants and licences, and all other things whatsoever, and the force and validity of them ought to be and all be examined, heard tried and determined by and ac-

according to the Common laws of this realm, and not otherwise.

And it is further enacted, sec. 4. "That if any person or persons shall be hindered,grieved, disturbed or disquieted, or his or her goods or chattels any way feched, restrained, taken, carried away or detained by occasion in any pretext of any monopoly, or of any such commission, grant or licence, or of other matter or thing, tending as aforesaid, and will use to be relieved in any of the premises, he shall have by the warrant of the same at the Common law, by action grounded on the said statute, to be heard and determined in the King's Bench, Common Pleas or Exchequer, against the party by whom he shall be so hindered or grived, or by whom his goods shall be so felled or attached, or wherein every such person which shall be so hindered or grived, or whose whole goods shall be so felled or attached, or shall receive three times so much as the damages which he sustained by means of such hindrance, and double costs; and in such suits, or for the staying or delaying thereof, no eon, protection, wager of law, aid, prayer, privilege, injunction or order of restraint shall be in any wife prayed, granted, admitted or allowed, nor any more than one imparlance; and if any person shall, after notice that the action depending is grounded upon the said statute, cause or procure any action at the Common law grounded thereon to be stayed or delayed before judgment, by colour or manner of any order, warrant, power or authority, shall have only of the court wherein such action shall be depending; or after judgment shall cause or procure the execution to be stayed or delayed by colour or means of any order, warrant, power or authority, only by writ of error or attaint, that then the said person or persons to offending shall incur a praemunire.

It is said, that the first branch of this last clause, relating to the delay of causes of this kind before judgment, not only extendeth to the Privy Council, Chancery, Exchequer-chamber, and the like, but also to those who shall procure any warrant from the King for such purpose; and it is said that the latter branch, relating to the delaying of execution after judgment, extendeth even to the judges of the court where the cause is depending.

3 Inst. 183.

But it is provided, sect. 6. "That no declaration in the statute mentioned, shall extend to any letters patents, and grants of privilege for the term of fourteen years or under, of the sole or exclusive use of any manner of new manufactures within this realm, to the sole true and first inventor and inventors of such manufactures, which others, at the time of making such letters patents and grants, shall not use; so as all ye be not contrary to the law, nor mischievous to the state, by raising prices of commodities and, or hurt of trade, or generally inconvenient; the said fourteen years to begin from the date of the first letters patents, or grant of such privilege, but that the same shall be of such force, as they should be if the said act had never been made, and of none other.

It hath been resolved, that no new invention concerning the working of any manufacture, is within the meaning of this exception, unless it be substantially new, and not barely an additional improvement of an old one. 3 Inst. 184.

Also it hath been held, that a new invention to do as much work in a day as an engine, as formerly used to employ many hands, is not within the said exception; because it is inconvenient to turn so many laborious men to idleness. 3 Inst. 184.

Also it seems clear, that no old manufacture in use before, can be prohibited in any grant of the sole use of any such new invention.

It is further provided, sect. 7. "That nothing in the said act contained shall extend to any grant or privilege, power or authority whatsoever, before the said act made, granted, allowed or confirmed by any act of parliament, so long as the same shall continue in force.

Provided also, sect. 9. "That nothing in the said act contained shall be in any wise prejudicial to any city, borough.
MORS

burough or town corporate within this realm, concerning any grants, charters, or letters patents to them made, or concerning any custom used by or within them, or unto any corporations, companies or fellowships of any art, trade, occupation or mystery, for any corporation or societies whatsoever within this realm, erected for the maintenance, enlargement or ordering of any trade or merchandize, but that the same charters, customs, corporations, etc. and their liberties and immunities shall be of such force and effect, as they were before the making of the said act, and of none other; any thing before in the said act contained to the contrary in any wise notwithstanding.

And it is further provided, sect. 10. "That nothing in the said act contained shall extend to any letters patent, or grants of privilege concerning printing, nor to any commission, grants, or letters patents concerning the digging, making or compounding of falt-petre or gun-powder, or the calling or making of ordnance, or for ordnance; nor to any grant or letters patents of any office, erected before the making of the said statute, and then in being and put in execution, other than such offices as had been deceased by proclamation; but that all such grants, letters patents, etc. shall be of the like force and effect, and remain, as if the said act had never been made.

But it is enacted by 16 Car. 1. cap. 21. "That it shall be lawful for all persons, as well strangers as natural-born subjects, to import any quantities of gunpowder whatsoever, paying such customs and duties for the same as by parliament shall be limited; and that it shall be lawful for all his Majesty's subjects of this his realm of England, to make and sell any quantities of gunpowder at his pleasure, and also to bring into this kingdom any quantities of falt-petre, brimstone or other materials for the making of gunpowder; and that if any person shall put in execution any letters patents, proclamations, edicts, etc., order, warrant, restraint, or other inhibitions whatsoever, whereby the importation of gunpowder, falt-petre, brimstone, or other the materials afore mentioned, shall be any wise prohibited or restrained, he shall incur a penamaine.

And it is further provided by the said statute of 21 Jas. 1. cap. 3. sect. 14, 12. "That nothing in the said act contained, shall extend to any commissary or grant concerning the digging, compounding or making of allum or allum mines, etc. nor concerning the licencing of the keeping of any tavern or selling of wines, to be kept in the manor-houses, or other place in the tenure or occupation of the parson filling the same; and a further provision is made in the latter part of the statute, for some particular grants to particular corporations and persons, as Neufdgale upon Tyne, etc.

But it is said, that the said claque relating to allum was needless; because all such mines belong of course to the persons in whose ground they are, and therefore no privilege concerning them can be granted that the King's own ground. 3 Inf. 185.

Charters for the sole making of brandy, &c. made void, 2 W. & M. fl. 2. c. 9. sect. 12.

Nisbi, (Monstrum.) A monster born within lawful marriage, that hath not human shape, cannot purchase, marry, beget or perform any thing; but if he have human shape he may be heir, though he may have some deformity in any part of his body. Co. Lit. 7. Cowell, edit. 1727.

A monster slain for money is a middlemorum. 2 Chan. Ca. 110. Trin. 34. cap. 2. Harring v. Hprimy. It was a child that had four legs, four arms and two heads, and both its bellies, where the two bodies were conjured; the child died and was embalmed to be kept for show, but was ordered by Lord Chancellor to be buried in a week. Ibid.

Monstrum be quit. Is as much as to say, the finning of right; in a legal sense it denotes a writ issuing out of Chancery, for the subject to be refound to land and re-ments, which he flown to be his right, though by office found to be in the possession of another lately dead, by which office the King is invited to a chancel, free-hold or inheritance in the said lands. And this monstrum de droit is given by the statutes 34 Ed. 3. cap. 14. and 36 Ed. 3. 13. See Statouf, Pryor, cap. 11. and Bract, tit. Petition, and Co. 3 Rep. fol. 44. Case of the Wroth and Community of Salterers. See Monstrum.

Churchmen. Some of the said records or deeds are thus; Upon an action of debt brought upon an obligation, after the plaintiff had declared, he ought to have shewed his obligation; and so it is of records. And the difference between monstrum de fato and exor de fato, is this; he that pleads the deed or record, or declares upon it, is the party, whereas by fuch deed or record is pleaded, may demand more of the fame. Cowell, edit. 1727.

Monstrum. Is a writ that lies for the tenants in ancient demesne, being disfaining for the payment of any toll or imposition, contrary to their liberty which they do of right enjoy. See Ancient benefice.

Monstrum, Is sometimes taken for the box in which relics are kept. Item omum monstrum cum officio St. Petri, &c. Manuf. 3 tom. pag. 173. Monstrum is also taken for what we call corruptly murthering soldiery. Cowell, edit. 1727.

Monument. (Monument. in Saxony montus) Is a piece of time, containing by the week 28 days, by the calendar sometimes 30, sometimes 31. See Co. Ed. 6. fol. 61. and Calendar month.

Monstrosity, A duty of two pennies Scts upon beer their 6 Geo. 1. c. 7. 7 Geo. 2. c. 5.

Monument, An heir may bring an action on the monument fund of the fole heir. See 6 Ed. 3. Mon. 43. sect. 3 of the act of the 6th of the reign of Geo. 1. of Mon. 3. Mon. the 6th of the reign of Ed. 3. 1727. It is said by a Mr. Jenkinson, that the same perfectly answers the case in the time of the late King.

Monument, An action to maintain the monument fund of the sole heir. See 6 Ed. 3. Mon. 43. sect. 3 of the act of the 6th of the reign of Geo. 1. of Mon. 3. Mon. the 6th of the reign of Ed. 3. 1727. It is said by a Mr. Jenkinson, that the same perfectly answers the case in the time of the late King.

Monument, A peremptory grant to the Mayor, Burghers, &c. of his ancestor; That the coffin and shroud of a deceased person belong to the executors or administrators; but the dead body belonged to none. 3 Inf. 202, 203.

Monstrum. The lord's bailiffs in the Isle of Aln, summon the courts for the several hearings, are called monstres, and every four years have the like office with our bailiff of the hundred. See King's Description of the Isle of Mon.

Mootti. (Mota, curia, platica. conventus, from 4 Saxony genota, conventus, which may be deduced from 4 Saxony monata, platicara) Is a term well understood in the inns of court, to be that exercife or arguing of cause which young students perform at appointed times, is better to enable them for practice and the defence of clients causes. The place where monstres were argued was anciently called a monst-ball. In the inns of court there is a ballast or surfawry of the masts yearly chose the beach, to appoint the monst-men for the inns of Chancery, and to keep account of performance of every both there, and in the house. See Orig. Judic. cit., 217.


Monstrosity, Are those that argue readers cafes (call also monstrosity) in the houses of Chancery, both in time, and also in vacations. Cke's Rep. 3. paras. Proctori.

Monstrosity, A monstrosity, or more barren unprofitable grant than marl. 1 Inf. fol. 5. a. 'Tin derived from 4 T. saxmon, i.e. monst. It signifies also marlplunder, S Ypyolus. Ufque ad marmon, i.e. Muncaum & bumbus plantation. Manuf. 2 tom. pag. 50, 32.

Monstrosity, A beast. Item de passamento, berage, etc. &c. an omnibus ebitus bofarum, morum, etc. Fleta, lib. cap. 71.

Monstrosity, A warty or boggy monstrosity, or for such Lancashire they call monstrosity to this time. Monstra is also used in the same sense. 4 Mon. Aug. 3 part. 70. a.

Monstrosity, Or Deformity in legs. See 4 leguminous as he deserved; because the party goes not forward in plaging, but rests or abides upon the judgment of a court in this point, who deliberate, and take time to gue and advise thereupon. Whenever the cause learned of the party is of opinion, that the court or pleader party is insufficient in law, and the party made or abides in law, and refers the same to the judgment, the court Cke on Littitton, fol. 71. b. See E. murrer.

Monstrosity, Was a sort of brown cloth, mentioned Mott. Purif. anno 1258. with which they made cap, Bagguagi.
theorically whatever were compelled by want of fear, could therefore transfer to eject in the lands, farther than to the next general jubilee, which returned three in 50 years; whereas they computed till the jubilee, that according to the distance from thence, fuel was the interdict that could be transferred to the buyer; at the vendor had power at any time to redeem, paying, the value of the lands to the jubilee; but tho’ he did not redeem it at the year of jubilee, yet that the same was given again free to the vendor and his heirs.

But our notion of mortgaging and redemption seems to have come immediately from the Civil law, and therefore it will be necessary herein to consider the differences in that law between pledges and things hypothecated. 79, 209, 249.

The 27. The pigus or pledge was, when any thing was obliged for money lent, and the possession passed to the creditor.

The hypotheca was, when the thing was obliged for money lent, and the possession remained with the debtor. Now in case of goods pawned, the creditor was obliged to the same degree in keeping them, as he used about his own; so that if the goods were left by the negligence of the creditor, an action lay as for a depleit; for the property being transferred to the creditor for a particular purpose, he was to keep them as his own. See 215, 216.

If the debtor did not redeem the thing pledged, the creditor was to foreclose the redemption of the debtor; and if the money was not paid, the creditor had an action on hypothecatio, or hypothecaria, which, when he had pursued, and obtained sentence thereon, he might sell as his own property; but there was this difference between the hypothecatio and hypothecaria; that the hypothecatio was only against the person of the debtor to foreclose him, because the pigus was already in the possession of the creditor, but the hypothecaria was in rem in ream, quam in personal, and was given ad pigus prosequendum contra quemque possessor; because herein the creditor had not the possession of the pledge, but it remained to the debtor; and till fomentation, which were called the actions, the creditor could not obtain the property of the pledge; and if the money was paid before sentence, the pledge was subject to redemption; and where the same thing was pledged to several, those were paid to be patres in pigis, to whom the things were first hypothecated. Digb. lib. 20, tit. 6, Corin. 269, 270, 271.

If the money was tendered or paid to the creditor, the contract of pigmentation was dissolved, and the debor might have the pledge back, as a thing lent; so that seems to have introduced the notion among us of the debtor’s right to redemption, and with them the usucaption, or the right of prescription, which did not extinguish the pledge, unless a bar was held in it for thirty years, or the debtor had held it for 40 years. Digb. lib. 20, tit. 6.

In the feudal law the rule was, Pandalia, invito domini, aut agnati, non rei leis fabicamentum hypothecae, quamvis frustus pug est receptum; and the reason of this rule was, because the land was held with a tenant from the lord’s original bounty, on whom he depended for his personal service in war and peace; and therefore the feudal could not obtrude a tenant on him without his leave, who might be less capable of those services; and therefore as the tenant could not originally alien without licence, so he could not mortgage. Corin. 268.

But when a licence of alienation was given about the time of Hen. 3. and it became a maxim in law, that the purity of a fee-simple imported a power of disposing of it as the owner pleased; there were two ways of mortgaging lands introduced, which Littleton distinguishes by the names of sodium vivum and sodium mortuum. 9 H. 3. 32. 18 Ed. 1.

The sodium vivum is, where a man borrows real, of another, and makes an eftate of lands to him, till he hath received the said fund of the issues and profits of the lands; and it is called sodium vivum, because neither the money nor the land is sick; for the lands are constantly paying off the money, and the tenants are not left as a dead pledge, in case the money be not paid. This seems to be

1. Of the original and several kinds of mortgages.

2. What shall be deemed a mortgage, or an estate realizable; and of the different kinds of mortgages and hypothecations.

3. Of the equity of redemption and foreclosures; and of the manner of redeeming and foreclosing.

4. Of the original and several kinds of mortgages.

The notion of mortgaging and redemption seems to be Jewish and Oriental, and from them derived to the Greeks and Romans; the plan of the Moravian law contains a just and equal agrarian, that the land was withdrawn from the same tribes and families, and the people might not be diverted by any extrict aëts and inventions from the exercise of agriculture, in which innocent emulotions they were to be continually educated; and Vol. II. No. 106.
be the ancient way of pleading lands; for they held, that lands could not be hypothecated; and therefore they used to subject the usufructus, which continued originally during the life of the feudary; but when there was a free liberty given of alienation, then the feudary could pledge the usufructus of the land at pleasure; the feoffee by his will, or his devisee after his death, received his money by degrees, and in small parcels, which was very troublesome; and those that lend money to usury, are generally willing to receive the whole in a gross sum; therefore this way of pleading is now out of use. Cf. Lit. 205. See Madd. Form. 316.

The medium mortuam is so called by Littleton, because it is doubtful, whether the seffor will pay the money at the day limited or not; and if he do not pay, then the land, which is but in pledge upon condition, for the payment of the money, is taken from him for ever, and he doth die; and if he do pay it, then the pledge is dead to the tenant of the land. Lit. litt. 332. Cf. Lit. 205.

Of these mortgages there are again two sorts; first, of the freehold and inheritance; and secondly, of terms for years. Maddox 318, 319.

Of the freehold and inheritance, and here the ancient way was to make a charter of seflement, on condition, that if the feoffee or his heirs paid the sum to the seffor, the seffor should re-enter and re-pollifie; and sometimes the condition was contained in the charter of seflement, and sometimes it was defeantenced by another charter, as may be seen in the old forms. Maddox 318, 319.

For as a man might annex a condition to his seflement, for ex. he stet his son, as he stet his dispose, to be he might annex a condition by another deed, bearing date, and executed at the same time; for being executed at the same time, it is really but one and the same dietition, quae intestmenti sunt in se unam integram; but a defeasance or condition annexed after the seflement executed comes too late; because the le visum curas partius attingles the intenstion, in which there is no condition, the tenant must hold the land according to the tenure of the vellitestate; but rents, annuities or warranties that are things executory, may be defeated by defeasances made at the time of their creation, or any time after; because there is not any necessity of the notority of livery to make an intenstion; and therefore being created by deed only, they may be defeated or destroyed by deed alone. Co. Lit. 226, 227.

These sorts of conveyances were subject to these inconveniences; that if the money were not paid at the day, so that the estate became absolute, the estate was then for the time, in the power of the seffor and all other his real charges and incumbrances; for though if the seffor performed the condition, then he might re-enter, and re-pollifie himself in his former estate, and consequently was in all the above the charges and incumbrances of the seffor; yet if he did not literally perform the condition by payment of the money at the day, then the estate was legally subject to the charges and incumbrances of the seffor, though the money were afterwards paid, and the estate reconveyed to the seffor. Co. Lit. 231, 221.

But the courts of equity, as they grew in power, have found this matter right; and have had the right of redemption not only against tenant in dower, and the persons who come in under the seffor, but even against the tenant by the curtesy, and lord by efschat, that are in the psf; because the payment of the money does, in the consideration of equity, put the seffor in sefum quae, since the lands were originally only a pledge for the money lent. Hard. 465.

As to mortgages by way of creating terms, this was formerly by way of demife and re-demise. As for example; A. borrowed money of B. thereupon A. would demisle the lands to B. for a term of 500, 50 years absolutely, with common covenants against incumbrances, and so forth. It appears that in B. would hold the day after re-demise to A. for 490 years, with condition, to be void on non-payment of the money at the day to come; this manner of mortgaging came in af-
MOR

A hearing, Lord K. North revered the decree on the ground of the equity of redemption, and therefore may take leaves or any settlement thereof, which will bind the mortgagor's title. It is said, that a tenant in tail in an equity of redemption may devise it for payment of debt. 1 Fern. 41. Turner v. Guin.

But as the mortgagee is more strong, 1 Fern. 734, 232. Newcom. v. Jordan. 2 Vent. 364. S. C. where it is said, that Lord North's decree was affirmed in the house of Lords.

If a mortgage lands to B. worth 30 l. per annum, for curing $200 l. and at the same time B. enters into a bond conditioned that if the sum of $200 l. is not paid within one year, then he be to pay to A. his executors or administrators, the further sum of 700 l. in full for the purchase of the premises, &c. and A. dies within the year, and he money is paid the next day, the mortgage is forfeiture, &c. and A. heir may redeem, saying the 200 l. and likewise the 700 l. was paid me, etc. But if the Master of the Rolls decreed a redemption on payment of 550 l. and the two fines. 2 Fern. 84.

There were 450 l. made an absolute assignement of church leafe for three lives to B. and by writing under his hand agreed, that if A. paid 600 l. at the end of the year, B. would convey; B. died, leaving C. his heir; and two of the lives died, and the lease coal adopt to C., and by other deed executed as near twenty years since the conveyance was made, the Master of the Rolls decreed a redemption on payment of 550 l. and the two fines. 2 Fern. 84.

A lends money to B. to carry on certain buildings, and it takes a mortgage from him to secure 1000 l. with interest and other charges. A. and B. enter into a further agreement, that A. shall take a covenant from B. that he shall convey to m., if he thought fit, ground- rents to the value of 100 l. at the rate of 20 years purchase; and on a bill ought to redeem, the Master of the Rolls decreed a demission on payment of principal, interest and costs, and then鲳 a covenant thereon, but it is not sufficient, as it is unenforceable; for a man shall not have interest for money, and a collateral advantage besides for the loan, it is, or clog the redemption with any bye-agreement. 2 Fern. 520. Jennings v. Ward.

But though these and such like restrictions are relieved as to make them answer the primary intention of the parties; yet if A. on a mortgage, lends money at 6 l. cent. but agrees in the deed, that if the money were paid within three months after it became due, that he would accept of 6 l. per cent. and the mortgagor negleets to pay the interest within the time, equity will not re- v en him, but he must pay 5 l. per cent. for though the principal may be unenforceable, yet this is it for, that the mortgagee might have refused to lend his money under 5 l. per cent. Preced. Chan. 160. Jory v. xx. 1 P. W. 653.

So if the mortgagee devises, that the mortgagor should remitted part of his mortgage money, provided he ye the principal and intererst within three days after his client, if the condition be not performed, the remedie is lost; because being a voluntary bounty, and not due to justice, the party must take it as it is limited, suijus dignare, ejus digna dispensa; and the court cannot live in this case after the 1 Chan. Ca. 52.

But where in a mortgage there was a proviso, that if the interest was bound within six months, that then the interest should be accounted principal, and carry interest; this Lord Chester was deemed to be a vain clause, and of no use; and he said, that no precedent had ever carried the advance of interest so far, and that an agreement made at the time of the mortgage, will not be sufficient to make future intererst principal; but to make interest principal, it must be expressly so in the deed, and then an agreement concerning it may make it principal. 2 Salik. 459.

The mortgage before forfeiture, and whilst it remains certain, whether he will perform the condition at the time limited or not, hath the legal effect in him; also al- so it be the nature of a redemption; so that is still considered as owner and proprietor of the estate, until the equity of redemption be foreclosed, and therefore may take leaves or any settlement thereof, which will bind the mortgagor's title. It is said, that a tenant in tail in an equity of redemption may devise it for payment of debt. 1 Fern. 41. Turner v. Guin.

Therefore the tenant is in some sort the owner, and, as is usual, still continues in possession, and levies his fine, and, five years past, yet the mortgagee is not barred; for though the mortgagee be in reality out of possession, yet when that is done by the consent of both parties, and the nature of the contract requires it should be so whilst the interest is paid, it is against the original design of the contract, that any of the mortgagor's except the interest of the money, should deprive the mortgagee of his securities, and is no less than fraud, which the law will not countenance. 1 Sid. 460. 1 Vent. 82. Cart. 101, 474. 2 Keb. 522.

And as the mortgagor, being considered only as tenant at will to the mortgagee, cannot, by his act, defeat the interest of the mortgagee, otherwise than by payment of the mortgage money; so neither can the mortgagee defeat the mortgagor of his equity of redemption; therefore if a mortgagee in fee suffers a recovery, even at law, shall not bind the mortgagor's title, and the condition be not ascertained that the mortgagor had been a party to the recovery, then his right had been bound, not only on account of the recumence in value, but because he is eftablished by the recovery to claim the land against the recoveror or his heirs, when he was called in before the judgment given to defeat his title, and could not do that. 2 Vent. 419.

So if a mortgagee be disfelled, and the defiguer levies a fine, and five years past after the proclamations, tho' the mortgagee is hereby barred, yet if the mortgagor pays or tenders his money, he has five years to prosecute his right, by the second saving is the statute 4 Hen. 7. cap. 24. because that title did not accrue 'till payment of the money. Plow. 372. a.

And as the mortgagor, 'till the equity of redemption be foreclosed, is considered as owner of the land, it was ruled, where a bill for a redemption was brought against a mortgagee in possession, and a decree accordingly, that the mortgagee before the account taken, having presented to a church that became void, should revoke his prestation, and present such a person as the mortgagor or his vendee (he having contracted to sell) shall appoint. Preced. Chan. 71. 2 Fern. 401.

By the 7 W. & M. cap. 25. it is enacted, "That no person or persons shall be allowed to have any vote in election of members to serve in parliament, for by reason of any trust estate or mortgage; unless such trustee or mortgagee be in actual possession, or receipt of the rents and profits of the same, but that the mortgagor, or easit que trust in possession, shall and may vote for the same, and shall have the benefit of such mortgage or trust."

And by the 9 Ann. cap. 4. which requires, that knights of the shire should have 600 l. per annum, and every other member 300 l. per annum, it is enacted, "That no person shall be qualified to sit in the house of Commons, within the meaning of the act, by virtue of any mortgage, whereas the equity of redemption is in any other person, unless the mortgagee shall have been in possession of the mortgaged premises for seven years before the time of election."

The condition must at law be strictly performed, otherwise the mortgagor looses all benefit of redemption; but if upon a mortgage a tender be made of the money at the place, at any time after the day specified in the condition, and the mortgagee refuses, the condition is saved for ever. 7 Ed. 4. 3. 9 H. 6. 12. 22 H. 6. 37. 47 Ed. 3. 36. Plow. 173. 5 Co. 114. 14 S. Litt. 209.

3. Of the equity of redemption and foreclosure; and of the manner of redeeming and foreclosing.

Altho', after breach of the condition, an absolute fee simple is vellied at Common law in the mortgagee; yet a right of redemption being still inherent in the land, till he be equity of redemption be foreclosed, it is a right which
M  O  R

shall defend to and is invested in such persons as have a right to the land, in case there had been no mortgage or incumbrance whatever; and as an equitable performance as effectually defeats the interest of the mortgagors, as the legal performance does at convenient, whereas the personal estate, till the equity is totally foreclosed; on this foundation it hath been held, that a person who comes in under a voluntary conveyance, may redeem a mortgage; and tho' such right of redemption be inherent in the land, yet the patty claiming the benefit of it, must not only set forth such rights, but also show that he is the person intituled to it. Hard. 495. 1 Vern. 195. 1 Vern. 482.

As the heir at law is regularly intituled to the benefit of redemption, he is also intituled to the assistance of the personal estate of the mortgagor for that purpose; according to the doctrine established in the courts of equity, that the personal estate, in the hands of the mortgagor, shall be employed in ease of the heir, by whatever means the heir becomes indebted as heir, for the personal estate having received the benefit by constraining the debt, and the real considered only as a pledge for it; according to the common rule, Socii ficti commodi fictit a debet ubi eous. Prev. in Chan. 477.

And on this foundation it hath been frequently held, that if a man mortgage lands, and covenants to pay the money, and dies, the personal estate of the mortgagor shall, in favour of the heir, be applied in exonerat the mortgage. 2 Salt. 449.

Also it is held by some opinions, that this benefit shall not accrue to the heir, at law, or barre natur, but also to an heir factus, from a presumption, that it is the intention of the tenant, that he should have all the privileges of the barre natur: and some even hold, that an ordinary devisee shall have this benefit; but as to this last point it is hath been held otherwise; and that if a man mortgages his land, and devises it to F. S. or to A. for life, the remainder in fee to B. that there the charge doth pass with the estate, there appearing no intention of the tenant, that he should have it discharged, 2 Chan. Ca. 84. 1 Vern. 36. 1 Chan. Ca. 271.

So if the mortgagor conveys away the equity of redemption, the purchaser shall not have the benefit of the personal estate, but must take it as herein. 2 Salt. 452. 1 Vern. 37.

It has likewise been held by some opinions, that the heir of the mortgagor shall have the benefit of the personal estate to pay off the mortgage, tho' there be no covenant in the mortgage-deed for the payment thereof; because the mortgage-money is a thing separate there from, and proceeds of the land, in the payment of it, and the money, there was no contract at all between them, neither express nor implied; nor would any action lie against the mortgagor to subject his person, to compel him to pay this money; but this was in nature of a conditional purchase, subject to be defeated on payment by the mortgagor, or on the failure of the land, and was without the right of redemption. And at any Mich. day, at the election of the mortgagor, or his heirs; for here was an everlasting subsisting right of redemption, defendible to the heirs of the mortgagor, which could not be forfeited at law like other mortgages; and therefore there could be no equity of redemption, or any occasion for the assistance of this court; but this right might even at law defeat the conveyance, by performing the terms and conditions of it; which were not limited to any particular time, but might be performed on any Michaelmas day, to the end of the world; and since there was no covenant or contract, either express or implied, to charge the personal estate of the mortgagor, he thought there was no reason to in the land, for the debts of the condition between the said persons did afterwards, when money upon account of their lands of other persons, and do not acquit the latter lender thereof with the same; whereby such last lender is very often in danger to lose his whole money, or forced to pay off the debts secured by the said judgment, that is, the recognizances before mentioned, or any benefit of the said mortgages; and that divers persons do many times mortgage their lands more than once without giving notice of their first mortgage; whereas the lenders of money upon second or after mortgages often lose their money; and are put to great charges in facts and otherwise; for remedy whereof it is enacted,

That if any person shall borrow any money, or for any other valuable consideration for the payment thereof voluntarily give, acknowledge, permit or be required to be entered against him or them, one or more judgment judgments, statute or statutes, recog- nizances or recognizances, to any person or persons, creditor or creditors, and any person or persons, after redemption or by a per- son or persons in trust for or to the use of such person or persons, as will pay the said money, to give, acknowledge, permit or be required to be entered against him or them, to any person or persons, creditor or creditors, of the said money, or of any other person or persons, for or for any other valuable consideration became indebted to such person or persons, and for the payment and discharge therefor shall mortgage his, her or their lands or tenements, or any part thereof, to the said person or persons, creditor or creditors, or to any person or persons in trust for or to the use of such person or persons, creditor or creditors, and do not give notice to the said mortgagee or mortgagees, of the said judgment or judgments, statute or statutes, recog- nizances or recognizances, in writing under his, her or their hands, before the execution of the same mortgage or mortgages; unless such mortgagee or mort- gagees, his, her or their heirs, upon notice to him, or them given by the mortgagee or mortgagees of the said lands and tenements, his, her or their heirs, executors, administrators or assigns, in writing under his, her or their hands, or under the hands of the said mortgagee or mortgagees, or any other person, persons, creditors, or any person or persons in trust for or to the use of such person or persons, creditor or creditors, of the said money, for the payment and discharge thereof, and such cousen or other judgment judgments, statute or statutes, recog- nizances or recognizances, to any person or persons, creditor or creditors, or to any person or persons, in trust for or to the use of such person or persons, creditor or creditors, and do not give notice to the said mortgagee or mortgagees, of the said judgment or judgments, statute or statutes, recog- nizances or recognizances, within six months pay off and discharge the said judgment or judgments, statute or statutes, recognizances or recognizances, and all interest and charges due thereupon and cause and prepare the same to be vacated, or discharged by record; that then the said mortgagee or mortgagees shall have a remedy against the said mortgagee or mortgagees, his, her or her heirs, executors, administrators or assigns, of the said money, or of any other money, or of any other person, persons, creditors, or any person or persons, in trust for or to the use of such person or persons, creditor or creditors, for or for any other valuable consideration of the said money, and for the payment and discharge thereof, and such judgment judgments, statute or statutes, recog- nizances or recognizances, or all interest and charges due thereupon and cause and prepare the same to be vacated, or discharged by record; that then the said mortgagee or mortgagees shall have a benefit of redemption against the said mortgagee or mortgagees, his, her or her heirs, executors, administrators or assigns, and enjoy the said lands and tenements for such and such term therein, as were or was granted and fatted to the said mortgagee or mortgagees against the said mortgagee or mortgagees, and all persons and persons, creditors, or any person or persons, in trust for or to the use of such person or persons, creditor or creditors, for or for any other valuable consideration; and the said mortgagee or mortgagees shall again mortgage the said

---

*Note: The text appears to be a legal document discussing the rights and conditions of personal estates and mortgages, with references to specific statutes and case law. The document is complex and requires a detailed understanding of legal principles and historical context to fully interpret.*
M O R

M O R
or tenements, or any part thereof, to any
jther perfon or perfons for valuable confiderations (the
aid former mortgage being in force and not difcharged,)

ame

lands

not difcover to the faid fecond or orher mortmortgagees, or fome or one of them, the former
nortgage or mortgages, Ln writing under his or tlieir
lands; that then, and in thefe cafes alfo, the faid mortnd

ftiall

'agee or

agor or mortgagors, his, her or their heirs, executors,

dminiftrators or affigns, (hall have

edemntion, a^ainft the

no

relief or

equity of

fecond or after mortgagee or

her or their heirs, executors, admini-

his,

liortgagees,

faid

upon

mortgage or mort-

the faid after

|;rato's

or affigns,

[ages;

but fuch mortgagee or mortgagees, his, her or

executors,

heirs,

heir

adminiftrators and afligns, (hall

more than once mortgaged
and tenements, for fuch eftate and term therein.
were or was granted and conveyed by the faid mortagor or mortgagors, againft him, her or them, his, her

may

ind

hold and enjoy fuch

iinds
Is

their

:

heirs,

executors or adminiftrators refpeJtively,

from equity of redemption, and as fully, to all innts and purpofes, as if the fame had been an abfolute
irchafe, and without any power or liberty of redempPfovided always, and be it further enadted by the
ithority aforefaid, That, neverthelefs, if it fo happen
ere be more than one mortgage at the fame time made,
any perfon or perfons, to any perfon or perfons, of the
me lands and tenements, the feveral late or under morteed

'

gees,

her or their heirs, executors, adminiftrators

his,

have power to redeem any former mortge or mortgages, upon payment of the principal debt,
tereft, and cofts of fuit to the proper mortgagee or
a(figns,

(hall

ortgagees,

her or their heirs, executors, admini-

his,

Jators or affigns.

That nothing

Provided always.
nil be conftrued,

in this zQ. contained

deemed or extended

to bar

any widow

any mortgagor of lands or tenements from her dower

^

who

d right in or to the faid lands,

th her hufband in fuch

did not legally join

mortgage, or otherwife law-

bar or exclude herfelf from fuch her

lly

dower or

right.

man

mortgages certain
ids to one man, and mortgages thofe lands with fome
\et3 to another, tho' this feems to be a cafe omitted
^t of the above ftatute againft clandeftine mortgages;
if it appears to be a contrivance to evade it, as if an
j
e or two of land were only added, this will not exempt
alfo a perfon, who will take advantage of the ftatute,
if a man
ift b? an honeft mortgagee; and therefore,
hath been held,

It

that if a

:

ufed

>

•rtgage,
^(?r«.

any fraud or pra£tice in obtaining a fecond
he (hall not have the benefit of the ftatute.

589, 590.

The methods

of redemption and foreclofing being di-

ory and expenfive, and inconvenient, not only to the

ll

now

;i)rtgagee but alfo to the mortgagor, the fame feem

by the 7 Geo. 2. cap. 20. which reciting, That
^lereas mortgagees frequently bring actions of eje£tment
f the recovery of lands and eftates to them mortgaged,

ijnedied

bring actions on bonds given by mortgagors to pay

3il

uney fecured by fuch mortgages, and
therein

c/enants

;

and

for

performing the

likewife

commence

his Maiefty's courts of equity to foreclofe their

in

IS

(

contained

nrtgagors from redeeming their eftates; and the courts
law, where fuch

«

ejcflments are brought,

have not

jwer to compel fuch mortgagees to accept the principal

Dney, and interefts, due on fuch mortgages, and cofts,
fuch mortgagees from proceeding to judgment

to ftay

<

:J

execution in fuch adtions,

but fuch mortgagors muft

Iverecourfe to a court of equity for that purpofe
')ich cafe
l,aring
ii

the courts of equity

do not give

;

in

relief until the

of the caufe; for remedy thereof, and to obviate

objections relating to the fame,

it

is

ena£ted.

That

and after the firft day of Eajhr term 1734. where
iy action (hall be brought on any bond for the payment of
t: money fecured by fuch mortgage, or performance of
I'm

covenants therein contained ; or where any a£tion of
• dinent
(hdll be brought in any of his Majefty's courts
'record at WeJirninJIer, or in the court of feffions in
I;

's/m, or in
llatine

VoL.

any of the fuperior courts

of Chejler, Lancajier or
II,

N°.

107.

in

the counties

Durham, by any mort-

gagee or mortgagees,

his, her or their heir?, executors,
adminiftrators or affigns, for the recovery of the pofTeifion
of any mortgaged lands, tenemen;s or hereditaments, and

no

fuit

(hall be

then depending

courts of equity, in

England,

that

part

in any of his Majefty's
of Great Britain called

touching the foreclofing or redeeming

for or

fuch mortgaged lands, tenements or hereditaments

;

it

redeem fuch mortgaged lands, tenements or hereditaments, and who (hail
appear and become defendant or defendants in fuch adtion,
(hall, at any time pending fuch adtion, pay unto fuch
mortgagee or mortgagees, or in cafe of his, her or their
refufal, (hall bring into court, where fuch action (ball be
depending, all the principal money and intereft due oa
fuch mortgage, and alfo all fuch cofts as have been expended in any fuit or fuits at law or in equity upon fuch
mortgage, (fuch money for principal, intereft and cofts,
to be afcertained and computed by the court where fuch
adfion is or (ball be depending,) the monies fo paid to
fuch mortgagee or mortgagees, or brought into fuch court,
(hall be deemed and taken to be in full fatisfadtion and
difcharge of fuch mortgage; and the court fiiail and may
difcharge every fuch mortgagor or defendant of and from
the fame accordingly ; and (hall and may, by rule or
rules of the fame court, compel fuch mortgagee or mortgagees, at the cofts and charges of fuch mortgagor or
mortgagors, to affign, furrender or re-convey fuch mortgaged lands, tenements and hereditaments, and fuch eftate
and intereft, as fuch mortgagee or mortgagees have or
hath therein, and deliver up all deeds, evidences and
the perfon or perfons having right to

writings in his, her or their cuftody, relating to the title
of fuch mortgaged lands, tenements and hereditaments,
to fuch mortgagor or mortgagors, who (hall have paid or

brought fuch monies into the court, his, her or their
heirs, executors or adminiftrators, or to fuch other perfon
or perfons as he, (he or they (hall for that purpofe nominate or appoint.
Seii. 2.

And

it

is

further enadled by the authority

That from and

after the faid Eajlcr term 1734.
where any bill or bills, fuit or fuits (hall be filed, commenced or brought, in any of his Majefty's courts of
equity in that part of Great Britain called England, by
any perfon or perfons having or claiming any eftate,
aforefaid.

any lands, tenements or hereditaments,
under or by virtue of any mortgage or mortgages thereof,
to compel the defendant or defendants in fuch fuit or
fuits, (having or claiming a right to redeem the fame,)
to pay the plaintiff or plaintiffs in fuch fuit or fuits, the
principal money and intereft due on any fuch mortgage,
together with any fum or fums of money due on any inright or intereft in

cumbrance or fpecialty, charged or chargeable on the
equity of redemption thereof; and in default of payment
thereof, to foreclofe fuch defendant or defendants of his,
her or their right or equity of redeeming fuch mortgaged

tenements or hereditaments; and upon his, her or
admitting the right and title of the plaintiff or
fuch fuit, fuch court and courts of equity may
and (hall, at any time or times before fuch fuit or caufe
fliall be brought to hearing, make
fuch order or decree

lands,
their

plaintiffs in

therein, as fuch court or courts

might or could have made

therein, in cafe fuch fuit or caufe had been regularly brought
to hearing before fuch court or courts; and all parties to

fuch fuit or fuits (hall be bound by fuch order or decree fo
to all intents and purpofes, as if fuch order or de-

made,

cree had been

made by fuch court

at or fubfequent to the

hearing of fuch caufe or

fuit ; any ufage to the contrary
thereof in any wife notwithftanding.

Se£J. 3.

Provided always. That thisfadt, or any thing
not extend to any cafe, where

herein contained, (hall

the perfon or perfons, againft

whom

the redemption

is

or

be prayed, (hall (by writing under his, her or their
hands, or the hand of his, her or their attorney, agent or

fliall

money (hall be brought
fuch court at law to the attorney or folicitor tor
the other fide) infift either that the party praying a re-

folicitor, to be delivered before the

into

demption has not a right to redeem, or that the premifles
are chargeable with ottier or different principal fums than
what appear on the face of the mortgage, or (hall be
admitted
5 R


M O R

admitted on the other side; nor to any cause where the
right of redemption to the mortgaged lands and premises
in question, in any cause or suit, shall be controverted or
questioned, by or between different defendants in the
same cause or suit; nor shall any prejudice to any
subsequent mortgagee or mortgagees, or subsequent in-
cumbent, any longer be in the suit to the contrary thereof,
in any suit or motion in suit, as the same shall stand.

For more learning on this subject, see 3 Boc. Abr. and

Mortgage, Is he that mortgages or pawns the lands;
and he to whom the mortgage is made is called the
mortgagor.

Mor. Murder; Sax. morh\, death. Mortal\, a murderer or
manliver. Mort-

Moritius. Dead of the rot, applied to sheep
and Lamb. Mon. 2 tom. p. 114.

Mortmain, (Manus mortua, compound of two
French words, mort. i. morr, & maine, i. manus) signi-

ifies an alienation of lands and tenements to any guild,
corporation or fraternity, and their successors, as bishops,
parsons, vicars, &c. which may not be done without
the King's licence, and the lord of the manor, or of the
King alone, if it be immediately held of him. The
reason of this was to prevent the sale of service, messuage,
the services, and other profits due, for such lands as
cheats, &c. should not without such licence come into a
deal hand, or into such a hand as it were dead, and so
dedicated unto God, or pious uses, as to be absolutely
different from other lands, tenements or hereditaments,
and is never assignable to the debt, or any temporal or
common use. Magna Charta, cap. 35. and 7 Ed. 1.
commonly called The statute of mortmain, and 18 Ed. 3.
cap. 3. and 15 Rich. 2. cap. 5. Polydeye Virgil, in
the seventeenth book of his Chronicles, mentions this law,
and gives this reason of the same. Et lemm banc manum
mortuam vocantur, quod res femel datis collis pretiosas
deduit, quemque usque ad hanc in perpetuum usum
invenire potest. Hence, is, nisi ali-
orum mortuorum in perpetuum apta essent. Lex diligentier
fuerat, si ut nihil possidendum ordini faceretabi a qua-
quam detur, nisi regis permisit: But the fore-mentioned
statutes are in some manner abridged by 39 Eliz. cap. 5.
by which the gift of lands, &c. to hospitals is permitted,
without obtaining licence in mortmain. Historian, in
his Commentaries De verbis Feudalibus, verbo Manus
mortua, hath these words; Manus mortua locatio est, qua
usurpatur de ilia, quam paupertas sit ut ita dicere immortali
est, quia nuncquam barre jure debuit defuntat: Qua de causa
res nuncquae ad privamen dominum reservarum, gentem
mansa parum facienda vel anticipata, vel impropriarum
et sit. Peter Belluga in sectulo Prinicipum, fol. 76./fasti
amoriminationis sicut licentia copiandi ad manum mortuam:
To the same effect read Caffian, de Confess. Burgund. p. 345.
faith, Dimittitus tertio ad manum mortuam est idem ut
umque detribue ad multitudinem sive aureolesatum, quod
nuncquam mortuit, idque per anticipations, seu a contraria saepe,
becaus commodees never die. Cowell.

William the Conqueror, demanding the cause why he
himself conquered the realm by one battle, which the
Danes could not do by many; Frederick the abbot of
St. Alban's answered, he was successful, because now the
maintenance of martial men, was given and converted to pious
impropriations, for the maintenance of holy vortaries: To which the
Conqu
eror said, that if the clergy be so strong that the realm
is infecibed of men for the war, and subjected by it to
reign invasion, he would aid it. And therefore he took
away many of the revenues of the said abbet, and of
other als. Specd. 418. b.

Stat. 9 Hen. 3. cap. 36. enacts, That it shall not be
lawful from henceforth to any to give his land to any
religious house, and to take the same lands again to hold of
the same house, &c. upon pain that the gift shall be
void, and that the land shall accrue to the lord of the fee.

Lord Coke, in his 2 Stat. 74. says, this statute is ex-
cellently abridged and expounded by the statute of 7 Ed.
1. There were two causes of making this statute, [1

In the English language, to be lawful is to be
"lawful" or permissible; it is a legal term that indicates the
validity or legality of an action or decision. In the context
of this statute, the phrase "shall not be lawful to any" means
that it is not permissible for anyone to give their land to a
religious house for it to hold it as their own. The statute
specifically prohibits this action to prevent the land from
being converted to pious uses, which the Conqueror viewed
as a means to maintain the holy vortaries, or religious
orders, and prevent the land from being given to the
religious houses in the first place.}

The next lord of the fee may enter. If there are Id
and tenant, and the tenant aliens in mortmain, and 2
and the landlord still have but few remedies in the case
as he had in the feigniorly, notwithstanding this statute
for he hath but an estate for life or in tail in the feignior,
he shall have the greater estate in the land; for in the
intendment of the statute; but the lord of the partic-
lar estate shall have perquisitive of villain in fee. But
when he has an estate in the seigniorly, he shall have it in
jure laws or ecclesi.

Quoted notes. Br. Estates, pl. 42, elise 5 Ed. 4. 61.
M O R

And for default of all the moxe lords'] This is to be understood of such inheritances as may be holden; but fuch inheritances as are not holden, as villains, scutages, commons, &c. the King shall have them prent by fuch fumes. Every one of the fumte granted to them is not mortmain, but carries the perfon only. Co. Lit. 2. b.

Stat. Witm. 2. 13 Ed. 1. b. 3. 32. fet. 1. When dignities men and other ecclefialitical persons do implead wrong, and the party imploed makes default, whereby he light to alienate the land, forasmuch as the juftices have hit & Horitho, that if the party imploed made default by collusion, and where the demandant by occa- sion of the flume, could not obtein fefin of the land by tile of gift, or other alienation, he fiall now by reason of default, and fo the flume is detered.

Stat. 2. It is framed thereby, that in this cafe, after the default made, if fliall be imploed by the party, whether the demandant had right in the thing demanded or no; and if it be found at the demandant had right in his demand, the juftice shall paif with him, and he fhall recover fefin; and if he has no right, the land flall accrue to the nach of the fee, if he demand it within a year from the mne of the inquefl taken.

Sett. 3. And if he do not demand it within the year, fiall accrue to the next lord above, if he do demand it within half a year after the fame year.

Sett 4. And to every lord after the next lord fhall remain a year to demand it fecufively, till it come to the King, to whom at length, through fault of other lords, the land fhall accrue.

Sett. 5. And to challenge the juftices of the inquefl, every of the chief lords of the lands fiall be admierted, as likewise for the King they that will defall a fum. An- Stat. Ed. 27. Ed. 1. Ordinario de pervertendi libertatwm. weight licence to amonize land, a writ of Ad quid modum fhall issue out of the Chancery to inquire concerning the fame.

Stat. of amortizing lands, 34 Ed. 1. enacts. That lands shall not be alienated in mortmain where there be feme lords, without their content declared under their als, neither fhall any thing pafs where the donor refers the dignity, or the impoion is made and retained without warranty, viz. without the writ returnef with the inquisition; and unless the real make mention of every thing according to the same order devifed by the King. Der. 23. Hen. 8. cap. 10. If any grant of lands or other liberties be made in truft to the use of any churches, chapels, churchwardens, guilds, fraternities, commons, companies, or brotherhoods, to have per- sional obits, or a continual service of a prieft for ever, or for 60 or 80 years, or to fuch like uses or intents; if fuch uses, intents and purpofes fhall be void, they be- ing made to no corporations, but erected either of devotion, or by common confent of the people.

Sett. 3. Such uses and intents may be made and declared to continue twenty years from the time of fuch lini- tation of them, but no longer.

Sett 4. Collaterall affurances made for the defeating of that flume fhall be void, and this fhall be interpreted not beneficfially but deftruction of fuch uses as afore- said. Sett 5. This act fhall not prejudice corporations, where there is a cufom to devote lands in mortmain.

Sett 6. This act fhall not prejudice the executors of tenth collectors, and certain later corporations.

Land devoted to one and his heirs, on condition to af- fume them for maintenance of a grammar school for ever, was held to be a good and charitable ufe, and fuch as this act did not extend to take away. 1 Rp. 22. b. Chin. 34. and 35. Elite. in the Exchequer, The Queen v. Porter, at Porter's cafe. S. C. cited 11 Rp. 71. b. 33. for in Magadlen College's cafe, S. P. in B. R. in the fame term; and it was there likewise holden, that this fla- cted extended only to feepertifious uses, and not to en- frain ufed that were in favour of learning and relief of the poor. C. R. 523. Mortmain v. Martin. At the end of Parte's cafe, learned men of the reporter, that any man at this cafe may give lands, tenements or here- ditaments to any perfon or perfon, and their heirs, for the finding of a preacher, maintenance of a school, relief and comfort of maimed foldiers, fullenance of poor people, reparations of churches, highways, bridges, chantries, deftruding of poor inhabitants of a vil or other common charges, to make a flock for poor labourers in husbandry, and poor apprentices, and marriage of poor, virgins, and for any other charitable ufed; and that it is good policy upon every fuch endowment or estate, to re- vive to the defcor and his heirs a small rent, or to ex- tended by such appropriation of any small sum, for the caufe before heeded.

Stat. 17. Cap. 2. c. 3. f. 7. enacts. That every owner of any impriopriation of tithes, may give and annex the fame to the parfonage or vicarage of the parish church where the fame lies, or settle the fame in trufh for the par- fonage, &c. or of the curates there succifively where the parfonage is impriopriated, and no vicar endowed, with- out licence of mortmain.

Sett. 8. If the settled maintenance of any parfonage or vicarage with cure, fhall not amount to 100l. per annum, it fhall be lawful for the incumbent to purchase to him and his fucceflors, rents, revenues or other her- editaments, without licence of mortmain.

Stat. 22. Cap. 2. c. 6. f. 10. enacts. That it fhall be lawful for bodies politic to purchase any fee-farm rents, &c. and the fame to retain; any statute of mortmain notwithstanding.

Stat. 7. G. W. 2. c. 37. f. 1. enacts. That it fhall be lawful for the King to grant to any perfon licence to alien in mortmain, and to purchase and hold in mortmain any lands or hereditaments.

Stat. 2. Lands so aliened, or acquired and licensed, shall not be subject to forfeiture.

Stat. 22. G. c. 1. f. 4. f. 1. enacts. That it fhall be lawful for her Majefly, by letters patent under the Great feal, to incorporate fuch perfons as her Majefly fhall app- point, to be one body politic and corporate; and by the fame, or any other letters patent, to grant to the faid corporations and their fucceflors for ever all the re- venue of fift frifh, and yearly perpetual tenth of all dignities, benefices and promotions spiritual whatsoever, to be applied to the augmentation of the ma- intenance of fuch perfons, vicars, curates and miniflats officiating in any church or chapel in England, Wales or Bertrick, where the Liturgy and Rites of the Church of England, as now by law established, fhall be used, with fuch fowers, rules and reftrictions as fhall be therein ex- presfed.

Sett. 2. And every perfon having in his own right any eftate or interest in poftecion, reversion or contingency in any lands, tenements or hereditaments, or any property in any goods or chattels, fhall have power by deed enrolled according to the flat. of 27. H. 8. for insollance of bargains and sales, or by his left will and testament duly executed, to give, grant and veft in the faid corpo- ration and their fucceflors, all fuch his eftate, interest or property in fuch lands, tenements and hereditaments, goods and chattels, for the augmentation of the mainte- nance of fuch minifters as aforefaid, to be applied ac- cording to the will of the faid benefactor and by fuch deed enrolled, or by fuch will as aforefaid expreffed; and in default of fuch appointment, in fuch manner as by her Majefly's letters patent fhall be directed as aforefaid; and fuch corporation fhall have ability to purchase, take and enjoy for the faid benefactors, lands, tenements, grants or per- fons to charitable disposed, as from all other perfons willing to fell or alien to the faid corporation, any mans, lands, tenements, goods or chattels, without any licence or writ of Ad good damnum, notwithstanding the statute of mortmain, &c.

Stat. 9. Gen. 2. c. 36. f. 1. No manors, lands, advow- sons, or other hereditaments, nor money or other per- sonal
feudal estate to be laid out in lands, &c. shall be given to any bodies politic or otherwise, or any ways charged in trust for charitable uses, unless such gifts, (other than books in the public fund) be made by deed indented, in presence of two witnesses, and months before, and made in Chancery within six calendar months after execution, and unless such books be transferred six calendar months before the death of such donor; and unless the same be made to take effect in possession immediately from the making, and be without power of revocation.

Sect. 4. Nothing relating to the failing and delivery of any deed twelve calendar months before the death of the grantor, or to the transfer of stock six calendar months before the death of the grantor, shall extend to any pur- chase for a full and valuable consideration.

Sect. 3. All gifts of lands, &c. or of any charge after the death of such donor, or of any book or personal gift to be laid out in lands, &c. for charitable uses, which shall be made in any manner, shall be void.

Sect. 4. This act shall not make void dispositions of any lands to either of the universities, or the colleges or houses within either of them, or to the colleges of Eton, Winchester, or Wifhampton, for the better support of the fellows of the same institutions.

Sect. 5. No such college or house, which shall hold so many advowsons as are equal in number to one moiety of the fellows, or where there are no fellows, to one moiety of the students upon the foundation, shall be ca- pable of purchasing any other advowsons, the advowsons of which are annexed to the headships of colleges or houses not being computed.

Sect. 6. Nothing in this act shall extend to Scotland.

For more learning on this subject, see 15 Vin. Abr. tit. Mortmain.

Mortmain, Mortuum, mortarium,) is a gift left by a man at his death to his parish church, for the re- concilement of his personal tithe and offerings not duly paid in his life-time. A mortuary is not properly and or- iginally due to ecclesiastical incumbents from any, but those only of his own parish, to whom he ministers spiritual instruction, and hath right to their tithe. But by custom in some places of this kingdom, they are paid to the parsons of other parishes, as the corps polles through them. See the statute 21 H. 8. cap. 6, before which statute mortuaries were payable in debts; the bell to the lord for a heretic, the second for a mortuary. Nor was it only de meliari avers, fid de melieri re. Mortuum (says Lindwood) sic librum ut quia relinquatur ecclesiae pro absentia mortuus est ne nos dierum habet, mortuariam, when it was held as due debts, the payment of which was enjoined as well by the statute De funeratis pagis, in 13 Ed. 1. as by several constitutions. A mortuary was formerly called Saneleaflet, which signifies pecunia sepulchralis, or Symbolum animae. After the conclavus it was called a testa-prentis, (because the bcast was presented with the body at the funeral,) and sometimes a principal; of which see a learned discourse in the Antiquities of Warrwichiis, fol. 679, and see Selden's History of Tithes, pag. 287. There is no mortuary due by law, but by custom. 2 part Ven. fol. 241. See Spen. de Council, tom. 2. fol. 390. This is likewise proved out of Plato, lib. 2. cap. 66. when he gives of mortuaries, to be the first right of the state. See Magnaquin, Principat, and Pretium sepulchri. In the H. bison 'cans' to be called Pretium sepolchri, and Seiudat. viva. Omne corpus sepolchri habet in jure suo vacuam & cuorum & vassifirum & ornamenta leti sui, &c. Canon. Hieren. lib. 19. cap. 6. And in another place, H. bison (principat loc. i.e. the H. bison, & the sepolchrum et sacrum leti sui, &c. & voidat annis pretium eis cujus et facultas com- mun. The word mortuarian was sometimes used in a civil as well as an ecclesiastical sense, and was payable to the lord of the fee, as well as to the priore of the parih.

Debtor domino (i.e. quidem de Wrechwycke) nomi- natis pretium, in mortuariam sacrum, dedicat. xii fol. Paroch. Antig. pag. 470. Council, edit. 1737.

Mr. Selden tells us, that the usage anciently was, bringing the mortuary along with the corps when it came to be burned, and to offer it to the church as a satisfac- tion for the supposed negligence and omission the defunct had been guilty of in not paying his personal tithes, and from thence it was called a coron-prentis. Walf. Comp. Incumb. Ess. 1053. cap. 53. cites Selden's Hist. of Tithes 247.

Sect. 13 Ed. 1. f. 4. enacts, That a prohibition shall not lie for mortuaries in places where mortuaries uted to be paid.

Sect. 13 Ed. 1. f. 4. sect. 2. enacts, That no spir- itual person, his bailiff or leffer, shall take or demand any mortuary for a mortuary as is hereafter expressed, nor shall conven any person before any ecclesiastical judge for the recovery of more for the same than is hereafter declared, on pain to forfeit so much as he takes or demands more, and likewise 40s. to the party grieved, to be re- covered by action of debt, wherein no effin, &c. shall be used.

Sect. 3. None shall take or demand for a mortuary any thing at all, where (by the custum) they have not been usually paid.

Sect. 4. Nor upon the death of a woman covert, a child, a peron not keeping house, a wayfaring man, or not residing in the place where he happens to die, no where the goods of the dead person (debts deduced amount not to the value of 10 marks; nor above the sum of 3l. 4d. when they exceed not 30l. nor above 6s. 2d. when they exceed 30l. but not 40l. nor above 10l. when they amount to 40l. or above; and if the person die in a place where he or she dwelt then, the mortuary shall be paid in the place where they had the mortuary.

Sect. 5. This act shall not abridge spiritual persons to receive legacies bequeathed unto them or to the high school for a mortuary than as is hereafter expressed, nor shall conven any person before any ecclesiastical judge for the recovery of more for the same than is hereafter declared, on pain to forfeit so much as he takes or demands more, and likewise 40s. to the party grieved, to be re- covered by action of debt, wherein no effin, &c. shall be used.

Sect. 6. No mortuaries shall be paid in Wales, Gloucester, or in any of their marches, save only in Wales and the marches thereof where they have been customarily used to be paid; and such as are there paid shall be regulated according to the order prescribed by this act.

Sect. 7. The bishop of Bangor, Landaff, St. Davids, and St. Asaph, and the archdeacon of Cheffor shall to mortuaries of the priests within their jurisdiction as ha been accustomed, notwithstanding this act.

Sect. 8. If mortuaries already settled by custum do not be increased by this act; and there also persons emped by this act shall not hereafter be chargeable.

Sect. 12 Ann. 2. cap. 6. abolishes all customs of payi mortuaries upon the death of any clergymen within the dioceses of Bangor, Landaff, St. Davids, and St. Asaph and enables the clergymen of the said dioceses to settle mortuaries in lieu of name thereof, shall be payable, any bishop of the said dioceses or other person claimi under them, and gives recompense to the bishops of the fees in lieu thereof.

Mortuaries taken away in the archdeaconry of Chiffor and a recompence made to the bishop of Chiffor, 28 Gin. 6.

Sodium nitrate, Infedts not a capital punishment 1 bare theft, agreeable to which is the Civil law; but a law doth, as in ftrict justice for the welfare of society may, Exod. 22. S. P. C. 25. 1 Hawk. P. C. 59.

Sodium tripoli, A rebellious sort of malefactors in furthe parts of this kingdom, the ship, and the, &c. was like the Ieran in Ireland, or the Banditti Italy; for whose suppression were made the statutes 4 Jac. 1. c. 7 Jac. 1. c. 1. and 14 Car. 2. c. 32.

Sodium. The bell so called, which was used by the English-Swedes to call people together to the court. Deba

Stilum pulgarii campis, quod Angles vocat met-bell, is the name of a bell made to call people together in convocatio & convocatiionem. Leg. Edw. Conf. 35-

Stilum. (Meta. Sax. genna, curia, platicum, convos As Meta de Hersford, i. Curia vel placia consitit Hersford. In the chapter of Mound the Empress, daughter of the Earl of the Firth, we read thus: Sicisti me felse Milonum de Glocest, Camit. de Horsford, & desig- norum Horsfordem cum tcco fabellis, &c. Hence Burg- more, curia vel convosat burti; Swainmore, curia vel convosat ministium, fel. forstels, &c. From this s
we draw our word mate and most, to plead. The Sext
say, to mutter, as the Mote bill at Seine, 1. Must placit
of Sona. We commonly apply the word most to that
argument of fact used by young stuten in the lanes of court:
Chancery. In the charter of peace between King
Stephen and Duke Henry, afterwards King, it is taken to
signify a forfeit, as Terras de London, & mata de Windfors,
the town of London, and forfeits of Windfor. Mote also
signifies a flaundling pool of water to keep fi in, or a
water encompassing a cattle, or other
dwelling house. Cowell, edd. 1777.

Spitifulis. One who may be removed or displaced, or
rather a vagrant. In carcere detentis, canonical, vel alli
religiosis, motabiles, juris, &. convenire non potenter, i.e.
In jure convenire non poffant, Plata, lib. 6. cap. 6. par.

Spero, A customary service or payment at the mote
or court of the lord. Cowell, edd. 1777.

Motion in court. A motion is a prayer or request
premised of the party to the court, either in person or by

One ought not to move the court for a rule for a
thing to be done, which may by the common rules of
practise of this court be done without moving the court or
it; much less ought the court to be moved for the
thing of that which is against the common rules and
practise of the court. 2 L. P. R. 209. cites 24 Cor. 9. R.

For the court is not to be troubled, nor the client put
the charge of needless motions, nor of motions not to
be granted; and the former fort of these kind of motions
are adverse to ignorance, and the latter of too much
prevention, the former are to put the court to needless
double, and the latter are moved against the honour of
the court. 2 L. P. R. 209.

The court was moved for an attorney of the Common
less that was fixed in this court, to allow his writ of pri-
piece. But Roll Ch. Jaff, bid him plead his privilege,
forte, that he cannot allow it upon a motion and his
It was said by Roll Ch. Jaff. If there be a judgment
plain three, and one of them is taken in execution, and
the other two afterwards at large by the plaintiff's
content, if eit-
or of the other two be afterwards taken in execution
upon the same judgment, he may have an auditia querela,
the he cannot be relieved upon a motion in court, tho'
Frer. v. Goodrich.

After motion in arrest of judgment, no motion shall
be for a new trial, but after motion for a new trial, one
may move in arrest of judgment. 2 Salk. 607, Parkers-
ville v. Stamp.

If any thing be moved to the court upon a record, but
the record upon which the motion is made be not in
favor when the motion is made, the court will make
no rule upon such a motion. 2 L. P. R. 208. cites Hill,
Carr. 2. R.

One ought not to move the court for a thing against
which they have delivered their opinions. Trim. 23 Car.
1. R. But ought to refl satisfed with the judgment of
the court, and to submit therunto. 2 L. P. R. 208.

Every person who makes a solemn argument at the
motion in court is to be allowed by the court a motion for his argument, 2 L. P. R. 210.

See 15 Fin. Abr. tit. Motion.

Subsite, An outcry or alarm to mount, and make
me a speedy expedition. Cowell, edd. 1777.

3. cap. 70. they are called Mufite, and sometimes
Musa.

Burnt, (Mulate,) A fine of money set upon one, for
one trait or misdemeanor. Jac.

Subter, As it is used in the Common law, seems
to call that which is used for mullets, or the French
effil, and signifies the lawful issue (born in wedlock,
ought begun before) preferred before an elder brother
of want of performance, anno 9 H. 6. 11. Smith de Re-
Anglos, lib. 3. cap. 6. But by Gladwell, lib. 9.
p. 1. the lawful issue seems rather mullet than multer,
Vet. II. No. 107.

because he is begotten to muliere, and not to concubina; for he
calls such issue filius mulieris, opposing them to baffards;
and Briston, cap. 70. hath freer multer, i.e. the brother be-
gotten of the wife, opposite to freer baffard. This appears
not to be used in Sc. &. also; for the former seems to say
that mulaterus filius is a lawful son, begotten of a lawful
wife. A man hath a son before marriage, that is a
baffard, and unlawful, and after he marries the mother of
the baffard, and they have another son; this second
son is called multer, that is to say, lawful, and shall be
be his to his father, but the other cannot be the payable to
any man, because in judgment of law he is said to be mulid
filius, or filius populi; and they are always disingullished
with this addition, baffard eigne and multer puisse. See
fol. 433. this son is commonly called for a woman, a wife,
and sometimes for a widaw. See Baffard.

Multrary. The being or condition of a multer, or
lawful issue. Co. Lit. 352. b.

Multions ferri, Cocks or sticks of hay. Paracch. An-
tiq. p. 401. Hence in Old English a mull, now a mow
of hay or corn.

Mullmutin laws. See Mullirian laws.

Mulna, A place to build a water-mill. Mon.
2 tom. p. 284.

Multipar, or Multipura epilipri, Is derived from the
Latin word multus, for that it was a fine given to the
king, that the bishop might have power to take the
law will and testament, and to have the probate of other
men, and the granting administrations. 2 Inf. fol. 491.

Multiplication, (Multiplicitatis,) Multiplying or in-
creasing. By a statute made 5 H. 4. cap. 4. it is ordained
and established that none from henceforth shall use to
multiply gold or silver, nor use the craft of multiplication,
and if any the same do, he shall incur the pain of felony;
and it was made, upon a preemption that some persons
enjoyed in chymistry, could multiply or augment those
metals. And H. 6. granted letters patent to some per-
sons (who under pretence were alchemists) to take the same,
and to find out the philosophers' stone, to free them from the penalties
of the statute. Rot. Pat. 34 H. 6. m. 13. Co. 3 Inf. fol.
74. But the restraint by the above statute of Hen. 4.
having been found to have no other effect upon the un-
accountable vanity of those who fancied such attempts to
be practicable, but only to kindle them beyond fea, to try
their experiments with impunity in other countries, the
stat. 5 Hen. 4. was at laft wholly repealed by 1 Will. &

Mutilter, (Multilateral,) Mull, according to some
authors, confid of ten persons, or more. But Co. en
Inf. fol. 255. &. 260. a. has only limited it to any
certain number, but left to the determination of the
judges.

Mulio fortiao, or A minio ad manus, Is an argu-
ment often used by Littleton, and is framed thus: If it be
fo in a sufficient passing a new right, much more it is for
the reflation of an ancient right, &c. Co. en
Inf. fol. 253. and 260. a.

Mulno, Puella, Polto, Puoto, Mutto, A mutton
or sheep, or rather a weiper, quia tectibus mutlatus.
Cowell, edit. 1777.

Mutilure, Pieces of gold money impress with an
aguis Divi, or with a lamb on the one side, and on
that figure called multus. This coin was more common
in France, and sometimes current in England, as appears
by a patent 32 Ed. 1. cited by the learned Specman,
though he had not then considered the meaning of it.

Res tenetur Ottini de Grandifinos in decem millibus
multronum aurum. Cowell, edit. 1777.

Mutilur, (Mulchel vel multeris,) Signifies the toll
that the miller takes for grinding corn. Cowell, edd.
1777.

Munt, On importation, pays a barrel excite 32. by
12 Cor. 1. c. 3. and 32. by 12 Cor. 2. c. 24. and 31.
by 1 Will. & M. c. 3. and 32. by 5 Will. & M. c. 20.
fect. 10. and 32 by 3 Inf. 9 and 4 Ann. c. 6. sect. 10.
and 104. by 12 Ann. b. 1. c. 2. sect. 107. and 108. by 30 Geo. 2. c. 4.
sect. 4. - Duties how to be levied, 2 Will. & M. &s.
c. 10. sect. 3. 5 Will. & M. c. 20. sect. 11. 4 Ann.
c. 6. sect. 10. 30 Geo. 2. c. 4. sect. 6.

5 S.
Mum may be exported, and the excise low repayable, 1 Will. & Mjff. 1. c. 22. sect. 1. Relating it, what to forfeit, 1 Will. & Mjff. 1. c. 22. sect. 2. Excise on foreign mum not to be repaid on exportation, 1 Will. & Mjff. 1. c. 22. sect. 3.

Antick diveris m in the Christinm holidays, to get my good cheer. Mummers to be imprisoned, 3 Hen. 8. c. 9.

Sundthirch, (from the Saxon sund, i. tutela, defen- fis, and brice, frons.) Some would have it to signify an infringement of colleges: and others would that it denotes munis framentum, because mum also is man. But after that it is expounded clausuram framenti, for munis signifies clausuram munis, the fencing of lands, therefore sundsbrecht must be the breaking of those fences, which in man points of England we call mounds; and we say, when lands are fenced in and hedged, that they are wounded. Cowell, edit. 1727.

Sundre, Peace; and mundebreche a breach of the peace. Leg. N. 1. c. 37. 66.

Sunduredum, (Munduredum, from the Sax. mund, i. c. tutela, and brice or bich, i. e. felijker) Defensionis vel injuriebantis et feipsum integritatis. A receiving into favour and protection. Cowell, edit. 1727.

Sundre. See Medal.

Sundre-houte, (Moniment.) In cathedral and collegiate churches, call, es, chalices, or such, is a house or little room, and is generally made for receiving the fees, evidence, charters, &c. of such church, colleges, &c. such evidences being called muniments, corruptly muniments, from munda, to defend; because inclusions and possessions are defended by them. 3 por. tejf. fel. 170.

Sundrintes. See Sundrintes.

Sundrintes. Are the grants or charters of the Kings and Princes to churches; so called, because cum ei munatur against all those who w. o. would deprive them of those privileges. Cowell, edit. 1727.

Sundus recellatunitn, The confecrated bread, out of which a little piece is taken for a communicant. In- sectis, quae sanctitatis et munis diximus ecclesiam sanctificat, 56. Ann. 2. tom. pag. 838.

Surage, (M unorigum, ) A toll or tribute to be le- vied for the building or repairing of publick walls. F. N. B. fol. 227. It is due to either by grant or pre- fcript. C. 2 por. tejf. fol. 222. Surage fecunth also being granted to a tenant by the King, for collecting money towards the walling of the same. Stat. 3 Ed. 1. cap. 10. Surage forfeited for being taken otherwise than it was granted. Stat. 1b.


Sure, Murder, (Sundum) From the Sax. sund, which some will have to signify a violent death; from which the barbarous Lat. sundrum et sundaram. Sometimes the Saxons exprest it by mortded, and mortduere, a deadly work; in French mortre, in Spanish mortfre, in English murder: A word in use long before the reign of Carinatus; but we cannot find that the Sax. morth signifies a violent death, but generally mars. Amongst us 'tis taken for a willful and a very felonious killing, either upon pre- matted malice. Briston, lib. 3. tract. 2. cap. 15. mun. 1. defineth it thus: Homicidium, quod nulls presenfite, nullus aidentiae, nullus violentae clam perfpecripit. Britton, cap. 6. is of the same opinion, so is Pliny, lib. 1. cap. 30. adding besides, that it was not murder, except it were prov- ed that it was the party, (not the English, and no foreigner: But Stannus in Pl. Car. lib. 1. cap. 25. says, The point is altered by the statute 14 Ed. 3. cap. 4. for now it is murder, when a man upon fores-thought malice kills another, whether privyly or publicly, English man or foreigner living under the King's protection; and this statute is the first. 1. Ed. when it may be evidently proved that there was ill will. 2. Implied, when one killeth another suddenly, having nothing to defend himself, as going over a rile, or such like. Comp. Juflicies of Peace, cap. Of murder, fol. 19. Per Rda, le mort der murder in grants, le grantes clama de over americhumt of murderers. Bobat. til. L. 2. 172. 2. But formerly it was taken only for a clandestine killing; for amongst our records, the King and the Countes of Angly made an auumanto antiquis declarato eusjus interjus nefcitabt usumque vel quemadmodum esso inventum, nullus ad sanctum, eos interjus quis mundrum fecerit, homicidium per postumption. So in Mat. Paris, anno 1210. Arthurum nepatem properati manubis per postumptionem interficit febmem genere quod Anglie mundrum appli. This now is willful killing another cu matia praesumptiva. Cowell, edit. 1727. See Homicide.

Surrop, See Riffle.

Surusius. See Sundrintes.

Sutibus, Duties on them. 11 & 12 Will. 3. c. 3. sect. 3. & 4 Ann. 4. c. 4. To be repaid on exportation, 12 & 13 Will. 3. c. 11. sect. 14. The duties not also. 11 & 12 Will. 3. c. 20. See Linen.

Syllis, (Lat.) A syllis or many syllis; also a place where fedge grows; a place over-run with moths. Cowell edit. 1727. Mon. 1. tom. pag. 426.

Syller, (from the Fr. montrer) Is to shew men and their arms, and to inrol them in a book, as appears by flat. 18 Hen. 6. c. 19. So myrled of record in the fall flate, is to be inrolled in the number of the King's soldiers. Syller of the king's mynors. 2 Ed. 6. c. 2. See in Maler.

Syller-mater general, is mentioned in flat. 35 Ed. 6. c. 4. Syller of the King's salters. See Salters of the Multes of Salters. See Salters.

Syller caum, (Fr. feint de Cbemus) A kennel- hounds. The King at a b. hoph or abbot's decease his fix things: 1. Optimum equum quum posta solutum efpes cum sella & serra. 2. Unam clamam solutam ex capella. 3. Unum eplum cum coosporo. 4. Unum per unam cum iscovo. 5. Unam annulum auratum. 6. Novecam canem qui ad Dom. Regem ratisse fesu fextant & pertinent. Hill. 2 Ed. 2. in flat. pro mortem Epif. Bath. & Wellens, & clauf. 3 Ed. 1. m. 11.

Syller, To mew up hawks in the time of the molting, or caftling of their plumes. The manor of Brong in comm. Osum. in the reign of Ed. II. was held by Dom. de l'Isle. The word was used by mutual usage of bullifh Dame. Ratis, vel illum bulliferi portandi ad aeriem Dominii R. gis. Paroch. Antiq. pag. 569. Hence the muta R gia, the muta near Charing-Crofts in London, now the King's fables, formerly the falconry or place for the King's hawks.

Syller, Change of apparel. Mat. Par. or. 1107.

Suratus accipiert, A mewed hawk. Cowell, ed. 1727.

Syller, (Mutter) Speechless, dumb, or that refuses to speak; or a prisoner may fland mute two manner of way. 1. When he stands mute, without speaking of any thing, and then it shall be inquired whether he be fland mute of au- rice, or by the act of God; and if it be found that he was by the act of God, then the judge of the court, ought not to inquire whether he be the person, and all other pleas which he might have pleaded, if he 1. He may be called mute, or as he pleased, or as he pleased not answer directly, or will not put himself a inquest, to be tried by God and the country. C. 2. fs. tejf. 12. 31. 12. 8. See Pain doit hure. As also signifies a kennel or cry of hounds, as koster le me fero, & envar a berge, to follow him with a full cry. See also in Lat. 3. Mutter, Ed. it is notorious felonous, and which openly be of evil fame, and
not put themselves in inquells of felonies that men arrange them with before the judges at the King's, shall have strong and hard imprisonment, as they rich refuse to stand to the Common law of the land, 1 it is not to be understood of such prisoners as be "Norious felons" This statute extends not to the land, is the highest offence, no, or petty larceny, which of all felonies the lowest; but it extends to women as ill as to men, and so it appears by divers ancient and it proceeded in the land, i.e. is the common law and "the trial according to law, and therefore his punishment is more severe without comparison, than it should have been for the offence of felony itself; and the felony itself cannot be adjudged without answer, and denies all those other opinions. And as to the first holds, that this punishment was not first inflicted by this act, for no court or judges could upon these words (have strong and hard imprisonment) frame such a judgment consisting of so many divers particulars; and hence it necessarily follows, that this punishment, because it was to be done in prison, was before this act, but sufficiently signified (as ever since it hath been) by the statutes for &c.; so as this act feeth forth the quality of this judgment, and not the judgment itself. 2dly, This act describes what persons shall be punished by pain fort & dure, viz. "Norious felons, and which are openly of ill fame, but fets not down (as has been said) what the punishment is, but provides, that it shall not be lighter than what the books held with great authority, that in case of appeal the prisoner flandering mate shall have judgment of pain fort & dure, do prove that such judgment was before the making this act; for this statute extends not to appeals, which are the fault of the subject, but only to the fault of the King which is by way of indictment; and wherein the words of Festa are very remarkable, Si autem appellatus nihili rei judicata erit, &c. et appellantur in peitieris judiciis, indeferet immemoratis, morte teneam non condiendis, sed generai commutatos, &c. and these are words which usual appear to be at the Common law; and herewith agreeeth Britannus, who wrote from after this act, so that the penance in case of appeal is both by ancient and found authority. And as to the second opinion, the answer to the first answers also; and if he should be found by the Common law, this statute does not extend to appeals, for &c.; so as this have strong and hard imprisonment, and therefore the statute that a flandering mate, may, according to their opinions, be hanged at this day, is contrary to all the books, and confiant and continual experience. As to the third, it would be entertaining too mean an opinion of the Common law, which is by way of indictment; and these by their contumacy against it suffer one of the lowest punishments, viz. imprisonment till they would answer; and the answer to the first opinion is likewise fo to this. 2 Inf. 178, 179.

Of light suspicion] Serjeant Hawkins says, that he does not find it said in any book, what shall be done to a person who obstinately flandering mate to an arraignment shall appear to be charged upon very light suspicion; but says he takes it for granted, that he may be severer fined and imprisoned for the contempt. 2 Hawk. Pl. 330, cap. 30, sect. 4.

Appeal at Neagate before the justices of gaol delivery, the defendant pleaded Not guilty, and would not put himself upon the country, by which he was put to parere, and the judgment was, that he shall be remanded to the prison where he was before, and after he shall be put into a chamber, and there shall be naked without litter, ruffles or cloaths, one thing that the defendant are to think; he shall be laid upon his back naked, without any thing about him, having a cloath to cover his members, and that his head and his feet be covered, and that the one arm be drawn to the one quarter of the chamber with a cord, and the other arm to another quarter, and that the one foot shall be drawn to the one quarter, and the other foot to the other quarter, and that a piece of iron shall be put upon his body as much as he can suffer and bear upon him and more, and the first day
day he shall have three morfels of bread made of barley, without any drink, and the second day he shall drink as much as he can at three times of water which is next to the door of the prison, except running water, without any bread, and this shall be his diet till he be dead. And as the water, he shall come, and put into some dark low room, and there laid on his back without any manner of covering, except for the privy parts, and that as many weights be laid upon him as he shall be able to bear and more, and that he shall have no manner of suffenance but the world bread and water, and that he shall not eat the same day in which he drinks, nor drink the same day on which he eats, and that he shall to continue till he die. But that it is said that anciently the judgment was not, that he should continue until he should die, but until he should answer, and that he might have himself from the penance by putting himself upon his trial, which he cannot do at this day after the judgment of penance once given. 2 Haw. Pl. C. 330. cap. 30. f. 16. And there in the margin, the ferjeant, to the reminding him to the place whence he came, cites H. P. C. 227. S. P. C. 150 (E), Keel. 70. a. 12. 18. Ed. 4. 11. pl. 17. and as to the words in some low dark room, this he says, that the clause is omitted in Keel. 70. a. 4 Ed. 4. 11. pl. 18. But is mentioned in all the other books above cited, but with this difference, that 14 Ed. 4. 11. pl. 17. says only shall be put in a chamber, without adding that it shall be low or dark. And as to the words there laid on his back, &c. he says, that in this all the books above cited seem to agree. And 14 Ed. 4. 8. pl. 17. and S. P. C. 150 (E), and 2 Injfl. 178. add, that he shall lie without any litter or other things under him, and that he shall be drawn to one quarter of the room with a cord, and the other to another, and that his feet shall be affed in the same manner. But that these clausse are wholly omitted in all the other books above cited, except H. P. C. which takes notice of the latter of them only. And Ra. Ent. 385. pl. 2. adds, that an hole shall be made for the head. And Keel. 70. a. says, that the head shall not touch the earth; but none of the other mention either of these clausse. And as to the words, that as many weights shall be laid upon him as he can bear and more, &c. he says, that in this all the books above cited agree. And as to the word bread, he says, that 14 Ed. 4. 17. p. 17. S. P. C. 150. (E), and 2 Injfl. 178. are, that he shall have three morfels of barley bread a day. Keel. 70. a. that he shall have only dry bread, and Ra. Ent. 385. pl. 2. and 2 Hen. 4. 1. pl. 2. generally, that he shall have of the world bread. And as to the word water, he says, that in 14 Ed. 4. 8. pl. 17. S. P. C. 150. (E), 2 Injfl. 178. and 3 Ed. 4. 1. pl. 2. and Keel. 70. a. are, that he shall have the water next the prison, so that he be not current; but Ra. Ent. 385. pl. 5. is general, that he shall have the water of the world. And as to the words, not eat the same day in which he drinks, nor drink the same day on which he eats, &c. he says, that this is omitted in Keel. 70. a. and in 2 Hen. 4. 1. and as to the words till he die, he says, this is omitted in none of the books above cited, except 14 Ed. 5. 4. [4.] 11. and H. P. C. 237. But that neither of these books give the whole judgment at large. Hawk. Pl. C. 330. 331. cap. 30. 31. More for more learning in this subjett, see 15 Vin. Abr. tit. Mure, and see Observations on the Statutes, chiefly ancient, &c. p. 51-54. Mutiny. See Soldiers. gutter and lamb. Not to be imported. 30 Car. 2. 2. 12. Mutudel. debt. See Debt and debtops. Mutual debate. Is where one man promises to pay money to another, and he in consideration thereof promises to do a certain act, &c. such promiss must be binding, as well of one side as the other; and both made at the same time, Hob. 88. 1 Salk. 21. Where there are mutual promises, and one of the parties die, which the other party could not charge the executor on the promiss of the testator; yet 'tis here said the promiss by the survivor shall continue. Tel. 133. But it is held, that on mutual promises and covenants, equal remedies are o both sides tho' the performance need not be precisely agree. 3 Salk. 151, 152, 153, 172, 227, 308, 88, 3 Mal. 4. Mutuatus. If a man oweth any person 10l. he hath a note for the same, without seal, action of deb lies upon a mutuatus; but in this there may be wasser c law, which there may not be in an action upon the cafe on an implied promiss of payment, Ed. Comp. Attorn. c. 1. Muttot, In a legal understanding, signifies to borrow or to lend. 2 Sound. 291. Mutus & Furtius. A person dumb and deaf, and being tenant of a manor, the lord shall have the wardship an custody of him. 2 Cris. 105. If a man be dumb an deaf, and have understanding, he may be a granter or grantee of lands, &c. 1 Co. I. II. Mydpery, (Mystterium, from the Fr. meifter, i. e. ar artificium,) An art, trade, or occupation.
NAT

Children of subjects born abroad deemed natural-born subjects, 4 Geo. 2. c. 21.

Foreign seamen serving two years upon proclamation in time of war, naturalized, 13 Geo. 2. c. 3.

Foreigners refiling seven years in the plantations naturalized, 13 Geo. 2. c. 7.

Extended to the Miserables, 20 Geo. 2. c. 44.

Sacrament to be received except by Quakers and Jews, 13 Geo. 2. c. 7, sect. 2.

Refrained from holding offices of trust, 13 Geo. 2. c. 7, sect. 5.

Foreign protestants serving three years in the whaling fisheries naturalized, 22 Geo. 2. c. 45, sect. 10.

Excluded from offices of trust, 22 Geo. 2. c. 45, sect. 10.

To inherit by 11 W. 3. c. 6, but such as were capable to take at the death of him who died last seised, 25 Geo. 2. c. 39.

Foreign protestants serving two years in America, naturalized, 2 Geo. 3. c. 25.

See Alien.

Bounties, That was duty which was incumbent on the tenant to carry his lord's goods in a ship. Liber finat ab suini caritatis, navagio, &c. Min. Tom. 922.

Natural Rights. See Ships, Students.


Nat. Nautica, A small dish to hold the frankincense, before it was put into the thuribleum, center, or incensing, or making the incense in the holy of holies; thuribleum cum vasi. Piper. Antiq. p. 598. I mean a vessel called from the shape, resembling a boat or little ship, as a vase of brandy for the like reason. Cowell, edit. 1757.

Natives, The name or body of the church, as distinguished from the church, and wongs, or ides. It is that part of the church where the common people sit, which being the longest part is so called: Quod camera ejus soli vocatur easa off. Du Cange.

Navy, See Steamen, Ships.

Navy bills. Coontracting them, &c. punished, 1 Geo. 1. fl. 2. sect. 3. Stealing them felony, 2 Geo. 2. c. 25, sect. 3.


Nec. See Admiss, inadmiss.

Necesse, How charges no man with default where the act is compulsory, and not voluntary, and where there is no consent and election; and therefore if there be an impossibility for a man to do otherwise, or to great a perturbation of the judgment and reason, as in preemption of law man's nature cannot overcome, such necessity carries a privilege in itself. Boc, Elem. 25.

Necessity is of three forts; necessity of conservation of life, necessity of obedience, and necessity of the act of God or of a stranger. Ibid.

And first of conservation of life: If a man vital viands to satisfy his hunger rushes, this is no felony nor larceny. Ibid. But if such necessity be owing to his unthriftyness, surely it is far from being an excuse. Hawk, Pl. C. 93. cap. 33. sect. 20. So if divers be in danger of drowning by the catling away of some boat or barge, and one of them get to some plank, or on the boat's side, to keep himself dry from the water, and another to save his life, thralls him from it, whereby he is drowned, this is neither se defendendo, nor by misadventure, but justifiable. Ibid.—S. P. Hawk. Pl. C. 73. cap. 28. sect. 26.

So if divers felons be in gaol, and the gaol by cautious is set on fire, whereby the prisoners get forth, this is no escape nor breaking of prison. Boc. Elem. 25.

So upon the statute, that every merchant getting his merchandise on land without satisfying the cusolver or agreeing for it, (which agreement is confirmed to be in 5 T certainty)
culpabili excuses not, no more does necessitas culpabili. Exc. Elem. 29.

Nec.

archiers and barackets of glasses imported, What duties to pay, 4 Will. & M. c. 5, selt. 2.

archiers, What sorts of neckclothes are not chargeable by 10 Ann. c. 19. 12 Ann. St. 2. c. 5. st. 5. and 21 Wili. c. 23.

Necelles, Importing it prohibited, 13 & 14 Car. 2. c. 15. May be exported duty free, 11 & 12 Will. 3. c. 3. stel. 15.

Necellus, 10 cert. King's, Is a writ to refrain a person from going out of the kingdom without the King's licence. F. N. B. 85.

By the Common law every man may go out of the realm to merchandise, or on pilgrimage, or for what other cause he pleaseth without the King's leave, and he shall not be punished for so doing; but because that every man is of right for to defend the King and his realm, therefore the King at his pleasure by his writ may command a man that he go not beyond the east, or out of the realm without licence; and if he do the contrary, he shall be punished for disobeying the King's command; and it is muthem that this command may be made by the King's writ under the Great seal, and also the Privy seal, if the law further directeth. And to the notice of every writ the King's seal in such case, as well as of the Great seal. F. N. B. 85. (A).

A writ of Ne certe Regno may be granted in any case where there is danger of subterfuge from the fallacy of the nation, though of private consideration. 2 Cha. 124. Note 2. as the false seal of the King's dominion, B. 9, the King may inhabit any man; for the case is not transferable. Lan. 29.

Ne certe Regno ought not to be granted but upon great reason and examination, otherwise a homine reip- gaundia may lie; for Hol Ch. J. Farr. 9, Pafl. a Ann. B. 28, 29.

A sactor's bill being taxed, and reported over pas 60 l. on motion, and affidavit of his going beyond fas, Ne certe Regno was granted, though no bill was in county to ground this writ; for Master of the Rolls Chan. Prec. 171, Mil. 1701, Loyd v. Carlyle. A Ne certe Regno lies to prevent one's going into Siceland, it being out of the jurisdiction of Chancery; as the process thereof not reaching thither is equally miserably to the suitor here, as if he actually were out of the kingdom; and though it was moved for one defendant against another defendant, yet it being in a matter of so much importance both parties are affected thereto, and money be removed due from the defendant against whom the order issue, Lord Hardcur thought the motion proper. Wm's Rep. 263. Trin. 1714. Douc's case.

Where the party is to be restrained from going to Siceland, the condition must be not to go out of the real to Siceland; for if it be not only to go out of the realm, the party going to Siceland will not forfeit the bond or recogignize. Wm's Rep. 263. in a note there.

It was moved to have a Ne certe Regno framed so as to prevent the defendant going into Scotland upon affidavit of his going to reside there, and having confessed that he had received 10,000 l. as trustee for the plaintiff. A Ne certe Regno was granted, and the party was joined for 10,000 l. bail, and apprehending that the usual we would not refrain his going into Scotland, as being no in the name kingdom, and yet as much out of the reach of the process of the court as any foreign part out of the King's allegiance, the fame was moved before the Lo Chancello, who afied, What authority he had to all an original writ? Especially as this writ was not originally intended to aid the procefs of this court, but was mandatory writ to prevent the King's subjects from going into foreign countries to praifie treason with the King enemies! And said, that perhaps there was no found statute which would render the common writ which prevent the defendant's going into Siceland, as well any of the King's other dominions out of the procefs this court. His lordship said, it was dangerous to alter old established forms, and therefore would make o
The defendant swore an affirmative, and afterwards 1 information was exhibited against him for it; tho' an evasive could not be proved, yet the court directed that they should first give their probable evidence, and that the defendant should afterwards prove his affirmative if he could. Cumb. 57. Trin. 3 Jac. 2. B. R. The King.

Corm. Two negatives may be construed as a negative in facts, but not in law; for they are to be taken as Latin, and not as Latinized, i.e. as Latinized. Salt. 328. Trin. 2 Iust. B. R. Dillon v. Harper. Negative may be implied by an affirmative, but not explicitly in corona. As the saying, that a paplit, unless conform, shall not take by devise, does not necessarily imply that he does conform, he shall be taken by devise.


An affirmative oath was made to ground an attachment upon; if the perfon against whom the motion is, denies he charge by oath positively and fully, the negative oath shall be preferred; and this is the only case in which it shall be so. 8 Med. 81. Trin. 8 Gen. The King v. Archbold & al.

Negative pregnant, (Negative pregnant) Is a negative, implying also an affirmative: As if a man be mpleaded to have done a thing on such a day, or in such a place, denieth that he did it, makes & forma declarata, which implicith nevertheless, that in the action, he did it. But he faith he hath not aliened in fact, and he faith he hath not aliened in fee, that is a negative pregnant; for though it be true that he hath not aliened in fee, yet it may be, he hath made an eflate in toll. Dyer, fol. 17, num. 95, and Break thy titles, and Ritchin, fol. 251, and the Terms of the Law. We read also in some Courts of affirmative pregnant, and that is, quæ habet in fe includeum negativam, & lic importare videtur dilinse (suln & tandem) que implicat negativam. Pastinian de Probationibus, lib. 1. cap. 31. num. 10. fol. 93. In information against J. K. for buying cloths of A. B. contra formam statuti de annu 24 Hen. 8, he faid, that he did not buy of A. B. contra formam statuti pravit, &c., and no reason was assigned, why he did not, B. A. or of W. N. or of any other, but if he bought the cloths contra formam statuti or not, and therefore the issue shall be that he did not buy made & formas, &c., Br. Stifes Joines, pl. 81. cites 33 Hen. 8.

Budge was brought upon an obligation, the condition whereof was, that he should make a new purchase without the plaintiff's affent. In debt on bond for performance of covenants, the defendant pleaded that he did not grant without the plaintiff's assent, and this upon demurrer was held not good. Gra. f. 559. 560. Hill, 17 Jac. B. R. Lea. v. Lutter. Atteridge & al. for illegitimate pregnancies.

Nefligence, To claim kindred. Cumb. 57, 1723. Nefligence, Is where a person neglects or omits to do a thing which he is by law obliged to. And where one has another's goods to keep till such a time, and he hath a certain recompence or reward for the keeping, he shall not fland charged for injury by negligence, &c., but if he hath nothing for keeping they may make no answer. Dottor and Student 269. A man that finds another's goods, if they are after hurt by wilful negligence, kis held he is chargeable to the owner; though in another case he is liable to be liable by handling. As in case they are laid in a house, which is accidentally burnt; or he delivers them to another to keep, who runs away with them, &c., Ibid. It is held, if an accountant be robbed, and it is without his default and negligence, he shall not be answerable for the money. 1 Iof. 89.

If there be a decree for a account to which an executor is part, he has a debt, and he makes a new purchase, unless he does not claim, but lies by, and the account is taken and perfected, he shall not bring a new bill for his debt, and put the eftate to the expense of a new suit to obtain a satisfaction, which he might have had in the course of the former proceedings. Per the Master of the Rolls, who said, that the plaintiff was not entitled to recover damages, 2 Wm. Rep. 665. Mich. 1734. Coxe v. Earl Coxe.

Further assurance was not demanded within the time, yet equity ordered to make further assurances afterwards. Tab. 76. cites 1594. Kemp v. Fauor.

If a purchaser neglects to imol his deed of bargain and sale, being his only assurance, and the bond of which he brings his ejfeement against him, and hath judgment; the bargain may refer to Chancery, and there be provided, if not for the land, yet for the money paid. Mich. 13 Jac. 1. Ch. Rep. 10. in the Earl of Oxfor's cafe, cites Jacques v. Huntly, 13 June 1599 in Chancery.

A term was vested in trustees, upon failure of issue male, to raise 1500 l. for daughters. And it was, that the trustees by and out of the rents, iiues and profits, &c., as well by leasing or demisting the same for 21 years, or three lives, or for any term, &c. of years determined of, and not exceeding, no execution of, and not exceeding, any term, &c. time limited for payment, nor any price for determining the term on payment. The trustees died. Then the father died, leaving a daughter, but no issue male, but had conveyed the remainder to E. for life, remainder to his first, E. sons in tail, and in default, remainder to C. for life, and after to his first, C. sons, &c., remainder over.
over. The daughter took letters of administration to the surviving trustee, and the B. mortgaged the land, which was 150 l. per annum, to J. S. and B. convener to pay the money. B. entered and took the profits, and paid the interest, but none of the 150 l. principal, and died without issue. Lord Thurlow filched the field out of her hands only for 21 years, or three lives determinable on any number of years not exceeding 120, and decreed, that (the 150 l. being to be raised out of the annual profits as they arose) the receipt of B. was the receipt of the daughter herself as to thole in remnant to J. & S., or for her place, who held the legal estate as administrator to the surviving trustee, and was also esseque tuit, the profits received by B. shall go in satisfaction of so much of the 150 l. and the refuse to be charged on the remainder. But decreed further, that what might have been raised by letting the fields according to the power by way of fine, if B. had apprehended that land chargeable with the money, and he had taken the benefit of making such fields, that they must be accounted for by the remainder man the defendant. 

**Negro.** In trover for 100 negroes, and upon Not guilty pleaded, a special verdict found that the negroes were not sold to him or his minister prince, and sued to be bought and sold in America as chattelslfe, by the cullom amongst the merchant, and that the plaintiff had bought them, and was in possession of them, and that the defendant took them out of his possession. It was argued, that no property can be in the person of a man whereupon to take a trover at all, but no property can be in slaves, unless by compact or conquest. But the court held, that they being usually bought and sold amongst merchants as merchandise, and being infeudal, a property may be in them sufficient to maintain the action; and gave judgment for the plaintiff nisi cassa this term. But at the term ensuing, upon the prayer of the attorney general to be further heard, day was given to the next term. 


In troftaps the case was, that the defendant H & arms unam Ethipion (Anygree vocat. a negro) lyfus querint pretiti 150 l. apud London, &c. took and carried away, and kept the plaintiff out of possession of the said negro from that time supe diem exhibitionis illius praetendit, per qua he lost the use of his said negro. Upon Not guilty the jury found, that the negro had been baptized after the taking; upon which a question was made, whether he was continued a slave in England because he was baptized? As to that the court gave no opinion; but held, that troftaps lies not; because a negro cannot be demandetl a chattel, nor can his price be recovered in damages in action of troftaps, as in case of a chattel; for he is no other than a flavelinfant, and the master can maintain no other action of troftaps for taking his servant, but such only as concludes per qua faverint amifs, in which the master shall recover for the loss of his service, and not for the value, or for any damages done to the servant. Judgment quaedam quenam nil capit ad bilam. Carib. 396. Hidl. 8 W. 3. B. R. Chamberlain v. Harvory.

In indiciat]. aljimpft the plaintiff declared for 20 l. fid he was injured by the plaintiff to the defendant, viz. In parochia Beate Marie de aervibus in urbea de Chespe, a verdict for the plaintiff. And in motion on arrest of judgment Holt Ch. J. held, That as soon as a negro comes into England he becomes free; one may be a villain in England, but not a slave. Per Powell J. The law took no notice of a negro. And Holt said, It should have been avered in the declaration, that the said was in Virginia, and by the laws of that country negroes are faeleable; for the laws of England do not extend to Virginia, which being a conquered country, their law is what the King pleases, and we cannot take notice of it but as a part of rule. But the power did not declare that the plaintiff amend the declaration, which should have been made that the defendant was indicted to the plaintiff for a negro field here at London, but that the said negro at the time of the sale was in Virginia, and that negroes by the laws and statutes there are faeleable as chattels. And then the attorney general coming in faid, that they were inheritances transferrable by deed and not without. And nothing was done. 2 Salk. 666. Smith v. Brown and Cooper.

"Traver lies not for a negro; for men may be owners, and therefore not the subject of property; and the court has never held to grant by sale copiusam from replius, the plaintiff might give in evidence that the party was his negro, and he bought him. 2 Salk. 667. Mich. 4 Ann. B. R. Smith v. Gould.

**Neft.** (Nativi. Et, neft. naturalis,) Is a bond-woman. Stat. 1 Ed. 6. 3. and 9. 2. cap. 2. But if a negro has been redemptioned, he may be freed, and if it be once free, and clear of dischrged of all bonds, the cannot be nefi after, without some special 2d done by her, as divorce, or confuilion in a court of record; and that is in favour of liberty, and therefore a free woman shall not be bound to taking a villain to her husband; but their issue shall be as their father was, which is contrary to the Civil law, which favs partum suivit. 9 Rich. 2. cap. 2. See Statutes. Ancient lords of manors hold, gave or assigned their bondmen and women, Cowell, edit. 1777. See Statutes, pars. 54.

**Neffy.** There was an ancient writ called writ of neff, whereby the lord charged such a woman for his neft, wherein but two neifs could be put; but it is now quitted of use.

He insuite vers, is a writ that lies for a tenant, who is disfranchised by his lord for other services than he ought to perform, and is a prohibition to the lord, common part, and his officers. The special use of it is, where the tenant has formerly prejudiced himself, by performing more fervices, or paying more rent without contrant than he needed; for in this case, by reason of the lord's fein, he cannot avoid him in aversely, and therefore is driven to this writ, as his next remedy. REG. OF W.R. fol. 4. 9th praet. f. 10.

Re recipitum. See Trial. He becomes, Colore mandatis Regi, quemquam animae a possessio e celibus minus yuje. Reg. of W.Rts, fol. 61.

**Nevis** and St. Christophers. The sum of 103,031 14s. 4 d. distributed among the proprietors and inhabi- tants, 9 Ann. c. 23, 25. 88. 10 Ann. c. 34. Gen. c. 32. 8 Gen. c. 10. 20. 43. 13 Gen. c. 1. f. 3. fec. 10 1 Gen. 2. 8. 2 c. 8. 24. Newcullfe upon Tyne. Kcels in the haven to be measured and marked, 9 H. 5. c. 10. 30. Car. 2. a. 1. 6 & 7 W. 3. c. 10. Things may be shipped in the harbour but at Newcullfe, 21 H. 8. c. 18. Fifth, falt or provisions excepted, 21 H. 8. c. 18. f. 5. The mayor, &c. of Newcullfe may pull down we in the river, 21 H. 8. c. 18. Gatesfide annexed to Newcullfe, 7 Ed. 6. c. 10. Re- pealed, 1 M. b. 3. 4. 3. Goldsmiths, silversmiths and plate-workers incorporated, 1 Ann. f. 1. c. 9. sect. 4. Newfandland. See Fish, Grenland.

Newgate marketplace, To be leased to the city of London, 22 Car. 2. c. 11. sect. 61. Newhaven. See Yarmouth. New inn at the sign of High. The poll for knights of the shire may be adjourned to, 7 & 8 Will. 3. c. 25. f. 10.


New York, Salt how imported from Europe thither, 3 Geo. 2. c. 12. Nolal, Anciently used for Lincoln. In fato petitionum in turri London, 30 Ed. 1. 7 Ed. 1. & seipse ante. Cowell, edit. 1727. New conveyance, Is an exception taken to a petition as unjust, because the thing desired is not contained in that act or deed wherein the petition is grounded. For example: One of the court to be put into pos- session of a houfe, formerly among other lands, &c. &c. judged unto him: The adverse party pleaded, That
Nitriculum Britones, Welfonem; because they lived near high mountains covered with snow, especially in Caernarvonshire; they are so called in our historians, — Cum adversus Nivicolos Britones Regia sit qvadvis, Du Cange, vol. ii. p. 838.

Quod, Was an ancient kind of English money now not in use; the value thereof, in the 34th year of Edward the Third, v. 1636, appears in the letters of John King of France, upon the treaty of peace between the same two Kings, where art. 13. you have these words: "Et aliquid de li et de domo regni de Anglia et tertii millium eius successorum," and this shows us the kind of Anglia and eightpence, but have no peculiar title of that name. Cowell, edit. 1727.


In the sixes times the Earls of counties being officiary, were elected by the great Duke in their folknotes, and were removable for male administration. See 23 Geo. 1. in marg. cites L.L. Edw. c. 35. L.L. Edgari, c. 5. L.L. Canonii, c. 17. and Saxux Chron. sub anno 1555.

Before the time of 11th Ed. 3. there were but two titles of honour, viz. Earls and Barons; Barons were originally created outside, afterwards added by letters of patent. And all by patent, viz. about the 11th R. 2. As to earls, they were first created by letters patent; and an earldom confided in office for the defence of the kingdom. See Brad. lib. 1. c. 8. Comites had their names not from counties, but a contrans Regem. 9 Rep. 49. It may be observe the same is still the case, and earldoms consist of rent and pollutions, which were anciently great. See Mag. Chart. The relief is 100l. per Habi Ch. J. 2. Salt. 509. Trin. 6 W. M. B. R. King and Queen v. Knolly.

At the time of the making Magna Charts, 9 H. 3. there was no Duke, Marquess, or Vizcount in England; for if there had been, they had, no doubt, been named in this charter. The first Duke that was created since the conquest, was Edward the Black Prince, in 11 Ed. 3. Robert de Vere, Earl of Oxford, in the 8th year of R. 2. created a great Duke in Ireland, and was the first Marquess that any of our Kings created. The first Vizcount that we find of record, and in parliament by that name, was John Beaumont, who in the 18th year of H. 6. was created Vizcount Beaumont.

Per Cote Ch. J. The dignities before the Conquest were not patronal, but of hereditary right; the hereditary right before the Conquest was in the hands of the King's feet, which and service were so paid that the King's feet were entitled to all the property of the King's feet, and right of all the property. But the nobility of the King's feet, and right of the nobility of the King's feet, were so paid that the King's feet were entitled to all the property of the King's feet, and right of all the property. The right of the King's feet, and right of the nobility of the King's feet, were so paid that the King's feet were entitled to all the property of the King's feet, and right of all the property.
A. the grandfather was called to parliament by writ
3 H. 8. A. died, and then B. his son was summoned to parliament several times by writ, and after was disabled by act of parliament to claim any dignity, &c. by defect, remainder or otherwise; B. being chosen C. his heir, was called to parliament by Queen Elizabeth by writ, and sat as youngest lord, and died, leaving D. his son; upon a petition by D. to be restored to the seat of A. his great grandfather it was referred to the judges, upon a reference to them by the committees, 14 H. 4. This being only a personal and temporary disability, and not an absolute and perpetual one, it being without any attendant, he may claim as heir to such disabled ancestor, or to any ancestors paramount, 2dly, That the acceptance of a new creation by C. cannot hurt D. because C. was disabled at the time, and in the same person, but an enquire only, for the old and new dignity defending together, the old shall be preferred. These resolutions were approved by the lords in parliament, and confirmed by the Queen, and thereupon D. was accordingly conducted to his legal seat. 11 Rep. 1. Ann. 39 Eliz. Lt. Delaware's cafe. See Peers.

Declaration. See Appovment.

Notes & nodum de firma. We often meet in Donofley with not nodus de firma, or firma not notandum, which is to be understood of entertainment for so many nights. See Donofley, tit. Epiftola. Rex hundred of Commonfords would, on their time redit, have mandatum denum de firma, & to lib. &S. Drink, or entertainment for so many nights. In the reign of the English Saxons, time was computed, not by days, but by nights, so we read in the council of Gl东南, anno 824. Et ibi finita & proferipta centuriae coram episcofo poll not nodus ilura juramenta, Wiffenfter delibatur id. And so it continued to the time of H. i. Leg. c. 66, 76, and from thence 'tis usual at this time to fay a fevenight or fortnight. Cowell, edit. 1727.

Nodjyes or Nodjy. Was a word well known among the Saxons to signify necessary fire, being derived from the Saxon neath, that is, necessary, and fy, &S. But the learned Spelman is of opinion from the old Saxon nead, i. abfegium; so that nodjyes were fires made in honour of the Heathen deities. Cowell, edit. 1727.

Nolla profequi, Is where the plaintiff will proceed no farther in his action, and may be as well before as after a verdict, and is stronger against the plaintiff than a non-joinder, because a non-joinder is a default for non-appearance; but this is a voluntary acknowledgment that he hath no cause of action. 2 Lit. P. R. 218.

In trepass of battery and imprisonment, &c. If defendant pleads Not guilty to part, and a justification for the residue, upon which a defendant is joined, the plaintiff by verdict may be for the demurrer by award of the court, in which the law is for him, and enter a nolle prosequi as to the issue. Tr. 15 Jac. in the Exchequer chamber, in writ of error upon judgment in B. R. Per curiam. Old Entries, fol. 545, tit. Trepass, pl. 13. A nolle prosequi for part, and judgment for the residue. Tr. 35 El. B. Ret. 1064. between Linacre and Kydnett, and others, in trepass accordingly. Tr. 9 Jac. B. R. 3301. Lawrence's cafe, in releu according. A. brought trepass against B. C. and D.—B. pleaded Not guilty, and to issue. C. and D. by jury. A. demurred. Pending the demurrer, the issue was tried against B. and damages and judgment against him. After judgment the plaintiff entered a nolle prosequi against C. and D. defendant brought error, and alleged for error, that the nolle prosequi discharged all the defendants. The plaintiff was not satisfied, that there was a nolle prosequi upon judgment before it was discharged the whole action, and so it had if the judgment had been against them all, and then the plaintiff had entered the nolle prosequi against the two, for nonfruit, or release, or other discharge of one, discharges the rest. But because he was an action against B. and D. defendant had against C. and D. for they are divided from B. and are not subject to damages against found him, it was adjudged, that he was not discharged, and so to no error. Hob. 70. Hill. 11 Jac. in com. spec. Parker v. Sir John Lawrentius, Verul and Wood. Jent 309. pl. 87. &c. and says, that if the nolle prosequi was not before, then, if I had not amounted to a release to them all, but only a waiver of suit. And where a judgment is given against two or three, in trespass or debt, a release of execution against one takes away the whole execution for the execution ought to be joined, as the judgment is. Where there are several issues, judgment may be entered as to one, and a nolle prosequi as to the other L. P. R. 114.

Domeniato, One that encroaches and opens the entry of names. Spelman verbo nomenclator, inter pretis to be hefuyonarius. Cowell, edit. 1727.

Domino paenea, Is a penalty incurred for not paying of rent, &c. at the day appointed by the lease, agreement for payment thereof. 2 Lid. 221. See Rent.

Dominability, Is an exception taken against the plaintiff upon some cause why he cannot come into law, as praetorium, praetor in region, excommunicate, or a stranger borne, which lack not only in actions real and mixt, and not in personal, except he be a stranger and an enemy. The Civilians say that such a man hath not praemium standi in judic. Cowell, edit. 1727.

Domino Bremia, Were payments made to a church, by those who were tenants of their farms, who now is a rent or duty claimed for things belonging to husbandry, and decline were claimed in right of a church. Cowell, edit. 1727.

Donapt, Is all that time of a man's age, under o and twenty years in some cafes, and fourteen in others as marriage. See Age.

Don allumpft, A plea in personal actions, where a man denies any promise made, &c. See Allumpt.

Downclalm, Is the omission or neglect of him who ought to challenge his right within a time limited, and which he is either barred of his right, as at the day upon non-claim within five years after a time, and to be given to him, according to the nature of 4 H. 7, 24, or of entry by his defeat, for want of claim within five years after the difffenf made, by the stat. 32 H. 8. 33 S. Claim, finit.

Non compus mentis, Is a man of no found memory and understanding, of which there are two sorts: First, An idiot who from his nativity, by a perpetual infirmity, is non compus mentis. Secondly He that by ficknels, grief or other accident, wholly loseth his memory and understanding. Thirdly, A lunatic, that is, sometimes ununderstanding, and sometimes not. Aquipando gaudet biclinci interdistant. Lastly, He that by his own act for a time deprives himself of his right mind, as a drunkard; but that kind of non compus mentis, shall give no privilege or benefit to him or his heirs; and a defeat takes away the entry of an idiot, or lunatic for a time was suspended. See Lib. 4. Beverley's case. See Jesuits and Lunatics.

Nonconformists, To be punished by imprisoner and to suffer in three months, or abjure the realm; El. c. 1. Keeping a nonconformist in the house after not subject to the penalty of ten pounds a month, 35 El. 1. sect. 8. Penail
The penalty or being at conventicles. 16 Car. 2. c. 4. 12 Car. 2. c. 1.

1. The act not to exempt them from tithes, 1 W. & M. c. 18.
2. Different ministers to be present at church courts, 1 W. & M. c. 18. 1727. See above.
3. The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3.

The penalties which are to be imposed, 2 Car. 2. c. 1. 1727. See also above.

The declaration, 2 Car. 2. c. 1. 1727. See above.

The acts for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The acts of the Parliament of Scotland, 17 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.

The act for settling the diocese of Edinburgh, 18 Geo. 2. c. 3. 1727. See above.
N O N

it—Cavest fii roon deferitns, quod infra 15 din terram, suam captam in manum Domini Regis repulsi, quod si non servit, ad eolumnam petitionis proximo dic plectit omittit fesiam terrae facta per saluati—Et ita datae necucr

at Callicre nonperiorne, & aput infitit, quod, 15 din dier dielieferia 99 pr. de reducta, promittit in M. A. f. cap. 137.

Non ponendius in affinis & iurislatis, a is a writ founded upon the statute of Wifmam 2. cap. 38. And Ar- tifici st public Chartus. cap. 9. which is granted upon di-

vers causes to men for the freeing them from ofiFicr & jurtis, particularly by reason of age. See P. N. D. fol. 169. and the Regist. fol. 100, 119, 181, 183.

Non procedendo a s leum Rege irnufacte, is a writ to stop the trial of a cause appertaining unto one that is in the King's service, &c. until the King's plea-

be further heard. Regist. fol. 73. &c.

Propos. If a plaintiff in an action, doth not de-

clare against the defendant within reasonable time, a rule may be entered against him by the defendant's attorney to declare; and thereupon a non pro. &c. Practif. Stic. 232. And a plaintiff may enter a non pro. against one defendant, where there are two or more in their plea, before the record of the cause is set down by nif. prors to be tried at the affises; but it is said there cannot be a non pro. at the trial at the affises. 3 Stat. 345. Tho' in action against several defendants, it has been ruled otherwise. 2 Stat. 456. Non pro. have been frequent upon informations; but never upon informations, till the reign of King Charles II. Bid. See Belfe pugilis. and Mouflon.

Non-repeute, is applied to those spiritual persons that are not reduct, but do absent themselves willfully by the space of one month together, or two months at several times in one year, from their dignities or bae-

fices, which is liable to penalties, by the statute against non-repeute. 21 H. 8. c. 13. But chaplains to the King, or other great persons, mentioned in this statute, and the 24 H. 8. c. 16. may be non-repeute on their livings; for they are excused from reper tune whilst they attend those that retain them: And bishop are not pu-

nishable by statute for non-repente; but if a bishop hold a deainty, parsonage, &c. in commision with his bishop-

rick, he is punishable by the flat. 21 H. 8. for non-re-

fence on the fame. Also where bishops are non-repeute on their bishopricks, they are liable to ecclesiastical cen-

fure; and the King may inflict a mandatory writ for their attendance, and compel them to it by fasting their temporarities, a notable precedent whereas we have in the case of the bishop of Hereford, in the reign of King Henry 3. 2 Eng. 625. See Reference.

Non-revisoria 999 Electi Regis. Is a writ di-

rected to the ordinary, charging him, not to make a chief of any suit to the King's service, by reason of his non revisoria. Reg. Orig. fol. 98.

Non fane memori. (Non fane memory.) Is an ex-

ception taken to any aet, declared by the plaintiff or de-

mandant to be done by another, and whereon he grounds his plaint or demand: And the effect of it is, that the party that did that act, was his own or the other's party, when he did it, or when he made his laif will and testa-

ment. See Non compos mentis.

Nonence. Where a matter fett forth is grammatical-

ly right but absurd in the sense, and unintelligible, we cannot reject some words to make sense of the rest, but must take them as they are; for there is nothing so absurd and nonsensical, but what by rejecting and omit-

ting may be made fene; but where a matter is nonsenfe by being contradictory and repugnant to what precedent, there the precedent matter which is sense enfer shall not be defeated by the repugnance which follows, but the precedent matter shall be rejected, as in ejec-

tion where the declaration is of a demife the 2d of J an-

uary, and that the defendant polla, selleter the 1ft of January, ejected him; here the felleter may be rejected as being expressly contrary to the polla, and the preced-

ing declaration. Ch. J. 1 Stat. 324. Trin. A. Am. B. R. Wray v. Andal. 1 Mer. Cas. 170. Words un-

necessary might in construction be omitted or rejected, 

tho' they are not repugnant or contradictory, but in ca-

ercis annuis agreed with the Ch. J. Ibid. See Schrrtr. Non solendo pernium, ad quam elecricm muntra

ut pros non reffectu. Is a writ prohibiting an ordi-

nary, or a plaintiff in an action, from giving a demife of the King's for non-repeute. Reg. of Writs, fol. 59.

Non-suit. (Non suti processus, &c.) Is a renunciation of the fuit by the plaintiff or defendant, most commonly, upon the discovery of some error or defect, when the matter is not well pleaded in, as the jury is ready at the bat to deliver their verdict. The Civicard term it Litt renunciationem. Conv. Where a plaintiff is demanded and doth not appear, he is said to be non-suit; and this usually happens, where upon the trial, and when the jury are ready to give their verdict, this plaintiff discovers some error or defect in the proceedings, or is unable to prove a material point, for want of a necessary witness, &c. and thereupon the plain-

tiff may be demanded, (as he must be) his default is recorded by the feudatory, and the entry is in mifercordia quia his processus est brevis fumus; upon which the defendant re-

covers his costs against him: but this arising from from

 copsit put prepul amended, by his being non-suit, it shall be intended that he had a such cause of suit as he declared in, and so that decla-

 ration is void, and he hath no day in court. 2 Lit. Reg.

231. 3 Bar. Ab. 679.

1. Who may be non-suit; and in what actions, and at what time there may be a non-suit.

2. How the non-suit of one shall be the non-suit of a other; and how far a non-suit for part of the thing in a mand shall be a non-suit for the whole.

3. Of the effect of a non-suit, and of its being a sent

verary.

1. Who may be non-suit; and in what actions, and at what time there may be a non-suit.

It is everywhere agreed, that the King being in no po-

sition of law always present in court, cannot be no-

suit in any information or action wherein he himself be the sole plaintiff; but it is held, that any informer or plaintiff in any popular action, may be non-suit, if he do not well in respet of the King as of himself. Bro. Nov. 68. Co. Lit. 139. b. 2 Rell. Ab. 131.

If an infant bring an affiay by guardian, albo't an infant disfavo the fuit in proper person, yet no mand shall be awarded. 39 Ed. 1. 2 Rell. Ab. 130. S. C. Where an infant need not name his executor, he shall pay costs upon a non-suit, and the naming his self executor shall not exempt him from it. 6 Ed 18.

If an attorney of the Common Pleas fues an acti there, he shall not be demanded, because he is supposed always present aiding the court. 2 H. 6. 44. A. 1. Ab 581. S. C.

A perdon may be non-suit in a writ of error. 2 R. Ab. 130. 1 Sid. 255. S. P.

A perdon may be non-suit in a writ of false judg-

20 H. 6. 18. 2 R. Ab. 130. S. C.

A person may be non-suit in an action in which he is an acter or defendant; and tho' he afterwards becomes an acter, yet not being originally so, he cannot be non-suit as an avowant; so of garnishers who become actors, they were not so originally. 22 Ed. 4. 10.

So if a perdon outlawed hath a charge of pardon, &c fues a faire acter a fuit against the party, tho' hereby he is an acter, yet he cannot be non-suit. 2 Rell. Ab. 130.

So if a man traverse an office he cannot be non-suit albo' he is an acter, for he hath no original pend against the King. 2 Rell. Ab. 130. Dyer 141. pl. 31. this is made a quare.
...
nonuit of one plaintiff the nonuit of both. Ca. Lt. 139 a. Cro. Eliz. 88 b. 5. Such nonuit in no peremptory in an attaint, but a discontinuance in an attaint is not; because there is a judgment given upon the nonuit, but not upon the discontinuance. Ca. Lt. 139 a.

For more learning on this subject, see 15 Vin. Abr. tit. Nonuit; and see Costs, Damages, Proceses.

Non funi infuinct. See Statutes non fun. Non mentione, is an exception to a count, by saying, that he holdeth not the land specified in the count, or at least some part of it. 25 E. 3. fl. 14. 5. Non instruments, makes mention of non-tenure general, and non-tenure special. Special non-tenure is in all cases, that he was not tenant of the land when the writ was purchased. Non-tenure general, is when one denies himself ever to have been tenant to the land in question. Coquil. editt. 1777. See 15 Vin. Abr. tit. Non-tenure.

Notwithstanding, (Non-terminus) is the time of vacation between term and term; it was wont to be called the time or days of the King's peace. Lamb. Archid. fol. 126. And that these were in the time of Edward the Confessor, see there. This time by the Romans, was called juliijum or feriae, or dies nonitii; Feriae appellati nonum aut tempus illud, quod foresatibus neguiti & jure di- cendo vocabantur. earum namum alien felonies coronat. Briffon de laish. Sigil. lib. 6. Wenefac. par. de Ratis, num. 6.

Look of land, (Nota terre) Universi passat quod ego f. quae sui uter W. B. — tradidi, & H. A. unam offens. & unam nonam terrae sum perin. in villa de M. Dist. apud Sudesston, 5 E. 3. In an old deed of Sir Walter de Pedderwdryn, 12 acres and an half were granted for a nook of land; but the quantity was not certain. Ilia qui tenuerunt dimidium vurgamenta terrae, vel matam terrae, vel catagium de kindagii terrae. Dugul. War. p. 609.

Northfolk, Northwyth and Suffolk, Who may buy instruments for felling in Northfolk, 31 Ed. 3. fl. 3. c. 2. Worthed makers in Northwich may have two apprentices.

Of rebuilding the houses in Northwich, 26 H. 8. c. 8.

Bishop of Northwich chargeable with the collection of the King's tenth, 32 H. 8. c. 47.

Only weavers in Northkill may worseth yarn in North or Norfolk, 33 H. 8. c. 16. 1 Ed. b. c. 6.

For repairing the wall, bridges, &c. 12 Gen. 1. c. 15.

Patents, &c. regulated, 3 Gen. 2. c. 8.

None but inhabitants to be elected sheriff of Northwich.

20 Gen. 2. c. 21.

Norroy, As much as to say, Norroy, that is, the northern King. The third of the three Kings at army, and his office lies on the northside of Trent, as Clarimont on the south: He is mentioned in the statute 14 Car. 2. cap. 33. See Herald.

Northampton, Statutes made there, 2 Ed. 3. for building the town, 27 Hen. 8. c. 1. 27 Car. 2. c. 1.

Northleach, &c. are the office of the sheriff, how founded and incorporated, a 3 Jac. 1. c. 7.

Northampton and northern counties, Proces of outlawry to be awarded against felons dwelling in Tindale and Herchamhires, 2 H. 5. c. 5.

Against those of Redkelfost, 9 H. 5. c. 7.

Gathering of local pense by the sheriffs of Northumberland, prohibited, 23 H. 6. c. 6.

Process of the warden court shall only be executed in Cumberland, Westmorland, Northumberland and Newcastie, 31 H. 6. c. 3.

Tindale made part of Northumberland, and the farmers to find surety to stand to the law, 11 H. 7. c. 9.

The county court shall be kept at Alnwick, 2 & 3 Ed. 6. c. 25. sed. 3.

The sheriff shall account as other sheriffs do, 2 & 3 Ed. 6. c. 3.

Inquiry in the decay of houses and tillage in the northern counties, 2 & 3 P. & M. c. 1.

Hexhamire united to Northumberland, 14 Ed. 1. c. 13.

Commission to inquire of the decay of houses in the northern parts, 23 Ed. 1. c. 4.

Banished for being made felony in the northern counties, 43 Ed. 1. c. 13.

For repressing robberies in the northern counties, 43 Ed. 1. c. 13.

Provisions for preventing theft and rape upon the northern houses, 7 Jas. 1. c. 13 & 14 Car. 2. c. 22. 20 & 21 Car. 2. c. 2. 24 Car. 2. c. 57.

Benefit of clergy taken from notorious spoil-takers in Northumberland, &c. or justices of assize, &c. may transport them not to return, 18 Car. 2. c. 3.

The acts for preventing theft and rape upon the northern borders shall be deemed public acts, 6 Gen. 1. c. 3.

North Wales. See Wales.

Northwich. See Northfolk.

Nor, Sifting or cutting it off, where felony, 22 & 23 Car. 2. c. 1. See Wmning.

Notary, (Notarius) mentioned in fl. 27 Edw. 3. cap. 1. is a writer or scrivener that takes notes, or make a short sight of contracts, obligations or other testamentary instruments. Claus. Edw. 2. m. 6. Scholium consecuta side memb. de notariis imperialibus non admissiti. At this day we call him a notary or public notary, that atted deeds or writings, to make them authentic in another country, but principally in business relating to merchants. Ca. Simon. 1777.

Note of a fine,Nota finis, Is a brief of a fine made by the scrivener, before it be ingreighted; the other, whereof see in Wm. Symbol. part 2. tit. Finis, foli. 11.

Notes promissory, See Bills of exchange.

Not guilty, See Non est culpabilis.

Notice, Is the making something known, that a man was or might be ignorant of before: And it produceth divers effects; for by it the party that gives the same shall have some benefit which otherwise he should not have had; And by this means, the party to whom a notice is given, is made subject to some action or claim that otherwise he had not been liable to, and his eff at will in practice of law. Ca. Lt. 359. fasc. 1.

The plaintiff and defendant are both bound at peril to take notice of the general rules of practice this court; but if there be a special particular rule made for the plaintiff, or for the defendant, he whom the rule is made ought to give notice of this unto the other; or else he is not bound generally to a notice of it, nor shall be in contempt of the court, though he do not obey it. 2 L. P. R. 204 cites Py 24 Car. B. R.

If a declaration be engrossed and put into the off., although it be not filed, yet is the defendant's answer not barred of it. Mich. 2 the party is not the duty of the plaintiff's attorney to put the declaration into the office, and the officer in the office, to file it; and though it be not filed, yet may the defen- dant's attorney take a copy of it. 2 L. P. R. 235.

The plaintiff or defendant are both bound to take notice of such rules of the court as do concern the party; And of the rights of their own Rhode. 22 Car. B. R. 236. cites Hild. 22 Car. B. R.

When counsel are to argue a matter in law in court, the judges ought to have notice thereof given unto them before the day, except it be where the court have appli- cated a day for it: Or if there be not such notice given, then the cause is to be put in the paper of cases, that it may come on in court to be spoken unto. 1. 2317.
Novel diffidui, Such affine, and affine of Morden-

er, where, and before whom to be taken, M.C. 9

H. 3. 2d. St. Woen. 2. 13 Ed. 1. c. 1. c. 10. 30.

May be adjourned for difficulty, M.C. 9 Ed. 3. c. 12.

2 H. 4. c. 7.

Re-diffidui, how to be inquired of and punish'd, 20

H. 3. c. 3. 13 Ed. 1. 1. 1. c. 26.

In what cases an affine of novel diffidsn lies, St. Woen.

1. 3 Ed. 1. c. 24. St. Woen. 2. 13 Ed. 1. c. 18,

25. 45. 46.

And at what times, 3 Ed. 1. c. 51. 13 Ed. 1. 1. 1.

c. 10. 30.

Tenants may plead by bailliff, 13 Ed. Ed. 11. c. 25.

34 Ed. 1. 1. 1. c. 1. 12 Ed. 2. 1. 1. c. 1.

c. 1. c. 25. 34 Ed. 1. 1. 1. c. 1.

The danger, how to be made, 13 Ed. 1. c. 1. 1. c. 25.

What the judgment on a diffidui with robbery or forces,

3 Ed. 1. c. 37. 4 H. 4. c. 8.

What to be done on a plea of jointenancy, 34 Ed.

1. 1. De conjunctio sex.

An affine of novel diffidui given against the perron

of the profits, 1 R. 2. 2. 9. 4 H. 4. c. 7. 11 H. 6.

3. c. 3.

May be taken against the paternce of the crown, 1

Hin. 4. c. 8.

Copies of the panel to be delivered to the parties six

days before the seisions, 6 H. 6. c. 5.

See Affire of Novel Diffiduit, and Diffiduim.

Novellae. Those conftitutions which were made by

emperors after the publication of the Theofidun Codis,

were called Novellae. Accurso calls the faltate edition by

that name; and that barbarous translation which was made

in the time of Bagaudas, he calls the authentick,

which are books of the Civil law. Cowell, edit. 1727.

Nople. No perfon foall put any noyfles, ficks, thums,

hair, or other decrivble thing into any broad wolloon cloth,

&c. 22 Jan.

Nurc colligere. To gather small nules, or hazle

nules. This was one of the works or fervices impofed


Pude couracat, (Novum pattum) Is a barren promise

of a thing, without any consideration; and therefore we

fay, Ex modo paeno non vireat eft. Cowell, edit. 1727.

See Confeiration.

Pude matter. See Matter.

But fefl record, Is the plea of a plaintiff, that there

is no fuch record, on the defendant's alleging matter of

record in bar of the plaintiff's action. See Failure

of record.

Numen. Civitas Cant. redd. 24 l. ad numeram,

Domeday; that is, by number or tickets, as in his

fale. And Libro penfata vel ad pandas, was by weight.

Pecunia in numeris, ad numeram, numeratas, was the

ancient and ufual refervation, and tuppofed to be intended

in all grants, unless the contrary was exprefTe:

Hale of Sheriff's accounts, pag. 25.

Numerum. Dicat cum Dominis terre, and thought to

contain an acce; Saciat me (Jo. Will.

Longepe) defidii & concifii ecclefiæ S. Maris de Waling-

ham & canonicis idem Des fervitutum in perpetuum

Elevemam 45 numerum terra in Walthamge, que

fatis decent & Briti, fcrifi, pro a fide Walthamhe, libere,

quiete & honoris abfine omni tortu & omni confraudat

Spelem.

Summata. Signifies the price of any thing by money,

as demania doth the price of any thing by comptuation

of price, and liberto by comptuation of pounds.

Cowell, edit. 1777.

Summata terre, Is the same with Denariatis terre,

and thought to contain an accce; Seatis me (Jo. Will.

Longepe) desidii & concifii ecclefiæ S. Maris de Waling-

ham & canonicis idem Des fervitutum in perpetuum

Elevemam 45 numerum terra in Walthamge, que

fatis decent & Briti, fcrifi, pro a fide Walthamhe, libere,

quiete & honoris abfine omni tortu & omni confraudat

Spelem.

Summata. Signifies the price of any thing by money,

as denaria doth the price of any thing by comptuation

of price, and liberto by comptuation of pounds.

Cowell, edit. 1777.


Summ. (Nonna,) Signifies a holy or consecrated virgin,

or a woman that hath by vow bound herself to a single

and chaffe life in some place and company of other

women, separated from the world, and devoted to an efpecial

service of God, as a mother, wife, falling, and such like holy

exercises. St. Hieron tells us, this is an Egyptian word,

as Hafiiunian recordeth of him in the book De Originis &

Pragrius Monachistas, fol. 2.
N U S

Penurious will. See Will.

Supr obit, is a will, that lies for a coheiir, being desirous of her commoner of lands or tenements, of which the grandfather, father, uncle, or brother to them both, or any other their common ancestor, died freed of an estate in fee-simple. See the form of the writ Reg. Orig. fol. 226, &c., and Fitzc. Nat. Brev. fol. 197.

But if the ancestor died freed in fee-fain, then the coheiir or her demand must be void. Ibid. But where the deforced flall have once freed, and dild not perfected of the posfition, but in reversion; in fuch a writ a right of rationa-

bili partes lies for the party.


This of the now generally are brought aotions of tref-
s, and upon the cafe. Cowell, edit. 1727.

A common nuisance is an offense against the public, or is any thing tending to corrupt the manners of both sexes, by such an open profefion of lewdnes.


Also it hath been adjudged, that this is such an offense, of which a fake covert may be guilty as well as if the were male; and that doe, together with her husband, may be indicted and condemned to the pillory for keeping a bawdy-houfe; or for the keeping the house does not the

cellarily import property, but may signify that fcare of government which the wife has in a family as well as the husband; and in this file is prefumed to have a confiderable part, as these matters are usually managed by the intrigues of her sex. Salk. 361. The Que. v. William.

It is clearly agreed, that all common gaming-houses are nuisances in the eye of the law, being deterrimental to the public, as they promote cheating and other corrupt practices, and incite, to idlenes and avairious ways of gaining property, great numbers, whole time might otherwise be employed for the general good of the community; also it hath been adjudged, that this is such an offense, for the landlord may be indicted; for as in the preceding cafe, the wife may be concerned in acts of bawdry; for she doe may be active in promoting gaming, and furnishing the guests with all conveniences for that purpose. 1 Haw. P. C. 1038. Trin. 2 Gen. 1. The King v. Dixon.

It seems to be the better opinion, that all common flages for rope-dancers, &c., are nuisances, not only because they are great temptations to idlenes, but also becaufe they are apt to draw together numbers of disorderly per-

sons, which cannot but be very inconvenient to the neighborhood. 1 Med. 76. 2 Reb. 848. 3 Reb. 404. 1 Will. 169. 1 Med. 122. 1 Haw. P. C. 193.

But it seems the better opinion, that playhouses having been originally inftituted with a laudable defign of re-

commending virtue to the imitation of the people, and expofing vice and folly, are not nuisances in their own nature, but may only become fuch by accident; as where they draw together fuch numbers of coheirs or people, &c., as prove generally inconvenient to the places adja-
cent; or when they pervert their original intenfion, by recommending vicious and loose characters under beau-


And now, for the better regulating of players and playhouses, by 10 Geo. 2, it is enacted, "That every perfon, who shall for hire, gain, or reward ad, represent or perform, or cause to be acted, represented or performed above, as opera, plays, farces, or other entertainment of the stage, or any part or parts therein, in cafe fuch perfon shall not have any legal fett-

element in the place where the fame shall be acted, repre
dented or performed, without authority by virtue of letters patent from his Majesty, his heirs, successors or predeceffors, or without licence from the Lord Chamberlain, or his Majesty's household, for the time being, fhall be deemed to be a rogue and a vagabond, within the intent and meaning of the 12 Ann. and shall be liable and sub-
ject to all fuch penalties and punishments, and by fuch methods of conviction, as are inflected on, or appoyed by law, for the punishment of rogues and vagabonds, who shall be found wandering, begging and mis-

 ordering themselves, within the intent and meaning of the faid act."

And feil. 2. it is further enacted, "That if any per-

son having, or not having a legal settlement as aroiled felf, or any other authority or licence as afoferted, shall be or cause to be acted, represented or performed for hire, gain or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any new prologue or epile-

ogue, unless the copy thereof be lent to the Lord Cham-

berlain of the King's households for the time being, in 1 day at least before the acting, representing or performing thereof, together with an account of the playhouse, or other place, where the fame shall be, and the time when the same is intended to be full acted, represented or per-

formed, signed by the maffer or manager, or one of the

matters or managers of such playhouse or place, or com-
pany of actors therein."

And feil. 3. it is further enacted, "That no perfo-

n shall for hire, gain or reward, ad, perform, represent, or cause to be acted, represented or performed, any new interlude, tragedy, comedy, opera, play, farce, or any entertainment of the stage, or any new prologue or epilogue, unless the copy thereof be lent to the Lord Cham-

berlain of the King's households for the time being, in 1 day at least before the acting, representing or performing thereof, together with an account of the playhouse, or other place, where the fame shall be, and the time when the same is intended to be full acted, represented or per-

formed, signed by the maffer or manager, or one of the

matters or managers of such playhouse or place, or com-
pany of actors therein."

And feil. 4. it is further enacted, "That it fhall as may be lawful to and for the faid Lord Chamberlain to the time being, from time to time, and when and as often as he fhall think fit, to prohibit the acting, per-

forming or representing any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage or any ad, scene or part thereof, or any prologue or epologue; and in cafe any perfon or perfons fhall be acted, hire, gain or reward, ad, perform or represent, or cause to be acted, represented or performed, any new interlude, tragedy, comedy, opera, play, farce, or other entertain-

ment of the stage, or any ad, scene or part thereof, or any new prologue or epologue, before a copy thereof be
d be lent as afoferted, with fuch account as afoferted; That if he ad, perform, or cause to be acted, represented or performed, any new prologue or epologue, before a copy thereof be lent, the perfon offending, or fuch offender, fhall forbe the repre-
By the like order any person can be committed for such an offence as is mentioned in the foregoing instance, to be kept in prison,

"whence was the proper relief according to the Common Law; insomuch as the birds were accounted man's property. But it is said, that a dove-cote newly erected in a man's field, was the lord's biccor to make an action on the case, at the suit of the lord. 5 Roll. Atr. 178. Poph. 141. Cro. Jac. 382. Gudb. 259. Cro. Eliz. 548. 1 Roll. Rep. 136. 200. 2 Roll. Rep. 3, 4, 34. 5 G. 4. M. 228."

It is clearly agreed to be a nuisance to dig a ditch, or make a hedge over-thrust an highway, or to erect a new gate, or to lay out of timber in it; or generally to do any other act which will render it leis commodious: But it seems that a gate, which has continued time out of mind, is no nuisance; but that the same may be justified by prescription, being at first intended to have been set up by consent, on a compropion with the owner of the land, or the laying out the road in which case, the people had never any right to a free passage that was nothing but enjoy. 1 Jones 221. Cro. Car. 184. 1 Bull. 203. 2 Roll. Atr. 137.

And as navigable rivers are deemed highways, it is a nuisance to divert part of the river, whereby the current of it is weakened, and made unable to carry vessels of the same burden as it could before; also the laying of timber in a common river, tho' the foil belong to the party, is equally a nuisance, as if the foil was not his, if thereby the passage of boats, &c. is obstructed; and hence also it seems to follow, that private stairs, from those houses that stand by the Thames into it, are common nuisances: but it seems, that where there are cuts made in the bank, that are not annoyances to the river, the timber lying there is no nuisance. 5 Mod. 405. 759.

It hath been held to be a common nuisance, to divide a houfe in a town from the inhabitant in; by reason whereof it will be more dangerous in the time of infection of the plague. 2 Roll. Atr. 139. pl. 3.

Bringing a great ship of 300 tons into Bollinggate dock, tho' a common dock, yet being only for small ships coming with provision to the markets of London, is a nuisance, in the same manner, as a man using with his cart a common pack and horse way, so as to plow it up, and thereby render it leis convenient to riders, is a nuisance indelible. 6 Mod. 145. The Queen v. Leech.

It seems the better opinion, that a brewhouse, glashouse, chandler's flop or tide for wine, set up in such convenient parts of a town, that they cannot but greatly inconvenient, to the commonwealth, and that therefore they are nuisances. 2 Roll. Atr. 150. Cro. Car. 510. Hutt. 156. Pohn. 536. 1 Nut. 26. 1 Keb. 500. 2 Mod. 138. Salk. 438, 460.

2. Of the indictment for a nuisance, how a nuisance is to be removed or abated; and how the offence is punishable.

Every nuisance, punishable by a publick prosecution, must be charged to be ad commune munimentum, or to the general annoyance of all the King's subjects; for if they are only injuries to particular persons, they are left to be redressed by the private actions of the parties aggrieved by them. 2 Roll. Atr. 83. 1 Hawk. P. C. 187.

And therefore an indictment for securing such a common or inclosing such a piece of ground, or disturbing such a water-course, or doing any other act, not apparently of a publick nature, to the nuisance of the inhabitants of such a town to, or of J. S. and his tenants, is not good. 1 Hawk. P. C. 199 and several authorities there cited.

So an indictment in a court leet for keeping a glasshouse at maximum munimentum was quashed; because it was not a nuisance, unless it had been ad commune munimentum. 1 Mod. 107. 3 Keb. 254.

But it hath been held, that an indictment for not repairing a bridge, for good usage Domini Regis transferrunt men Vex.
but it is clearly agreed, that common nuisances against
the publick are only punishable by a publick prosecution.
And that no action on the case will lie at the feet
of the party injured; as this would create a multiplicity
of actions, one man being as well invited to bring
an action as another; and therefore, in those causes, the
remedy must be by indictment at the feet of the King.
51. 10 Salk. 64. 2 Med. 204.

Corbi. 175. 1 Salk. 150.

But if by such a nuisance the party suffer a particular
damage, as if by flogging a highway with logs, &c.,
his horse is wounded or hurt, an action lies.
52. 10 Salk. 153.

Alfo an action lies for continuing a nuisance; as
where, for eradicating a nuisance 2 die Feir', the
defendant pledged a prior action, brought for eradicating a nuisance 2
die Martis, and a recovery thereupon, and averred state
to be the fame nuisance and ercription; and on demurrer
the plaintiff had judgment; for though he cannot have
a new action for the same erlication, yet he may for the
continuing the same nuisance. 1 Salk. 10.
For more learning on this subject, see 16 Vin. Abr. tit.
Nuisance.

Attenuating, (Nuis mafucct.) Is a spice well known
to all, mentioned among spices that are to be garbled.
1 Salk. 54.

Nutrition, Breed of cattle.—Quilkket faurmarius Dominus non debit debere equam mos fuculum neque

The seven antipodes or alternate hymn of seven
verses, &c., sung by the choir in time of Advent,

was called O, from beginning with such exclamations.
In the old fatures and orders for the church of St. Paul in
London, in time of Raph de Disce, Dean, there is one
chapter De Faciendo Oratione. Deit etiam necum refutatione
O faunum intus, &c. It done sine fest comes
completorum totum cerebri invocata, &c. Liber Sermonum
Ecc] London, Ms. fol. 86.

Oath, (Juramentum) Is a calling Almighty God to
witness, that a testimony is true: Therefore it is aptly
termed, Juramentum, a holy band, a sacred tie, or
belles lawis, a holy compact, on oath it is called a
claim. Juramentum; because when the party swears toucheth with his right hand
the holy Evangels, or book of the New Testament.
Coke, 3 par. Init. cap. 74. And anciency at the end of
a legal oath was added, So help me God at his holy done.
I. c. judgment. Black Book of Hare. fol. 46. It is call-
ed Cornutia purgata, because allowed by the canon, to
difluxitu from vulgar pervertitio, &c. by battle, or
by fire, or wrested stridio, which was alvays prohibited
by the church, and in small matters, which the plaintiff
could not prove, or if he could, and his proof was dis-
allowed by the court, the defendant might purge him-
self by his own oath; and this was called Jurare proprios
mutes; but in greater affairs he was to bring some other
credible persons, who were usually of the same quality or
condition with the plaintiff, and they were to swear, that
they believed what the defendant had sworn was true,
and those were called juramentales, whose number were
more or less, according to the quality of the criminal,
and to the fault or thing in question. If the defendant
was acquitted of a very great offence, of which there was
no proof, then he was to purge himself by the oath of
twelve such witnesses; and this was called Jurare duele-
tima manu. Leg. Hen. r. cap. 64. Cowell, edit. 1727.

A new oath cannot be imposed upon any judge, com-
mis or any other subject without authority of par-
liament; but the giving every oath must be warranted by
OAT

OAT

Directions for taking the oaths in England, to qualify for offices in Scotland. 8 Ann. c. 15.

Advocates, &c. in Scotland to take the oaths, 10 Ann. c. 2. f. 10. 20 Geo. 2. c. 43. f. 44.

All persons in office, &c. required to take the oaths, 1 Geo. 1. c. 13. f. 21.

Seamen and soldiers under the degree of commission or warrant officers to pay nothing for taking the oaths, 1 Geo. 1. c. 13. f. 31.

Alterations of the oaths to be taken by preachers in Scotland, 5 Geo. 1. c. 20.

All persons required to take the oath, or register their oaths, 9 Geo. 1. c. 12. 10 Geo. 1. c. 4.

Perfons in the Fleets, or beyond the seas, to take the oaths after their return, 13 Geo. 1. c. 29.

Perfons continued in office for six months after the death of the King, not obliged to take the oaths, 1 Geo. 2. f. 1. c. 5. & c. 23.

Six months time given to officers and others to take the oaths, &c. 2 Geo. 2. c. 2. f. 21. &c. 4.

Time for taking the oaths and the sacrament enlarged to six months, 9 Geo. 2. c. 26. f. 2.

Chaplains, schoolmasters, &c. in Scotland, to take the oaths, 21 Geo. 2. c. 32. f. 18. &c.

Further time allowed to members of corporations to take the oaths of office, and, upon their admissions, 23 Geo. 2. c. 3. 29 Geo. 3. c. 32. f. 2.

Farther time allowed persons who have omitted to qualify themselves for offices, 28 Geo. 2. c. 24. 29 Geo. 2. c. 32. 33 Geo. 2. c. 29. 1 Geo. 3. c. 12. 2 Geo. 3. c. 13. 3 Geo. 3. c. 5. 5 Geo. 3. c. 4.

2. The force of an oath, where there is oath against oath; and in what cases the plaintiff's oath is necessary.

By Grym Ch. J. Trin. 1656. B. S. If oath be made against oath, in a cause depending in court, this is a non liquet to the court, by which oath is true; and where the court will take that oath to be true which is to affirm a veridic judgment, or other oath of the court, and not that which is made to destroy them; for this tends more to the honour of the court, and to the expediency of justice. 2 L. P. R. 47.

The court will rather believe the oath of the plaintiff than the oath of the defendant, if there be oath against oath; because it is suppos'd, that the plaintiff hath wrong done him, and that the defendant is the wrong-doer, and may therefore be rather suppos'd to swear falsely to protect himself from the justice of the law, than the plaintiff that is forced to fly to the law to obtain his right. Pach. 47. 2 L. P. R. 247, 248.

Where there is a suit in Chancery, and there is a single witness against defendant's oath, 'tis not sufficient evidence to decree against him, nor will the court after that fend it to be tried at law, where one witt|fie is insufficient. Hill. 1632. 2 Vern. 283. Christ College v. Witherspoon.

There being oath against oath, whether a plea came in in time, it was referred to a trial on a saigned issue, to satisfy the confidence of the court, and in the mean time the judgment to stand. Comb. 399. Mich. 8 W. 3. B. R. Collins v. Lowley.

Where the defendant denied notice of the plaintiff's title, which the plaintiff proved by one witness; by the usage of the court of Chancery it is not sufficient to ground a decree for the plaintiff, being oath against oath; but the cause has been to direct a trial at law. It was now said by the Lord Keeper, that he did not fee the difference between doing it per prora and per pacu|eras; for that it was no law to be tried where the jury will certainly find it on the testimony of one witt|fie, and then decreeing it on that verdict, is the same thing as decreasing on one witt|fie without any trial at all; and therefore directed it to be tried; but that the plaintiff should admit the defendant's answer to be read at the trial, not as evidence, (for that he said it could not be) nor should they admit it to be true, but to be sworn to; so that defendant might have the benefit of his oath at law, as in this court, if it would weigh any thing with the jury.

When a bill alleges the want of a deed, and seeks relief on the matter of that deed by a decree, there oath is ne-
cessary that he hath not the deed. But where the bill seeks
no deed, but barely to be relieved of the moiety or to have the deed produced at a
trial, in that case the plaintiff ought not to be put to his
oath. Trin. 14 Cor. 2. 1 Chan. Cheri, 11 Ann. -

But where no relief can be had at law on the deed, if
not lost, but the remedy is only in equity (as in a case of
coercion for further assistance) - then oath need not be
made of the lost, per North Ch. J. 2 Med. 173. in the
case of Howard v. Attorney General. Where the bill is
for the discovery of deeds generally, and not of a particular
bond or deed, oath need not be made of the plaintiff's
not having them. Per Lord Macaulay. Ch. Pray. 536.
and between you. If the party seeking relief alleges, upon any deed
or bond, to recover the money upon the bond, or the
profit of the land under the deed, in these and the like
cases there must be an affidavit; because such a bill does
by consequence seek to transfer the jurisdiction from
the Common law to the court of equity. Per King C.
And. 542. (the next day) Saunders v. Stephen.

Obedientia. Was a rent, as appears out of Roger
Hovenden, parte pyler, Annal. jur. pag. 430. in the
Canon law it is used for an office, or administration
of an office; and thereupon the word obedientiales is used in
the provincial constitutions, for those which have the
execution enjoined upon them by the abbot; and, in more
refrained sense, the cells or cells which formed for the
abbey to which the monks were wont, vi ejusdem
obedientiae, either to look after the farms, or to collect
the rent, which were likewise called Obedientia. So in
Matt. Parif. ann. 1213. In quibud bullion quo obedien-
tiae dependentis, &c. Cowell. edid. 1727.

Obit. (Lat.) Signifies a funeral solemnity, or an office
for the dead, most commonly performed at the funeral,
when the corpse lies in the church uninterred: Also the
anniversary office. Cro. 2 par. fol. 51. Hillioway's case.
It was held 14 Elia. Dyer 375. That the tenure of obit
or chanty lands held of subjicib, is extinct by the act of
1 Ed. 6. 14. See also Cro. 2. cap. 9. The anniversary
of any person's death was called the obit; and to observe
such day with prayers and alms, or other commemoration,
was called keeping the obit. In religious houses, they
were a register or calender, wherein they entered the obits or
obitual days of theirfounders and benefactors, which was
there called the Obituary. Cowell. edid. 1727.

Obharratianis, Scolds or railing women. Id. ii.

Obhata, Properly offerings: But in the Exchequer it
signifies old debts, brought together from precedent years,
and put to the present thief's charge. Prat. Exchev.
78. Also gifts made to the King by any of his subjicib, which
he has accepted of, or taken for his King 's own and
Henry the third, that they were entered in the Fine Rolls,
under the title Obhata; concerning which see Phillips his book of the antiquity and legality of royal
purveyance. Speelman's Glossary, and Pepys's
Aurum Regnum. Cowell. edid. 1727.

Obligations. See Enquiries.

Obligation. (Obhagitas.) Is a bond containing a pe-

nalty, with a condition annexed, either for payment of
money, performance of covenants, or the like, and so
differs from a bill that hath no penalty nor condition;
and yet a bill may be obligatory. Co. on Litt. fol. 172,
and Wiff. Synthet. part. 1. b. 2. sect. 126.

Obligation, says my Lord Cave, is a word of its own
nature of a law or precedent, but it is usually taken that
the Common law for a bond, containing a penalty with con-
dition for payment of money, or to do or suffer some
act or thing, and a bill, fast he, is, most commonly
taken for a single bond without condition. Co. Lit.
172.

This security is also called a specificity; the debt being
particularly specified in writing, and the party's seal,
acknowledging the debt or duty, and confirming the
contract; rendering it a security of a higher nature than
to be entered into without the solemnity of a seal; and
therefore bonds or specialties shall be preferred to simple
bonds. When the object of administration is either in-
being a higher security, it is held, that for a breach of
non-performance an action of debt only will lie. 3 Bat.
Adv. 690.

1. Of the nature of the security, called a bond or ob-
gation.

2. What words create such a security; and of the
necessary requisites to a bond or obligation; and of fasting
sealing, date and delivery.

3. How may obhibors and obligees, and of making
feral obligors and obligees.

1. Of the nature of the security, called a bond or ob-
gation.

A bond or obligation is a duty or weight which advi-
ded to the obligor or debtor, let it be contracted where it w ill
and let the debtor fly to what place he pleases, and be
chargeable every where, it need not be dated from an
particular place; and therefore usually begins with Not.
An obligation is a promise to pay the
lay a place where it was made, that it may receive its
if it be denied. Cro. Lib. 773. Salt. 441. 3 L.
348. 6 Mod. 223.

A bond is a chope in action, which cannot be affi-
ged over; so as to enable the affiance to sue in his own
name; yet he has by the affiance such a title as
the instrument and wax, that he may keep or cancel it.
Lit. 232.

Also in equity a bond is assignable for a valuable
consideration paid, and the affiance alone becomes
herent the money; so that if the obligor, after notice of
affiance, pays the money to the obliger, he will
compelled to pay it over again. 1 Term. 595. 3 Ed.
45. 10 Mod. 137.

The affiance must take its, subject to the same equi
that it was in the hands of the obligee; as if, on a ma-
riage treaty, the intended husband enters into a marriage
brokerage bond, which is afterwards assigned to credi-
yet it still remains liable to the same equity, and is
is to be carried into execution against the obliger. 2 Per
595. 10 Mod. 44.

Bonds are to be considered as securities for the per-
formance of contracts, and are usually entered into with
parties, which are to be considered as compensations for
the breach of the contract; as that a man shall pay 5l.
he omits to pay 100l. within such a time, that
shall pay so much; if he does not perform such as
conditions, do or omit such and such acts; and in the
he may cede fines, provided he be not liable in the
self, or injurious to the publick, &c. Term. 19
2 Mod. 201. 1 Sand. 66.

In consideration of the bond of such a sum, on con-
dition to be void on payment of a letter sum; or if
man bind himself in the penalty of 100l. that he
pay 5l. by such a day; after the day of payment is
the penalty or sum of 100l. is the legal debt; and
so much it hath been resolved, an executor of an obi-
r of such and what may be obtained at the election of his
Cro. Car. 450. 1 Vent. 354. 3 Leys. 5
Hill. 9 Geo. 2. R. The Bank of England v. Murp-
And as the penalty, by the bond being forfeited, becomes the legal debt; so there was no remedy against such penalty, but by application to court, and certifying in the bills, and paying the principal, interest and costs; and so there was no remedy beyond the penalty; because in that the obligee seems to have taken up his security; yet, as it is on the conditioning of doing equal justice to both parties that equity is made, and that which relieves those cases, on payment of principal, interest and costs, then exceeding the penalty. 

Samuel. Par. Ca. 15. 11. 

And this rule of compelling the party to do equity who has the cause seems to be the reason why an obligee shall have after he has entered upon judgment; for tho' it be true it may be accounted his own fault why he did not take out execution, and therefore not intitled to the security; yet, as by the judgment he is intitled to the security, it does not seem reasonable that he should be prevented of it, but upon paying him principal and the costs, which incurred as well before as after the entering up of the judgment. 

Act. Eq. 92, 288. 

And by the 45 & 46. Ann. cap. 15. it is enacted, "That where any action of debt shall be brought on any single bill, or where an action of debt, or false fascia, shall be brought on such payment bill and may be pleaded in bar of such action of suit; and where an action of debt is brought upon any bond, which hath a condition or defeasance to make void the same, upon amount of a lessor sum at a day or some certain place; if the obligor, his heirs, executors or administrators have, by the action brought, paid to the obligee, his executors or administrators, the principal and interest due by the defeasance or condition of such bond, the such payment as not strictly made according to the condition or defeasance; yet it shall and may be pleaded in bar of such bond, and shall be as effectual a bar thereof, as if the action of debt had been brought and tried at the day and time of its being brought, and for the condition or defeasance, and had been so pleaded." 

And it is further enacted by the said statute, sect. 14. That if at any time, pending an action upon such a bond and with a penalty, the defendant shall bring into court, here the action is depending, all principal money and interest due on such bond, and also all such costs, as have been expended in any suit or suits in law or equity upon such bond; the said money so brought in, shall be deemed as taken in full satisfaction and discharge of the bond, and the court shall and may give judgment of discharge every such defendant of and from the same accordingly."

2. What words create such a security; and of the ceremonies requisite to a bond or obligation; and of signing, dating, and delivery.

Herein we must observe, that the law does not seem to require any particular set form of words, as essentially necessary to create an obligation, but that any words, which declare the intention of the party, and denote his being bound, will be sufficient; because such obligation is only in nature of a contract, which ought to be construed as it is according to the law. 

Vol. III. 92. 2 Roll. Abr. 146-7. 

Therefore if a man useth this form of words, viz. 

This bill writteath, that I A. B. have borrowed ten pounds; of D. Or this form; Memorandum, good talent debt to be. ten pounds. Or thus: Memorandum, all things demanded and accounted between A. and B. conveyeth to B. ten pounds; all these forms are good, and hath as effectually bind the party and his executors, as if the most formal words were made use of, provided the writing be sealed and delivered. 

Dyer 228. 

So a writing in this form; Memorandum, I A. B. etc., pay to C. D. etc., in this be in the pretter perfect tenor, yet if it hath all other ceremonies eftential, it shall amount unto an obligation. 

1 Leon. 25. 

So in this form; This bill writteath, That I A. S. have received of T. P. 401. to the use of R. and S. Vol. II. 109. 

children of, etc. equally to be divided between them; which sum I confefs to have received to the uses aforesaid, and the same time as shall be thought best for the profits of the said R. and J. S. and this is resolved to be a good obligation. 

Cran. Elia, 729. 

So a writing in this form; Memorandum, that I bind myself to J. M. to pay him as much money as my brother owes him; and in the end of the bill is wrote the sum of 401. is said to be paid due from the brother; this is a good obligation. 

Cra. Elia. 564. and see Cra. Elia. 768. 

Memorandum, that I owe and promise to pay to A. 141. at any time after the feft, &c. when thereto required, for payment whereof I bind myself to J. H. by these presents; this is a good bill to A. by the first words, and the latter being fulpplied are void, and to be rejected. 

Cra. Elia. 886. 

It is held in Moor and Cran. Elia. that a bill in this form; By it is known, that I owe to B. 141. to be paid at the feft, &c. together with 61. which I owe him upon bills and receipts falsified with my hand, amounts only to a bill for 141. but Dyer held it a good obligation for the whole debt of 201. 

Moor 537. 

In debt for 201. the plaintiff declared, that the defendant consented to remit, &c. for sufficient sum, obligation, &c. and the words of the deed were; I do acknowledge Edward Wayne, and all to whom it may concern, for doing the work in my garden; and upon demurrer to the declaration, it was adjudged a good bond. 

1 Port. 238. 

Watson on Smed. 

These words; I am content to give to W. 141. at Misch. and 10 days after to-day, amount to an obligation, and an express engagement to pay, &c. 

2 Leon. 119. 2 Roll. Abr. 146. 5 P. 

It hath been held in variety of cases, that a deeming W. not properly expressing the quantity of the sum, in which the party intended to be bound, though, not withstanding be so constructed as to confer the intention of the parties, rather than the obligation should be void; as quinquingenti libris, for quingunqinta libris, has been held good; so tringintatre viginti, for sexaginta; and it is said in general, that in most cases where the gen. or sing. or the sex. or fem. are right, the obligation is held to be given. 

Erick. 132 a. 

Yet 96. 193, 206. 

Hib. 119. Cran. 

Joc. 290, 299, 305, 603, 607. 

Cran. Car. 147. 1 Brompt. 

62. 2 Roll. Abr. 146. 5 Mod. 

154. 2 Jan. 

186. 187, 226, 477. 

Comb. 60, 86, 

Bond in cognizant habitation has been held a good bond for 91. B. for two months by the twenly pounds upon demand, yet it being a term signifying 61. and 8d. it may properly be made use of. 


Debt brought upon bond of 201. the bond was in Italian, and the firm therein expressed was in these words, viz. in coffana libris, and adjudged to be good. Cran. 


In debt upon a bill obligatory, demanding thirty-two pounds four shillings and sevenspence; the defendant demanded over of the bill, and it was thirty-two pounds four shillings and seven pence, to thirty, and pence for pounds; and upon demurrer for this cause, it was adjudged for the plaintiff. 


So a bill, in which the party bound himself in the sum of twentye pounds, has been held a good obligation for 17. in order to answer the intention of the parties. 

10 Co. 133 a. in Opftrum's cafe. 2 Roll. Abr. 147. 5 P. cited. 

As to the ceremonies requisite to a bond or obligation, it is said, that there are only three things essentially necessary to the making a good obligation, viz. writing in paper or parchment, sealing and delivery; but it hath been adjudged not to be necessary, that the obligor should sign the bill, or have a seal put upon it; yet it being the obligation the obligee be named Erlefin, and he signifies his name Erlefin, that this variation is not material; because subscribing is no essential part of the deed, sealing being sufficient. 

2 Co. 5 a. Gedor's case. 

Noy 21, 85. 

Moor 28. 

Stil. 97. 2 Salk. 467. 5 Mod. 281. 

5 2.
And though the seal be necessary, and the usual way of declaring on a bond is, that the defendant per scriptum suam obligatum fignis suo figillatum acknowledged, &c. yet if the word sigillum be wanting, it is cured by verifying the delivery; pleading over; for when he faith per scriptum suam obligatum, &c. all necessary circumstances shall be intended; and if it were not sealed, it could not be his deed or obligation. Dyer 19. a. Cro. Eliz. 571. 737. Cro. Jac. 420. 2 Co. 5. 1 Pent. 70. 3 Lev. 348. 1 Sail. 141. 6 Salk. 306. 19. b. But if the delivery is essential in an obligation, yet there is no occasion in the bond to mention that it was sealed and delivered; because, as my Lord Coke says, there are things which are done afterwards. 2 Co. 5. a. An obligation is good though it wants a date, or hath a fallacious or impossible date; for the date, as hath been observed, is not of the substance of the deed; but herein we must take notice, that the day of the delivery of a deed or obligation is the day of issue, though there is no day set forth; and if a deed bear date one day, and be delivered at another, it was really dated when delivered, though the clause of Generall date be otherwise. 2 Co. 5. Gellard’s case. Noy 21, 85, 86. Hob. 249. Stil. 97. Cro. Jac. 156, 264. Yew. 193. 1 Salk. 76. If a man declare on a bond, bearing date such a day, but does not sign when delivered, this is good; for every deed is supposed to be delivered and made on the day it bears date, unless by the better opinion, it shall be found that the delivery; pleading over, was not afterwards replies, that it was primo delibera‘t on another day, for this would be a departure. Cro. Eliz. 773. 3 Lev. 348. 1 Salk. 141. But if a bond bear date such a day, but was really delivered at a day after, the obligee may declare on a bond of such a date, but primo deliberatu at a day after; and if the obligee declare on a bond of such a date generally, the obligor may plead it was primo deliberatu on such a day after; but then he must traverse that it was delivered on the day of the date. 1 Brev. 104. 1 Lev. 196. If the bond was delivered before the date, on illus, non el factum, joined on such a deed, the jury are not estoppen to find the truth, viz. that it was delivered before the date, and it is a good deed from the delivery. 2 Co. 4. 6. 2 Keb. 332. In debt on an obligation, the defendant pleads that he delivered it as an ecfrow, &c狍e paturas eft vinculare; this is ill, for he ought to have sworn to whom he delivered it, and the fium non for fals, &e de hoc petit fe, &c. 1 Vent. 9, 110. 1 Salk. 747. So pleading that he delivered it to the obligee as an ecrow, to be his deed on certain conditions, is ill; for by the delivery of it to the obligee, it is become his deed absolutely. Hob. 249. 1 Vent. 9. A bond or deed may be delivered by words, without any act of delivery; as where the obligor says to the obligee, go and take the said writing, or take it as my deed, &c. So an actual tradition, without speaking any word, is sufficient; otherwise, a man that is mute could not deliver a deed; but where on an illus of non el factum, the jury found that the defendant signed and sealed the obligation, and laid it on a table, and that the plaintiff received and took it, this was held not to be the defendant’s deed, without other circumstances found by the jury. Cro. Lit. 30. a. Cro. Eliz. 835. Lew. 193. Cro. Eliz. 122. If an obligation be delivered to another to the use of the obligee, and the same is tendered, and he refuses, the delivery has lost its force. 5 Co. 119. 4. 3. Who may be obligors and obligees; and of making several obligors and obligees. All persons who are enabled to contract, and whom the law supra, or by the sufficient freedom and understanding for that purpose, may bind themselves in bonds and obligations. 5 Co. 119. 4. 1 Rob. Abs. 370. But if a person is illegally restrained of his liberty, by being confined in a common gaol or elsewhere, and, du-
If a. enters into an obligation to B. which he delivers to C. the use of B. though this immediately, upon the execution and delivery to C. becomes the deed of A. yet, if after it is preferred to B. he (as he may) discharges it to its purport, by such refusal the obligation loses its effect. Dyer 129. 7. 2c. Ex. 145. 1 Rol. Abr. 148. and 1 Salt. 301, cited. It is clearly agreed, that two or more may bind themselves jointly in an obligation, or they may bind themselves jointly and severally; in which case, the obligea may sue them jointly; but if they are jointly and not severally bound, the obligea must sue them jointly; also, in such case, if one of them dies, his executor is totally discharged, and the survivor and survivors only chargeable. 2 Rol. Abr. 148. Dyer 129. 310. 5 Ca. 12. Daff. 85. pl. 42. 1 Salt. 393. Cart. 61. 1 Laut. 536.

If there enter into an obligation, and bind themselves severally in the following words, Obligamus ns & utramque noftrum sequeftri esse & feper esse & in fidele, etc., these make the obligation joint and severable. Dyer 129. pl. 114.

Where two bound themselves, or any of them, their heirs, or every one of their heirs, etc., and the obligation was sealed and delivered by both of them jointly; it was held to be a joint and severable, and not joint only; and that the word et should be understood as et; and that therefore the joint delivery and acceptance could not make that joint only, per se, as is held on his part by counsel. W. 39. 5 Rol. Abr. 148. 1 l. of the obligee. Crou. Jct. 322. Hawkington v. Sandilands. If two jointly and severally bind themselves in this word, they which severally deliver at different times and places, yet is the obligation joint or severable, at the election of the obligee. 8 H. 6. 2 Rol. Abr. 148.

If there are bound in a bond in these words, Obligamus ns & querelam noftrum conjunctam; this is a joint obligation, and one of them alone cannot be sued; the word conjunctam makes the obligation joint, which the word querelam cannot make severable; being inferted, for no other purpose, but to express more strongly that they might be all bound, not that they were to be severally bound. Mor 260. pl. 407. 3 Leon. 206. Wigmore v. Vell. Though there be several obligees, yet a person cannot bound severally, or a person, and therefore an obligation of 200l. to two, felon's the one 100l. to the 30, and the other to the other is a void felony. Dyer 50. a. pl. 20. Hob. 172. 2 Brownl. 207. Yelv. 77.

A bond was worded in the following words: Be it known that J. A. do acknowledge myself to owe and bind myself, and the obligation is in two, felon's the one 100l. to the 30, and the other to the other is a void felony. Dyer 50. a. pl. 20. Hob. 172. 2 Brownl. 207. Yelv. 77.

If an obligation be made to three to pay money to one person, they must all join in suit, for they are but one obligea; and if he to whom the money is to be paid, the others must sue, although they have no interest the fund contained in the condition. Telle. 177.

So if an obligation be made to three, and two bring their action, they ought to the three is dead. 1 d. 239. 430. 1 Post. 34.

If A. bind himself in a sum to B. solvendum to C. the burden of the payment to C. is not to A. but to B. and in an action upon it, the count must be upon and solvendum to B. 1 Sid. 295. 2 Rol. 81.

In debt the declaration was, that the defendant became bound in a bond of, for the payment of, the sum of money, his attorney or aflign, and on oyer of the bond, upon the bond, and solvendum to the plaintiff's attorney or afligns, without mention of solvendum to B. is not to B. an emurcer for this variance it was held good; and that declaration must not be according to the letter of the obligation, but according to the operation of the law thereupon. 6 Mod. 228. Robert v. Harnage. So if A. makes a bond to B. solvendum to such person as he shall appoint; if B. does appoint one, payment to him is a payment to B. and if B. appoint none, it shall be payable to B. 6 Ad. 296.

For more learning on this subject, see 16 Vin. Abr. and 3 Bac. Abr. tit. Obligation; and see Condition.

Oligog, he that enters into an obligation, and obligea the person to whom it is entered into. Before the coming in of the Norman law (as we read in Inegilbrus) writing obligations were made with golden crosses, or other small figs or marks. But the Norman law began the making such bills and obligations with a print or seal in wax, to which every one’s special signet, attested by three or four witnesses. In former time many houses and lands thereto posted by grant and bargain, without script, charter or deed, only with the landlord’s word or helmet, with his horn or cup; and, many tenements were demifed with a fur or curry-cumb, with a bow, or with an arrow. Cowell, edit. 1727. See Wang. Didota terræ, In the opinion of some, contains half an acre of land, others but half a perch. Cowell, edit. 1727.

Actions (Obsecutiones). Offerings. 2 Inst. 6. 661. Also ten, revenue, propery of spiritual living. Stat. 12 Car. 2. cap. 11. See Offerings.

Detrafla, Is, according to Spelman, taken for an impediment; it signifies also a tribute, which the lord imposed on his tenants. Cowell, edit. 1727.


Stations, Are affectis, wherein Manuspeak speak at large, the word is derived de ascendente, i.e. harrowing or breaking close. See Spelman, vol. vi. and verbo Efferum. Effara velo dicatur que apud opus occasionis munificent. Lib. Niger Sacc. par. 1. cap. 13.

Occupant. If tenant for term of another’s life dies, leaving cessui que vie; he who first enters shall hold the land during that other man’s life, and he is in law called an occupant, because his title is by his first occupation; and so, if tenant for his own life, grant his estate to another, or if the grantee dies, there shall be an occupant. Co. on Litt. cap. 6. sect. 56. and Bullow. 2 Rep. 5 par. 51. 12.

If a man leaves to J. S. for life, and J. F. dies, the land returns to the heir, because the life being spent for which the land was conveyed, it must necessarily come back to the old proprietor; but if J. S. and J. F. are bound to J. S. during the life of A. and the lease has delayed, leaving cessui que vie, or if in the former case J. S. had granted over his estate to B. and B. had died; in these cases he that first took possession of the land was lawfully the tenant, for the recovering could not claim in either case, because he had parted with it during the life of A. in one case, and of J. S. in the other; and J. F. cannot have any right, for that were to act contrary to his own grant, and to claim an interest which he had transferred to another; and the tenant par auter vie being dead, his descendants could not claim it, because they were not comprehended in the words of the original donation; and therefore the first occupant must be the rightful tenant, since this, like all other things which are derrilis, and without any owner, belongs to the first occupant or poiffessor. Co. Lit. 41. b. Cro. Eliz. 182.

The law of occupation is founded upon the law of nature, etc. Ead. tenenda manus voca occupant consequitur. So as, upon the first coming of the inhabitants to a new country, that he first enters upon such part of it, and manures it, gains the property (as is now used in Cornwall, etc. by the laws of the Statuaries); so that it is the actual possession and manure of the land, which was the first cause of tenure, and consequently is to be gained by actual entry. Sid. 342. Graty v. Barentost. The
The true ground of occupancy is, that anciently all trials of titles were by real actions, and therefore he that had the freehold was one to whom the law had a special regard. The ancient law for many respects did not allow leases for above 40 years, till 21 Hen. 8. 15. And another reason there was not only to have that right paramount might know how to try his action, but that the lord might know how to allow for his services (which were considerable things formerly); he ought to know who was his tenant, and therefore the law provided there should be a person on whom he should answer. See Henam Ch. 4. 37, 65. in the case of Geary v. Beresford.

The subject and object of the occupant are only such things as are capable of occupancy, and not the freehold at all; into which he neither doth nor can enter; but the law calls the freehold immediately upon him that hath to 27. 47. for the lives of B. 47. and D. and 27. 47. thing whereof he is occupant, that there may be a tenant to the present; per Vaughan Ch. 3. Hill. 19 & 20 Car. 2. in the case of Holden v. Smallvike.

If tenant by currey grants his estate to another and his heirs, and grantee dies, his heir shall be a special occupant of this estate; 27. 47. 31. to adhere to the grantor and his heirs; it is admissible that the heir of the grantee shall have the land. 2 Rel. Ab. 151. There shall be no occupant of an estate of tenant by the curtey or dower, which are estates created by law. Cro. Eliz. 58.

The tenant pur ater vis makes lease for years to commence from his death; a stranger enters; though the stranger is occupant of the freehold, yet lefsee for years shall fall upon him, and the lease shall bind the occupant; agreed. Lov. 201. in the case of Geary v. Beresford.

If tenant pur ater vis leases for years, in truth for himself and life, and in truth for his wife for her life; and the lefsee for years actually enters, but permits the baron to enjoy it, who dies, and then the feme enters; the feme shall be occupant, and not the lefsee for years. And so a judgment given in C. E. contrary to the opinion of Bridgesman Ch. J. was affirmed pur three juries, abente Kayling Ch. J. Lov. 302. Geary v. Beresford.

The custom of a manor was, that every customary coyo- phold of that manor might be granted to three persons, tabendum to them facerfuit first nominatur, & non alter. A surrenderer was made to 7. 8. and his sffignis for his own life, and the lives of two others. Povell J. feem'd to incline that if 7. 8. had become bankrupt, and the estate assigned, and the assignee had died, living the copy- holder; the lord should immediately have the land; and Povell J. thought that upon the death of the copyholder the estate of assignee would determine, but the assignees were living. But it was agreed, that if the grant had been to 7. 8. for the lives of B. 47. and D. and 7. 47. had died, the lord should have the land again, tho' against his own limitation, because there can be no occupant of a copyhold estate without a special custom; and this would be no mischief, the failure being on the fide of the grantor only. 6 Med. 63, 68. Mech. 2. 2. A. R. Smorle v. Penrith. See 16 Fam. Ab. tit. Occupant; and see Life-estate.

Occupation. (Occupation.) Signifies the putting a man out of his freehold in time of war, and is all one with diffijin in time of peace, faving that it is not so danger- ous. Co. e. Litt. fol. 249. Alio ufe or tenure. So we say, such land is in the tenure or occupation of such a man, that is, in his possession. See Difjusm. Alio trade or occupation, 12 Car. 2. cap. 18. But occupation in the flat. De Bigamis, cap. 4. are taken for usur- pations upon the King, and is when one usurps upon the King, by ufling liberties which he ought not. And as an unjust entry upon the King into lands or tenements, is an interufion, to an unlawful ufling of franchises is an usur- pation. But occupations in a larger fcope, are taken for pur- profures, intrusions and usurpations. See 2 Infl. fol. 273.

Disputat, Is a writ that lieth for him which is ejected out of land or tenement in times of war, as a writ of usual diffijion lies for one ejected in time of peace. Jaggam. feil. Brief de Novel Diffijion.

Difpute, (Oatton.) The eighth day following some pecu- liar feats. See Deflagr.

Difputa. An old writ mentioned in the statute of 39. Hen. 8. 15. for securing the use of the church, which was directed to the sheriff to inquire, whether a man com- mitted to prison upon suspicion of murder, be committed upon jult caufe of suspifion, or only upon suspicion. R. gifer, fol. 139. Bratlon. lib. 3. part. 2. cap. 20. And it upon inquisition it were found, that he was not guilty, then his name came to be written to the law. See Deflagr.

But now that course is taken away by the statute of 38 Edw. 3. cap. 9. as appears in Stanwixd Pt. Cor. fol. 77. and, Ch. lib. 9. fol. 66. and Spelman, verbo Asia. Asia was anciently written battle, or batays, for batays, from the Saxon baton, to wax hot, to rage, also to hate; not the ancient canto of oracle, as S. Edward Cate had in his q Rep. fol. 506. and in 2 Inf. fol. 42. See Spelman, on Asia.

Ducorum. This word was used for the executor of a lait will and testament, as the person who had the ac- cession or fiduciary disposal of the goods of the party de- ceased; uufed in the testamentum famulorum. see Testament, Hift. Dunelm. 3. and Whartonc Abic. Sacr. part. 1. pag. 784. See Testament. Sometimes the word is taken for an advocate or defender; as, fumnum feudarium economus, & prsebiter ecclesi. Mat, Parif, and others.

Ditione, (Debitione.) Is an aq committed against a law, or omitted where the law requires it, and punishable by it. Woffin. Symb. And all offences are capital or not so; capital, those for which the offender shall los his life: And not capital, where an offender may forfeit his lands and goods, be fined or suffer corporal punishment, or both; but not los of life. H. P. C. 2. 13. 94.

Capital offences are comprehended under high treason, petit treason, and felony: Offences not capital include the remaining part of the pleas of the Crown, as come under the title of Misdemeanors. An offence may be greater or less, according to the place wherein it done. Finch 35. But the offence will be in equal de- gree in them, who are equally tainted with it; and the that aet and content therof are alike offenders. See Rep. 80.

Disturbances. Obligations and offerings feem to be on the same thing, and are in a fenece something of the same nature, but not, and the one is only for real or personal. Offerings are reckoned among personal tithes, and as fuch come by labour and induftry, are paid by fervants and others once a year to the paftor, vicar, according to the custom of the place; or the are to be paid in the place where the party dwells; but, four offering-days, as before the statute 27. H. 4. now in cap. 13. within the space of four years then laft past has been used for the payment thereof, and in default thereof Co. 3. Abid. Cofa 159. In London, offerings are great a foule. They are, by the law now in force, to paid as formerly they have been. See Stat. 32 Hen. 8. 15. in the 3 Ed. Cus. & Co. 11. economus

They properly belong to the parson or vicar of the church where they are made; of these feme were free at voluntary, others by custom certain and obligator.

They were anciently due to the parson of the parish th. officiated at the mother church, or chapels that had rochial rights, and by law; but they were paid to other churches than any parochial rights, the chaylains thereof were accountable for the same to the parson of the mother church. Lindw. C. de election. & cap. Quaia quidam. See offerings as at this any are due to the parson or vicar facraments, marriages, burials, or churching of women are only such as were confirmed by the statute 2 Ed. V. and not by any jurisdiction, before the making of the said statute, and are recoverable only in the ecclesiastical court. Godolph. Rep. 426, 47.

Stat. 32 Hen. 8. cap. 7, sect. 2, imposes the payment of offerings according to the custom and places where the grow due. 2
OFF

By flat. 2d of Ed. cap. 13, f. 10. All persons
bich by the laws of this realm ought to pay their of-
ing, shall yearly pay to the parson, vicar, proprietary,
their deputes, or farmers of the parishes where they
vail, at such four offering-days as hereofbefore within the
six of years last past hath been accustomed, and
default thereof shall pay for their said offerings at Exeter
Church.

The four offering-days are Christmas, Easter, Whitsun,
and the feast of the dedication of the parish-
church. Gisf. 739.

Office. A piece of silk or fine linen, to receive
add up to the offices, or occasional oblations in the
church. Hence in the statutes of the church of St. Paul
London, it was ordained, Us sacrificia curat qued copula,
pana, velamenta, offentoria & abjersfia manda festa
Cawell. edit. 1717.

Diff. (Officeum) Signifies that function by virtue
herof a man hath some employment in the affairs of
other, as of the King, or of another person. Cawell.
It is said, that the word officium principally implies a
fy, and the next place the charge of such duty; and
at it is a rule, that where one man hath to do with
other's affairs against his will, and without his leave,
at this is an office, and he who is in it is an officer.
Eis. 478.

There is a difference between an office and an employ-
ment, every office being an employment; but there
is a difference which do not come under the denomination
offices; such as an agreement to make, has, plough
in the earth, &c., which differ only from that of
ward of a man, &c. Sir 2d. 142.

By the ancient Common law, officers ought to be ho-
men, legal and fage, & qui melius fiant & perfct office
intendere; and this, says my Lord Coke, was the policy
prudent antiquity, that officers did ever give grace in
place, and not the place only to grace the officer.
Inf. 2d, 456.

Officers are distinguished into civil and military,
according to the nature of their several trusts. Carib. 9.

Offices are distinguished into those which are of a pub-
lc, and those which are of a private nature: and herein
is said, that every man is a publick officer, who hath
y duty concerning the publick; and he is not the les
publick officer, where his authority is confined to nar-
row limits; because it is the duty of his office, and the
use of that duty, which makes him a publick officer,
not the extent of his authority. Carib. 479.

It hath been held, that the commissioners for purging
obstructions could not take notice of or remove an att-
orney of a court, it not being a publick office in which
government was concerned. 1 Sid. 9d. 152. 1 Lev. 1.
1 Ed. 349. Raym. 94. Harri's ca!c.

It hath been doubted, whether the suffr of the college
physicians, be such an officer as is compellable to take
eaths prescribed by the statute 25 Car. 2. it being
ged, that the oversight and inspection of medicines was
a private prescribed; and that no offices were within the
ment of that statute, but such as related to the revenue,
and creation of the peace; and that particular
ners created for particular purposes were not within
statute. 5 Mid. 431. Carib. 478. The King v.
Dr. Borell.

Also offices are distinguished into ancient offices, and
those which are of a new creation; and herein it is ob-
rollable, that constant usage hath not only sanctioned the
estabishment of such ancient offices as have existed
me out of mind, but also hath preferred and settled the
ner in which they have and are to continue to exist,
what manner to be exercised, how to be dispelled, &c.
431.

There is also another distinction of offices into such as
is judicial, and such as are ministerial offices only; the
relation to the administration of justice, or the actual
exercise thereof, must be executed by persons of sufficient
Vol. II. N°. 109.
capability, and by the persons themselves to whom they are
granted; and herein also ancient usage and custom must
govern. 1 Jon. 109. Dev. 3d. 9. Co. 97.

1. Who hath a right to create and grant or affix an office;
and of one office being incident to another.

2. Of the offence of buying and selling an office, and what
offices are prohibited to be thus dispelled.

3. What remedies a person having a right to an office must
use, to let its enjoyment of it, and how a distur-
ance is punishable.

4. Of the forfeiture of an office; wherein for cor-
ruption, bribery, extortion, and oppressive proceedings, offices
are punishable.

1. Who hath a right to create and grant or affix an office;
and of one office being incident to another.

The King is the universal officer, and disposer of justice
within this realm, from whom all others are to be paid
but yet, he cannot create a new office in conflict
with our constitution, or prejudicial to the subject. 12

There are three religious offices, the right of
Lord Coke, which have fair pretences, yet are mischievous; 1st, new courts;
d, new offices; 2d, new corporations for trade; and
for new offices, either in courts or out of them, the
they, cannot be erected without act of parliament; for
that under the pretence of common good, they are exer-
cised to the intolerable grievance of the subject. 2 Inf.
540.

An office granted by letters patent for the sole making
of all bills, informations and letters mifive in the council of
York, was held unreasonable and void. 1 Jon. 231.
Manfr. v. Lighter.

One Guile petitioned the King to erect a new office
for registering all strangers within the realm, except
merchant strangers, and to grant the said office to the
person, or persons, for a fee; and it was refused by all the
judges at Serjeants Inn, that the erection of such new
for the benefit of a private person, was against all
law of what nature ever. 1 Co. 116. and several cases
there cited to this purpose.

King Ed. 4. by his letters patent bearing date 10th of
October anns 15. of his reign, reciting, That there was
no office of the Chancellor of the Garter, and that
there should be such an office of the Chancellor of the
Garter, and that none should have it but the bishop of
Salisbury for the time being, we will and ordain, That
Richard Beaufamp, now bishop of Salisbury, should
have it for his life, and after his decease, that his successors
should have it for ever; and amongst divers other points
it was resolvd unanimously, that this grant was void,
for that a new office was erected, and for the juridition or
authority the officer should have, and therefore for the uncertainty it was void. 4 Inf. 100.
Pech. 6 Tac. 1. Bishop of Salisbury's cafe. Mor 88.
S. C.

The King cannot grant to any person to hold a court
of equity, tho' he may grant tenures placites; for the
depensation of equity is a special trust committed to the
King, and not by him to be intrusted with any other,
except his Chancellor. Hob. 63.

Where ever one office is incident to another, such inci-
dent office is regularly grantable by him who hath the
principal office; and on this foundation it hath been held,
that the King's grant of the office of county clerk was
void, it being inapplicable incident to the office of sheriff,
and could not by any law or contrivance be taken away
from him. 4 Co. 32. Mitton's cafe.

So the office of chamberlain of the King's Bench prison
is inapplicable incident to the office of marshall; and
therefore a grant of the office of marshall with a reversion
of the office of chamberlain is void. 1 Sal. 429. Per Halt
Ch. 1. 1 Lev. 320. 321. Like point.

So it hath been resolv'd, that the office of Exigenter
of London and other counties in England, is incident to
6 A
the office of Chief Justice of C. B. and that therefore a
grant thereof by the King, tho' in the vacancy of a
Chief Justice, is null and void. Dyer 172. a. pl. 25.
1 And. 152. and see Slov. Par. Co. Sir Rowland Hai't's
cafe.
My Lord Coly says, that the justices of courts did ever
appoint their clerks, some of which after by prescription
grew to be officers in their courts; and this right which
they had of constituting their own officers, is further
confirmed to them by Wylton. 2. cap. 30. the reasons
whereof are twofold; 4th. For that the law doth ever
appoint the head of the greatest office called and still,
the chief that which is to be done. 20th. The
officers and clerks are but to enter, inroll, or effect
that which the justices do adjudge, award or order; the insufficient
doing wherewith maketh the proceeding of the justices er-
roneous, than the which nothing can be more dishonour-
able and grievous to the justices, and prejudicial to the
party. 2 Inf. 455. 4 Had. 173. cited.

2. Of the office of keeping and selling an office, and
what offices are prohibited to be thus dispofed of.

The taking or giving of a reward for offices of a
publick nature is said to be bribed, and, as it were, Hawa-
hint, nothing can be more palpably prejudicial to
the good of the publick, than to have places of the
highest concernment, on the due execution whereof
the happiness of both King and people doth depend, dispo-
 sed of not to those who are most able to execute them,
but to such as are most able to purchase them; nor
can any thing be a more discouragement to industry
and virtue, than to fee those places of trust and honour,
which ought to be the rewards of those who by their in-
dustry and diligence have qualified themselves for them,
conferred on such who have no other recommendation,
but that of being the highest bidders; neither can any thing
but bribery and corruption offend the publick, injure
their power by bribery and extortion, and other acts of injus-
tice, than the consideration of the great expenses they
were at in gaining their places, and the necessity of some-
times straining a point to make their bargain answer their
expectations. 2 Inf. 149. 1 Hawk. F. C. 168—9.
It is said to be malum in se, and inadmissible at Common
law. Np 102. Mor. 783.

For which reasons, among many others, it is expressly
enacted by 12 Ric. 2. cap. 2. That the chancellor, trea-
urer, keeper of the Privy seal,eward of the King's
house, the King's chamberlain, clerk of the rolls of the
judge of the court of king's bench and of the other, barons of
the Exchequer, and all other that shall be called the
ordain, name or make justices of the peace, thrifeis, esclators,
customers, comptrollers, or any other officer or
minister of the King, shall be firmly sworn that they shall not
ordain, name or make any of the above-mentioned offi-
cers for any gift or brokerage, favour or affecation; nor
that none that such by himself, or by others, privately or
openly, be in any manner of office, shall be put in
the fame office, or in any other, but that they, make all
such officers and ministers of the beat and most lawful
men, and sufficient to their estimation and Knowledge.

And by the 4 H. 4. cap. 5. it is enacted, That no
Officer shall let his heir, or a servant or a farm to any man for the
time he occupieth such office.

But the principal statute relating to this matter is the
5 & 6 Ed. 5. cap. 16. which is verisimil as follows,
Sect. 1. For avoiding of corruption which may here-
after happen to be in the officers and ministers in thofe
courts and places, or in whatsoever office or offices to be
had the true administration of justice, or for servants of
tru' and to the intent that persons worthy and meet to
be advanced to the place where justice is to be miniftr'd,
or any service of truit executed, shall hereafter be pre-
ferred to the fame, and no other;

Therefore enacted, That if any per-
or or persons at any time hereafter bargain or sell any
office or offices, or deputation of any office or offices,
or any part or parcel of any of them; or receive, have
or take any money, fee, reward or any other profit; di-
rectly or indirectly, or take any promife, agreement, co-
venant, bond or any assurance to receive or have any
money, fee, reward or other profit, directly or indirec-
tly, for any office or offices, or for the deputation of any
office or offices, or any part of any of them; or to the
reward, against any such office or offices, or for the
execution of any of the said offices, or of any of the
Majesty's honours, cares, manors, lands, tenements,
woods or hereditaments, or any of the King's Majesty's,
customs, or any administration, or necessary attendance
be had, done or executed in any of his Majesty's cur-
taut house or house, or the keeping of any of the King's
Majesty's towns, carles or fortresses, being used, occu-
plied or appointed for a place of strength and defense;
which shall concern or touch any clerkship to be occu-
pied in any manner of court of record wherein justice is
be miniftr'd; that then all and every such person or
persons, that shall so bargain or sell any of the said offices
or offices, or deputation of any of the said offices, or the
execution of any of them, or that shall take any money, fee, reward or profit, for any of the
said offices, or offices, deputation or deputations, of
any of the said offices, or any part of any of them, or shall
take any promife, covenant, bond or assurance for
money, reward or profit, to be given for any of the
said offices, or offices, or any of any of them, shall in
the like manner and by the like right and their right to elate, which such person or persons shall have of, in
any of the said offices, or offices, deputation or deputa-
tions, or any part of any of them, or of, in or to the gift or
nomination of any of the said offices, or offices, deputation
department or deputation of which offices or offices, or for
the deputation or deputations of which offices or offices, or
any part of any of them, any such person or persons
shall to make any bargain or sale, or take or receive a
sum of money, fee, reward or profit, or any promife,
covenant, bond or assurance to have or receive any
ward, money or profit; but also that all and every such
person or persons, that shall give or pay any sum of
money, reward or fee, or shall make any such promife, agree-
ment, bond or assurance for any of the said offices, or
for the deputation or deputations of any of the said
offices, or any part of any of them, shall immediately
and by upon the same fee, money or reward given
them, upon any such promife, covenant, bond or
agreement had or made for any such office or offices,
reward, to be paid as is aforesaid, be adjudged a disablc
person in the law to all intents and purposes to have, or
copy and enjoy the same offices, or offices, deputation
or deputations; or any part of any of them, for the while
such person or persons shall to give or pay any sum
money, fee or reward, or make any such promife, covenant,
bond or other assurance to give or pay any sum
money, fee or reward.

Sect. 4. It is further enacted, That all and every
such bargains, sales, promisses, bonds, agreements, co-
venants and assurances, as before specified, shall be void
and annulled from and after the same, and all and every
such bargains, sales, promises, bonds, covenants or
assurances shall be null and void, and all and every such
intercourse, transactions, and actions in any manner contrary to the
law and effect of this act, yet that notwithstanding the
judgments given, and all other acts or acts, executed.
one, by any such person or persons offending by authority, or colour of the office or deputation, which ought to be inflicted, but not occupant of the same office, or of a commission officer, before his commission is registerd, should take the oath there mentioned; that he had not directly or indirectly given any thing for procuring the commission, but the usual fees extended only for horse, foot and dragoons, but not to the marines.

Percod. Chan. 199.

8. It hath been adjudged, that the use of the deputation of the office of a provost marshal of Jamaica, is not within this statute; because this statute does not extend to the plantations. 4 Bald. 222. Salt. 431. Blankard ver. Gully. 2 Mod. 45. S. P. undertermined, and there said arguenda, that so good a law should have as extensive a construction as possible.

9. In a writing in a judgment in Ireland, it was held clearly that the office of clerk of the crown, and clerk of the peace, was within the statute; but that this law did not extend to Ireland, not being enacted there. Trim. 9 Geo. 2. in B. R. Maccartey ver. Wickford.

10. It hath been held, that one who makes a contract for an office, contrary to the purport of this statute, is so far disabled to hold the fame, that he cannot at any time during his life be reformed to a capacity of holding it by any grant or dispensation whatsoever. Hdb. 75. Co. Lit. 234. Co. Car. 301. Co. Jec. 386.

11. It is held, that where an office is within the statute, and the office is certain, if the principal make a conveyance, reserving a letter sum out of the salary, it is good; so if the profits be uncertain arising from fees, if the principal make a conveyance, reserving a certain sum out of the fees and profits of the office, it is good; for in these cases the deputy by his constitution is in place of his principal, yet he has no right to his fees, they still continue to be the principal's; so that as to him it is only reserving a part of his own, and giving away the rest to another; but where the reservation or agreement is not to pay out of the profits, but to pay generally a certain sum, it must be paid at all events; and a part of the fund for performance of the agreement must be void by the statute. Salt. 468. 6 Mod. 234. Godolphin v. Tudor. Comb. 356. S. P.

12. It hath been held, that this being a public law, the judges ex officio are to take notice of it; but yet it seems the more regular and safe way to plead it; but it hath been resolved, that a person in pleading this statute need not allege, that the party against whom it is pleaded is not within any of the provisos or exceptions in the statute; but that if he be, must come on his side to shew it. Trim. 9 Geo. 2. in B. R. Maccartey ver. Wickford.

3. What remedies a person having a right to an office may pursue, to be let into the enjoyment of it, and how a disturbance is punishable.

It is held clearly, that an office lay at Common law for an office, and that therefore though the statute of 5 Gil. 2. cap. 25. speaks only of offices in fee, yet an office fees for an office in tail, or for life; but this is to be understood of offices of profit, for an office of charge and no profit, an office does not lie. 8 Co. 42. a. John Webb's case. 2 Idf. 412. S. P.

But a man shall not have an office of the whole office, unless he be defribed of the whole office, and a man be defribed of parcel of the profits of an office, he may have an office for that parcel only. 8 Co. 49. b. 2 Idf. 412.

In an affize for an office newly erected and constituted, the demandant in his plaint must shew what fee or profit is granted for the exercise thereof; for this office cannot have a fee or profit of any commonalty, but a man may, and for an office without fee or profit no office lies. 8 Co. 49. Webb's case.

But in an affize for an ancient office, the demandant in his plaint need not shew what fee or profit is belonging to it, for it shall be intendment there is some fee or profit. 8 Co. 46.

In an affize for an office, the demandant must shew a seizin; but it hath been held, that the taking of g.d. for a copia;
cases against B. is sufficient seisin of the office of filiatar de 8. 1 Rol. Abr. 270.

So if one by the house of commons be committed to A. who before and long after was in possession of the office of feigant at arms to the house, and the prisoner compounnds with B. for his fees, and gives him twenty shil-
lings; this is a good seisin of the office by B. for he can-
not be differe thereof, but at his election; and it was
likewise held, the proving that B. being in the lobby of
the house of commons, took hold of the door of the house,
and laid his hands upon the mace, then being in the
hands of A. to take it, but hindered by A. was good 
evidence both of a seisin and differe. 2 Lev. 108.

But when the feigant of the mace to the house of
commons, in an action upon the cafe for a disurbance,
recover damages; and whether this was a sufficient
seisin, the damages being recovered in satisfaction of
the fees, and he then being out of possession of his office,
was doubted; some of the judges inclining one way and
some the other; and it was intended to have been found
specially, but the plaintiff being unwilling to stand to it
was nonuit. 1 Lev. 108. and fee Med. 122. where
such recovery is held to be a sufficient seisin.
Ailo in an affile for an office, the demandant in

An affile lies for the office of registor of the admiralty;
for though their proceedings are according to the Civil
law, yet the right of their office is determinable at the
Common law; so of the masterthip of an hospital, being
cases. 8 Co. 47. 2 Inst. 412. 11 Co. 59 b. Dyer
152.

A man may bring an action on the cafe for the profits
of an office, tho' he never had seisin. 1 Med. 122. per
Hale Ch. 1.

If the King grant the office of commouter of the
customs to A. and B. durante beneficls, and A. dies,
and afterwards the King, to the office of B. under
pretence of curruption, exercised the said
office, and receives the profits thereof; C. may have
an indebitatus afoam for so much money had and
received to his use. 2 Med. 260. adjudged upon a special verdict
between Avrit v. Stukely.

4. Of the forfeitures of an office; and where for
corruption, bribery, extortion, and opprobrious
proceedings, officers are
forfeitable.

It is laid down in general, that if an officer be
contrary to the nature and duty of his office, or if he refuse
to act at all, that in these cases the office is forfeited.
11 Ed. 4. 1 b. 2 Roll. Abr. 155.

But herein it will be necessary to consider more mi-

nately, what shall be said such acts as are contrary to
the duty of his office, and how far the same, whether they
be acts of omission or commission, amount to a forfeiture;
wherein it hath been clearly agreed, that a gaoler by
fuf-
fering voluntary eaves, by abusing his prisoners,
by extorting unreasonable fees from them, or by detaining
them in gaol after they have been legitimately discharged
and paid their just fees, forfeits his office; for that in
the grant of every office it is implied, that the gaoler execute
it faithfully and diligently. Co. Litt. 233. 9 Co. 50.
3 Med. 143.

But it is held, that one negligent eaves is not a for-
feiture, though one voluntary one is, but that two neg-
ligent eaves amount to a forfeiture. 39 Hml. 6. 33.
2 Roll. Abr. 155. 2 Barn. 173. and fee Tate. 8 S. 994 113.

There are, says my Lord Coke, three causes of for-
feiture or forfeitures of office by matter in deed. 1st.
By abuter. 2dly. Nonufer. 3dly. Refruit. 1st. Abuter;
2 as by a maifial or other gaoler's permitting eaves, 2dly. By nonufer; in which there is this difference, when
the office be forfeit, the administration of justice or the
commonwealth, the officer ex officio ought to attend
without any demand or request, there by nonufer or non-

attendance the office is forfeited; but where an officer
is not obliged to attend, but upon demand or request made
by him whose officer he is, there without such demand or
request, there can be no forfeiture; and herein also my
Lord Coke in another place takes the following divercy.
that non-uit of itself, without some special damage
is no forfeiture of private offices, but that it is otherwise
in publick offices. 2 Inst. 149. 3dly. To justice.
And as to refual, he says, that in all case
where an officer is bound upon request to execute his
office, if he does not do it upon request, he forfeits it
as if the Reward of a manor be requested by the lord to
have a court, if he do not do it, it is a forfeiture
2 Cot. 233 b.

The King granted the abbot of St. Alken to have
gael, and to have a gael-delivery, and divers persons
were committed to that gael for felony; and because that
it would not be at the expense of making delivery
but had detained persons in prison a long time, it was
referred, that the abbot had for that cause forfeited
his franchise, and that the fame might be feized into
the King's hands. 2 Inst. 45.

If a sier facis be brought to repeal the patent
of search of the customs in a part-town for non-attendance
and upon evidence it appears, that such a cafis was in
possession of it, and others also were agreed, and
feit, not being searched, and that when these shis we
imported or exported, neither the searcher himself, nor
any of his deputies were there, tho' it does not appear
be by negligence or voluntarily, yet this voluntary a
fence and neglect, so as neither himself nor fervants we
there to search, is not only crass negligens, but a v
luntary permifion and forfeiture. 1 Rol. 20, 1772. 2

So if a gaoler should leave his prison door unlock
and the prisoners escape, it is not only a negligent
but voluntary escape. Cre. Car. 452. per cur.

If conditions in law, which are annexed to offices, to
be observed, and for every, these conditions are as strong and binding as express co
ditions; and therefore if the office of forcer, &c. defere
to an infant or feme covert, (where by law they may
defend) and there are not excrcited by sufficient deput
they become forfeited. Co. Litt. 233 b. 8 Co. 44.
Gar. 556. Hard. 11.

If a parkar or forcer cut a tree, not for browse
separations, this is a forfeiture in law of his office;
caus he breaks the condition in law annexed to his office
which is, that he will preserve the game, and not a
thing that may impair or destroy them; but on
wards, that the cutting down of trees is no forser,
itself, if he leaves sufficient for browse and thake for
deer, and to cover them. 9 Co. 50 a. Cre. Eliis. 38
1 And. 29. Papeb. 117. cotb. Mor 707. 2 Med. 121.
Inefficiency is an original incapacity which creates
forseiture of an office; so if a superior puts in a de
into an office, which may be excercited by deputy, who
ignorant and unskillful, this is a forfeiture of the o
4 Med. 29. arguendo.

If the King grants an office in any of the courts
Welfenfler, the judges may remove an officer for inf
iciency, and they are the proper persons to judge of
abilities. 4 Med. 30. arguendo. Where an officer may
removed, but not abridged of his fee. 1 Rol. Rep. 534.

A philizer of C. B. being absent two years, and b
farned out his office from year to year, without the
cease of the court, was discharged by the Chief Juiff
ex officio by the juififum futurum, by words spoken openly
court; and there was no record made of the discharging
for his office, it was agaiin for him to do any act of
vation, yet the discharge was held good. Dyer 114.
pl. 64. 1 Rol. Abr. 155. S. C.

An officer was turned out, because that he folovat pr
dam records contra offici sui abditum; and it was objec
1st. That it was not certain enough, because not the
was notified and at which he, committing the admittin
will be prolix, and then having spoiled the records, th
not are perhaps to be had, 2d objection, That it may
it did by chance, and not wilfully; to which the court said, that the conclusion contra efficit Jui debetur includes at 1 Keb. 597. Pitkington's case.

If A. hath the custody of a cattle with all profits, etc., ante'd to him for his life, of which the inheritance hath been granted to B. and A. refuses B. to let him inhabit that herd, it is charged with discharge item, 1 Chit. 7, 18. If tenant in tail of an office commit a forfeiture, this all bind the issieu, by the force of the condition tacitly annex'd by law to such estate; but if an officer for life omit a forfeiture, this shall not affect him who hath an inheritance. 1 Ed. 4. 7. 1 Ed. 7. 14. 36 Hen. 6. 8. 8 H. 7. 11. 23. 24 Hen. 8. 16. 18. 18 Hen. 7. 1. 2 Roll. Abr. 155. 7 Ch. 34. Popl. 119. Lev. 71. Reyms. 216. 3 Lev. 288. 3 Med. 146. in 114. 2 Ver. 189, 269. Bridgem. 27.

The archbishop of Canterbury granted the office of esquire and keeper of Aldington-Park to Sir Edward Nokes of 22ng, raflice, of which he committed himself to the court of Chancery, where he was committed to the common pleas for 240l. and 209. 36 Ed. 3. But if the King grants an office which concerns truth and diligence to two, and one of them is attained, the void office is forfeited to the King; for he cannot make me to occupy in common with another. Pws. 180. Wherever an officer who holds his office by patent immiss a forfeiture, he cannot regularly be turned out without a fieri facies, nor can he be laid to be completely or perfectly voided; but it was resolved, that being only an officer in being, and so serving, the issue shall be understood to be all of a high nature. But for this see Dyer 155, 38, 211. 9 Co. 98. 23 Ch. 233. Cru. Car. 60, 61. Sid. 81, 134. 8 Co. 44 b. 1 Roll. Abr. 580. 3 Med. 35, 27. Lev. 288.

There can be no doubt but that all officers, whether held by the Common law or made purport to fluctuations, e punishable for corruption and oppressive proceedings, to the damage and to the public peace of the state, by indictment, attachment, action at the suit of the party injured, los of their offices, etc. 6 Med. 96. 36, 3 Hen. 6. 36. 2 Ed. 17. 11 Hen. 4. It is intended for his neglect or oppressive execution; but the particular information which a man may be able to add, contrary to the duty of his office, tho' various, are yet so far as obvious, that it seems needful to endeavour to enumerate them. Co. Lit. 233, 234.

For more learning on these subjects, see 16 Vin. Abr. and 3 Bac. Abr. Vol. 3, 207. Officers.

Office found, is where an inquisition is made to the King's use of any thing, by virtue of his office who inquirit. And therefore we oftentimes read of an office found, which is nothing else, but such a thing found by inquisition made ex officio. And in this sense it is used 33 H. 8. 20. and in Steauty; Pravng. 17, div. 66, where to traverse an office, is to take it out of the power of the King's issue. And in Kitchen, fel. 127, to return an office, is to return that which is found by virtue of the office. And there are two sorts of offices in this signification, issuing out of the Exchequer by commission, viz. an office to intestate the King to the thing inquired of, and of an office of investigation, found in such see 6 Rep. fel. 52. Page's case.

Inquisition. Officialis, Officialis. By the ancient Civil law signifies him that is the minister of or attendant upon a magistracy. In the Canon law, it is especially taken for him to whom any bishop doth generally commit the charge of his spiritual jurisdiction; and in this sense there is one in every diocese called Officialis Principalis, which is sometimes Commissarius, Commissarius, or sometimes 6 B. Commissarius.
Communijari Forami. The difference of their two powers you may read in Lindeswede, tit. De Secquesis Pofficiis, cap. 1. verbo Officialis. But this word official in our statutes and Common law signifies him whom the archdeacon subtitute in the exercising of his jurisdiction, as appears by the said statute, Cowell, edit. 1727.

Diffaritaris non facundis vel amovendis, Is a writ directed to the magistrates of a corporation, willing them not to make such a man an officer, and to put him out of the office he hath, until inquiry be made of his manners, according to an inquisition formerly ordained. Reg. Orig. fol. 182.

Dil, Search to be made in London for defective oils, 3 Hen. 8. c. 14. Duties on hempseed oil, rape oil, and other seed oil, and olive oil, 2 Will & M. Jefl. 2. c. 4, fol. 9, 41. No lamps to be used in private houses but of fish oil, 8 Ann. cap. 9, fol. 18. See Gattling, Dalhousie, edit. 1727.

Dieron labus, Or the laws of Oleron, (Leges Uibrarum), are so called, because made when King Richard the Firft was there, and have respect to maritime affairs. Co. en Litt. fol. 260. This Oleron is an island in the bay of Aquitain, at the mouth of the river Charent, now belonging to the French King. See Selden's More Gramam, fol. 227 & 254, & Prym's Animadversiones on 4 Angl. fol. 126.

Olympiad, (Olympius). The space of five years: Ethelred, King of the English Saxons, reckoned his reign by Olympiads, as appears by a certain charter of his, having these words, Consuetudines (Unus) factus Crucis, anno 989, 4 Regni sui. And this, by contemporary writers, seems to have been the sixteenth year of his reign, and the year of our Lord 994, or thereabouts. Spelman.

Difmissals, Are placed among crimes and offences; and omission to hold a court leet, or not swearing officers therein, etc. are cases of forfeiture. 2 Hen. P. C. 73. Omissions in law proceedings render them vicious and defective; as want of warrants of attorney entered, &c. 1 Keb. 202, 204. See Multifacere.


Durando raro positione, Is a writ that lies for a joint-tenant, or tenant in common, that is disfrained for more rent than his proportion of the land comes to. Reg. Orig. fol. 182.

D. ili. In the Exchequer, as soon as a sheriff enters into his accounts, for fines, amercements and mean profits, he fetts his hand upon this mark O. ili. which signifies O. ili. of which the mayor or collector, hath but sufficient assurance: and therupon he forthwith becomes the King's debtor, and a debit set upon his head, and then the parties Petra- vouile become debtors to the sheriff, and discharged against the King. Co. 4. Litt. fol. 116.

Dinbow, (Arbor, Eqv.) An annuity of 2000 L. per annum out of the aggregate fund, for the natural lives of Arthur Osban, Edg and of his son George Osban, Eqv; in consideration of the long continued and eminent services of the said Arthur Osban, as Speaker of the house of Commons, 2 Geo. 3. c. 33.


Divers are publish'd for the burden of proving, spoken of 14 Car. 2. cap. 11. and several other statutes.

Open labrum, (Lex manifisfa seu apparentis) Is making laws, which by Magna Charta, cap. 21. Bailiffs may not put men unto upon their own bare affliction, except they have witneses to prove the truth thereof. See Labrum, cap. 222. Open labrum, or open criminal, is a false perjuris, que judicibus, bennet, open theft, cecernemund et iuradwrick. Leg. Hen. 1. cap. 12. Hic in remandumibus, Widdlic. pri. Ran dictat, faith Spelman.

Sperat. In ancient surveys and accounts of manors, near the market towns, those tenants which were called sparatia; they were those who had a certain degree or portion of land, by the duty of performing many bodily labours, and other servile works for their landlord, and were

other than the first, natives and bond-men. Cowell, 1727.

Speratto, One day's work performed by any infe- nant to the lord. Id. ib. Paroch. Antig. p. 320.

Spertum, In a private feine, is the trapping up, or being down, one, on purpose of law, which is unjiufl: But where the law is known and clear, though be unquestionable, the judges must determine according that. Vaugh. 37. In another signification, it is said a Fortis, that all the unjuft methods invented by print, to extort money from their subjects, are so many fal- man of the law which he regards up; for should Kings seldom fail to follow the example of their pre- cedors. Fortis. Laud. Leg. Angl. See 16 Vinia c. 141.

Option. When a new feiffran bishoF is consecrated, the archbishop of the province, by a culbinary prærogati- vis claim the collation of the first vacant dignity or of nifice in that fee, at his own choice, which is called the archbishop's option. Cowell, edit. 1727.

Dassa. This was Saxon money or coin, valued at 169. a piece (often found in Dene-margy) and soon, according to the variation of the standard, twen times. It is a word often mentioned in Dene-margy, 9. Tale materiam reddit 30 libras a tertio der 20 in Leg. Canui fifteen sere make a pound, cap. Cowell, edit. 1727.

Sample 40 Regis & Regno. Before the reforma- tion, while there was no standing collect for a finite parliament, as soon as the houses were met, they proceeded to the election of bishops, and a clergy to pray for the peace and good government of the realm, and for a continuance of the good understandings between his Majesty and the estates of his kingdom. Accordingly the writ De granda pro Regis & Regno cum Common in Edward the Third's time. Nicholos's Eq. Hist. fol. part 3. p. 36. 66.

Damas, (Prince of) Naturalized, 7 Geo. 2. c. 4. 

Dartiflim, The hem or border of a garment. See edit. 1727.

Dysis, Anglice, A bone, a swelling or knot in 1 feth, caused by a blow. Brayh. ib. 3. tit. De Conu cap. 15. num. 2.

Dyctana and gardens, Robbing them, or defiling trees in them, how punifhed, 43 El. c. 7. 9 Geo. c. 22. The hundred anfwerable for the damages, 9 Geo. 1. c. 22. fol. 7. 

Dyfel or Drisal, (mentioned in f tat. Rich. 2. & 8. 24 M. 8. cap. 2. and 3 & 4 Edw. 6. cap. 6.) Seen to the point of the navel, or rather a kind of stone like a lum, which dyfels in their colours. To what duty liable. 4 Will. & M. c. 5. fol. 2.

Dyffe or Dyfelles, (Effijijus metallici, derived from the Saxon Ver, metalum and defien, effideres) Is offered in charters in privileges, being taken for a liberty whereby a man claims the fere found in his own ground but properly is the ere lying under ground: As alfo delfe of coal, is coal lying in veins under ground before it is digged up. Cowell, edit. 1727.

Dydel, or Dydal, (Ordalium) Is a Saxon word compounded of or, magnum and defi, or des, judicium or as others, from or, in that language is præ- latum, prælatum, or a prelate, or affair, or affairs, Not guilty bar is used for a kind of purgation practifed in the old times, and in the Canon law called purgatio vulgaris. There were of this two farts, one by fire, another by water. Of thefe see Mr. Lambard, in his Explication of Saxon words, verbo Ordalium: Of this you may read in Dychigis, fol. 98. and Hateman especially, Dipus, de Feud. 11. fol. 6. of five kinds of proofs, which he callef Feudaletes probationes, he makes the fourth, called it Explorationem, & bujus furiis probationes 6. generis fulfae animadversione, viz. per flammam, per aquam, per formam candidam, per aquam vel gelida, vel ferventem, per ferreis & per corpus Domini, of all which he mentions some examples out of histories very worthy the reading. See Stene de verbor. Significat verbo Mr. Churambio. This feems to have been in use in Henry the Second's
ORD

Second's time, as appeareth by Glantville, li. 14. cap. 1.
2. See also Verghun, cap. 3. pag. 63. &c. See also Henley 556. This Ordinian law was condemned by Pope Stephen the Second, and afterwards here totally abo-

Dipls. Oaths and Ordals. Was part of the priviliges and immunities granted in old charters, meaning the right of administering oaths, and adjudging ordal trials, within such a precinct or liberty. Crowell, edit. 1727.

of the Chancery, King's Bench, &c. Orders of the courts of Chancery, either of course or otherwise, are ob-

Orders of several forts, and by the consent of the

Orders, or by some other interest in or affected by it;

and they are sometimes made upon hearings, and some-

of parties. Proit. Sac. 26. They are to be pronounced in open court, and drawn up by

he register from his notes; and if there be any difficulty in

a register from his notes; and if there be any difficulty in

attaching the notes, a summons is given by the register

for the clerk or solicitor of the other side to attend, whereupon they are setted, or the court is applied to,

they are to be served on the parties, or the clerk or solicitor

upon the petition or motion of one of the parties in a

court, or of some other interest in or affected by it;

of the register, to draw up the register from a

when the register is drawn up, it is to be entered by

entering clerk, which must be within eight days from

the promoung; and then the register passes and gives it, after which the service, &c. For not obeying

an order, personally served, a party may be committ-

Dyers of the King's Wench. Are rules made by

court in cauws there depending; and when they are

when attended at the day, the cauze is to be put out of

cases but except for a doy good cauze be flown. Mich. 22 Car. B. R. 2 Litt. 11.

The court of King's Bench hath power to quaff

orders made at the publick or private seffions of the

or the order of the court; and the attorney in the cauze

not attend at the day, the cauze is to be put out of

cauws, &c. The cauze is to be put out of

orders, or by other commissaries, if they find good

reason for it. Ibid.

of the peace. See Pop.

Dudinale. A book containing the manner of perfor-

divine offices; In quo ordinarius modo, &c.

Dudinale of the foyet. (ordinariis forjihna) Is a

statute made touching foyet cauws, in the thirty-four

eight. of Edw. I. See Nith.

Dudinale of parliament. The foyet with all of

cauws. Acts of parliament are called ordinaries parlia-

mentary often in the parliament-rolls. If there be any

difference it is, that an ordinance is but temporary, to

be altered by the Commons alone. But an act is

perennial law, and cannot be altered but by King,

and Commons. See Par. Roll. 37 El. 3. sum. 38.

Antonomas 4 li. 13. Yet the oracle of the

way Sir Edw. Coke, does with many citations affert,
at an ordinanee of parliament is to be distinguisht from

afo, forasmuch as the latter can be only made by the

afo, and a third confound of the afoes, whereas the

as afo, and one or two of them. Crowell, edit. 1727.

Dudinale. (ordinariis) Is a Civil law term, and

tere signifies any judge that hath authority to take

causse of cauws in his own right, as he is a magistrat,

not by deputation; but in the Common law, it is

the right for him that hath exempt and immediate jurisdic-

in cauws Ecclesiastical, as appears in Co. 6th. 9.

f. 36. Henfu's cafe. And the statute of Westminster 2.

cauws. 31 El. 3. cap. 11. and 21 H. 8. cap. 5. Co.

afo, cap. 19. See Brooke, Ordinary, and Linndread

in cap. Exterior. tit. de Confectionibus, verbo Ordinarii.

advantage against ordinary, &c. for extorion, mull for

the 11th. of Oct. See Adminis-

trato, Bishop, Clergy. Hapitulates. Dibination contra levitanea. Is a writ that lied

against a servanть, for leaving his master against the statute.

Reg. Orig. f. 180.

Dibination of riotage, Form of ordination and con-

Bribe 3 & 8 El. c. 1. fett. 3.

Who qualified to have priets or deacons orders, 13 El.

c. 12. fett. 5.

Persons in orders to subscribe the articles, 13 El. c.

fett. 1.

And to take the oath, 1 W. & M. fijj. c. 8. fett.

7. 1 Geo. c. 1. t. 13.

Penalty for procuring, giving or taking orders for re-

ward, 31 El. c. 6. fett. 10.

None but priests are capable of any benefice or digniti,

or of administering the sacrament, 13 & 14 Car. 2. c.

fett. 14.

Djebdes, A general charter, or other solemn

confirmation of the religious of such a particular order.


Djebdes majoris et minores. The holy orders of

priests, deacons and sub-deacons, any of which did qualify

for presentation and admission to an Ecclesiastical digni-

ty or cure, were set down to the parishes; and the inferior or-

ders of chanter, psalmist, cantor, and acolyte, were called
djebdes minores: For which the persons so ordained had their prima tontum different from the

synodical clergy. Crowell, edit. 1727.

Djebdes fugitivi, Those of the religious who de-

sert their houses, threw off their habit, and so renoun-

ced their particular order, in contempt of their oath and

other obligations. The favouring and protecting such

djebdes was charged on Thomas, Earl of Lanyer.

Ordinum fugitivus, legisse transit/simus, ut legi placentur,


Djebnare, Letters patent for making it not within

the flauta of monogonons, 21 Jac. 1. c. 3. fett. 10.

Djeb, So taken for that rule which the monks

were obliged to observe. In Eadmer. vita S. Anfhimi, cap. 77.

Hac &c. his familia novitatis dictis, dum ordinis illi

grovii ordinem, Djebus also.

The white friars. These were of the order of S. Agnifiue. The Cistercius also were white. Crowell, edit. 1727.

Djeb niger, The black friars. Sub nomina Benedicti

sframans; as Ingalpbus tells us, pag. 851. &c. Matt.

Parisi. pag. 321. 514. The Chimais also were black.

Crowell, edit. 1727.

Djefyl, or Choapylus. (from the Saxon or., peac.

gold, folius vel redemius,) Is a delivery or refolution

of cattle. But Lombard says, 'tis a refolution made by

the hundred, or county, of any wrong done by one that

was in pledge. Archa. pag. 125, or rather a penalty for

taking away of cattle.

Djibby haven, Penalty on selling a net with a ball-

boat within the mouth of Oxford haven, 27 El. c. 21.

Djefrites ( Jurifriedum, i. e. velitis acquisita aureis

filitis), Finel or embroidered cloth of gold, made and

used in England, both before and since the conquest,

worn by our Kings and nobility, as appears by a record

in the Tower, where the King commands the Templars
to deliver such jewells, garments and ornaments, as they

had of his in keeping, among which he names dalmati-

cum saltatum de orisfis, i.e. a dalmatic or garment,
guarded with orisfis. And of old the jacquets or coat-

armours of the King's guard, were also termed orisfis,
because adorned with such goldsmith's work. Crowell,

edit. 1727.

Djigallous, But more truly orisfises, that is, proud

and high-minded, derived from the French orisfis, pride.

Djirpes, (mentioned in flat. 32 El. 2, fi. 3. c. 3.) Is

the greatest fort of North-sea fish, (for the latte fays they

are greater than lob-fish) which we now call organ, or

corruptly
corruptly from Orkney-fang, because the beft are near that island.

Cowell, edit. 1727.

Diligere, Without recumence. The meaning is, with care and diligence, to be made for the death of a man killed; that is, he was lawfully slain. *Si hoc inveredit, jactat orgide.* Cowell, edit. 1727.

Diftill College, A prebend of Reykby‡, how annexed to its provothing, 12 Ann. f. 2. c. 6. sect. 7.

Original. In the court of King's Bench, the usual original of such actions, are trappels on the case, and this court doth not find original in actions of debt, covenant or account, &c., whereas the court of Common Pleas, proceeds by original in all kinds of actions: But to arrest and fine a party to outlawry, it is made use of by both courts. And for original in trappels on the case, there is none payable to the crown, for the damages are laid above forty pounds in proportion to the damage. Practif. Sols. 254, 255.

The original is the foundation of the capias, and all subsequent processes; the return whereof is generally the cause of the capias: Though the capias may be taken out before the original, by leaving the propeuy with the filazer, who will make out a capias upon it, and afterwards carry it to the cur�tor to make an original; and the filazer when it is returned, is to file it with the cufjus brevium. See Attorney's Practi, in Court of K. B. and C. P.

Legallitas, In the Treasurer's remembrance-office in the Exchequer, are records or transcripts fent thither out of the Chancery, and are distinguished from Records, which contains the judgments and pleadings in suits tried before the barons of that court. Id. ib.

Dumon, (Duke of) Attainted, 1 Geo. 1. f. 2. c. 17.

Disfyllon, (Orphans,) Is a fatherless child; and in the city of London there is a court of record established for the care and government of orphans. 4 Inf. 278.

Funds appointed for the relief of the orphans of London, 5 W. & M. c. 10. 21 Geo. 2. c. 29.

Duty on wines imported to London, 5 W. & M. c. 10. sect. 8.

Duty on coal continued, 21 Geo. 2. c. 29.

Defendant intitled to costs, 21 Geo. 2. c. 29. sect. 6. See Custom of London.

Dystella, A forest word, signifying the claws of a dog's foot. Cowell, edit. 1727.

Difgisa, A garden plot. Men. Ag. tem. 1.

Dyfr, (Orchisium,) Is a room or cloister of a monastery, privy to a place, or chamber, prefixed to that of Oriel or Oriel college in Oxford took name. Cowell, edit. 1727.

Distilum parents. It was a custom formerly in the church, that in celebration of the masses, after the priest had consecrated the wafer, and spok the theke words, viz. Pax Domini vobisam, that the people kild each other; and this was repeated afterwards: But this custom was abrogated, another was introduced, viz. That whilft the priest spoke thefe words, a deacon or sub-deacon offered the people an image to kif, which was commonly called Pacem. We read it in Mut. Parif, ano 1100. Regem duorem ed ofendendum & iterum redunxerat ed pacem. Cowell, edit. 1727.

Dymonds, or Dymonds, (Mentioned in flat. 32 H. 8. cap. 14.) Is a kind of ore, or iron-forne, assuming the nature of iron, and it feems was anciently brought into England. Cowell, edit. 1727.

Durnino, Was a tribute paid by merchants for leave to flew or expote their goods to sale in markets. Qui per terras tantillum denoninam debant & telonem. Leg. Ethelred. cap. 23.

Dowland's law. By which was meant the eating married proffes, and introducing monks into churches, by Ojofold bishop of Worcester, in the year 974. Cowell, edit. 1727.

Dowland's law intuited. Is an ancient bunded in Worceftershire, so called of Ojofold, bishop of Worcester, who obtained it of King Edgar, to be given to St. Mary's church there. It comprehends 300 hides of land, and is exempt from the jurisdiction of the sheriff. Cam. Brit. tit. Worcestershire. See the charter in Spelm. Coiuml, 1 tem. fol. 452.

Drio, Was a deacon-cardinal of St. Nicholas, in care core Tulvian, a legate for the pope here in England, 23 H. 3. whose constitutions we have at this day. Stotul Angliae, ann. 1230.

Drobonus, Was a deacon-cardinal of St. Adrian, and the pope's legate here in England, 15 H. 3. as appeareth by the award made betwixt the said King and his commons at Kiento. His constitutions we have at this day. See Dought, (Mentioned in flat. 24 H. 8. c. 13.) A kind of collar of gold, worn by women about their necks. It is sometimes also used for a bos or button of gold, set with some rich stone.

Durt. Words which begin or end with ever, and are names of places, signify a situation near the bank of some river. See Durtrel, inv. 25. St. Mary Over in Southwark, Breadfeur in Worcufhire.

Dyrrchantic, Is a Saxon word, and signifies a person convicted of a crime; from the Sax. ofier, safer, and cythun, offenders. *Tis mentioned in the laws of Edu, opid Brempton, p. 836.

Dyurthermilla, A contingency or contempt of the court. Sometimes it signifies a forfeit for such contempt. In the laws of Alfred, c. 25, it signifies comitance, viz. Si quis gemetum adiijus superfcitis, ter emendet overhernillium. In a council held at Winchester, anno 1027, it signifies a forfeit for such a contempt. Cowell, edit. 1727.

Duryly, Is to have been found guilty of some penalty or fine (before the statute of hue and cry) laid upon those who hearing of a murder or robbery, did not pursue the malefactor. 3 Inf. fol. 116.

Dyurderers of the poor, See Poor.

Duyrcraft, (Fodum aportum,) An open seat, Co. 3 Inf. fol. 12, which must be manifestly proved. See Stratoon, &c.

Dyurwold, An open plain speech; derived from the French or weft, open. Stat. 1 Mar. f. 2. cap. 3.

Duryt, The leware or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debarred. —Nativi in villa de Withenbro—sebeit qui liber pro filibus sui maritiandi legem Dominii, & ouit ex filibus curatius, & Beth & alia servitia & auxilium Per, Bever. Cont. Hift. Creyland, p. 115.

Dyver, Derived from the Old French eter, to re, move, as suflated of the possifion, that is, removed, ou put of possifion. Mich. 9 Car. 1. Cr. 3 Rep. fol. 349. Pecoe's caele.

Dyvet le maine, (Amoore manum.) Signifies to take off, or expel; though in true French it should be ouler main; in a legal sense it denotes a judgment given for him that traversed or fueled a nontrim folde to do, and is indeed a delivery of lands out of the King's hands; so when it appeareth upon the matter disfused, that the King hath no right or title to the thing seized, then judgment is given to the person who was the King's hands amoved, and thereupon an amoures manum that be awarded to the eccheator, which is as much as if the judgment were given, that he shall have again his land Stundaf, Praecog. cap. 24. See 28 E. 1. flat. 3. cap. 19. It was also taken for the witt granted upon this petition F. B. N. cap. 256. It is written ouler le main, 25 H. 2. 22. But now all wardships, liverties, primer felions, & ouler le main, &c. are taken away and discharged b. 12 Car. 2. cap. 24.

Dyver le mer, (ultra mares,) Is a cause of excede of effion, if a man appear not in court, upon summons, for there was then beyond the seas. See Clinein.

Dyverfathch, is the thing defined by Drakton, l. 3. trad. 3 cap. 34. Ufufathec deicture latro extrae continentiam extra de terra aliena, & qui capit suos in terra ipsius qui tuti habet libertates; But Britten hath it otherwise, fol. 91. It is a compound of three Saxon words, viz. aut, extra, fungo, capio vel captus, and thes, far. It is used in the law of property or privilege. When a lord is enabled to call any man dwelling within his own fect and taken for felony in any other place, and to judge him in his own court. Rajall's Explication of Words, an 102 P. 2 P&. & Mar. cap. 15.

Dyuttland. The Saxon Thanes divided their belked, & hereditary estat into inland, such as lay nearest to the
OUT

3. To what place process of outlawry is to issue; and of the
quaint exactus, and proclamations on an outlaw.

4. What the party must do in order to initiate him to
a reversall; and of the effects and consequences of a

1. In what cases process of outlawry lies; and by what
jurisdiction such processes are to issue.

It seems, that originally processes of outlawry only lay
trespass and felony, and was afterwards extended to
deads of an enormous nature; and herein it is laid down
by ferjeant Hawkins, That processes of outlawry at this
day lies in all appeals, and in all indictments of conspire-
acy and decreit, or other crimes of a higher nature than
trespass, &c. or arms; but it lies not in an action, nor, as
some fay, on an indictment on a statute, unless it be
given by such statute, either expressly, as in the case of
premature, or impliedly, as in cases made treason or
 felony by statute, or where a recovery is given by an
action in which such processes lay before, as in the case of
felonious entry.

In an affile a capias pro fine lies, and upon that processes
of outlawry, if the affile be found with force, but being
a mixed action, as favouring of the reality, it is out of the
@itute of additions, 1 Hen. 5. cap. 5. which extends only
to personal actions, appeals and inquests.

So process of outlawry lies in reprieve, and is given
by the statute 25 Ed. 3. cap. 17. which gives the capias
in this manner; when on the partes repligati faces the
sheriff returns averita et clangata, then a capias in nullam
ficies, and on that being returned nulla bona, a capias
ficies, and fo to outlawry; but it does not lie on the
original writ of reprieve, which is vicissital and deter-
mined; and therefore as no addition is required in such
original writ, so neither ought there to be any in the
second writ; for where a writ or process is founded on a
former, it must pursue the former, and cannot vary from
it. 6 M. 84. 1 Salt. 5. Earl of Banbury v. Wood.

But in account, debt, detinue, annuity, covenant, and
such actions as are grounded upon negligence or laches
never, no capias lay at Common law, but only long-
mans and disfrses infinite, and therefore the capias and
outlawry in these actions were introduced by divers acts
of parliament. Co. Lit. 128. 6 Leav. 82.

As at forfeitures for not appearing, to which is called
the outlawry, or in personal actions, or in personal actions,
on account, detinue, annuity, covenant, and such actions
as are grounded upon negligence or laches never, no capias
lay at Common law, but only long-
mans and disfrses infinite, and therefore the capias and
outlawry in these actions were introduced by divers acts
of parliament. Co. Lit. 128 b. 3 Co. 12. 2 Bull. 63.
2 Inf. 143. 3 Co. Jus. 222, 261. 1 Selw. 158. 2
Staund. 128. 1 Ke. 890, 908. 1 Sidw. 248, 258. Of
detinue of charters. Dyer 223. a. subsititute.

By the statute of Marlborough, cap. 23, the writ of
moritavets de componenda was given, where before the
processes in account was fammons, attachment and disfrses
infinite; and by Woffm. 2. cap. 11. processes of outlawry is

4. Against whom process of outlawry may be awarded;
and whether it may be awarded against a peer, an infant,
some fole or owner, several defendants, and principal and
affly.

Vol. II. p. 110.
where the proceeding is by bill, and not by original, as there can be no capias, so there can be no proces of outlawry, as in a bill of privilege by or against an attorney. 1 Leon. 329. 2 Rull. Abr. 70. 1 Lov. Abr. 159. 1 Rol. 577.

It is clear, that the courts of Westminster may issue process of outlawry, and that the court of King's Bench, either upon an indictment originally taken there, or removed thither by certiorari, may issue process of capias and exijlment into any county of England, upon a non ciel treatment, or the arrest of the sheriff of the county where he is indicted, and a teftament that he is in some other county. 2 Hal. Hift. P. C. 198.

Also justices of oyer and terminer may issue a capias or exijlement, and so proceed to the outlawly of any person indicted before them, directed to the sheriff of the same county, under their封 signature, and by the statute of 5 Ed. 3. cap. 11, they may issue process of capias and exijlment to all the counties of England, against persons indicted or outlawed of felony before them. 2 Hal. Hift. P. C. 31. 199.

But justices of gaol delivery regularly cannot issue a capias or exijlment; because their commission is to deliver the gaol of prisoners in exijlentibus, so that those whom they have to do with are always intended in custody already. 2 Hal. Hift. P. C. 199.

Justices of the peace may make out process of outlawry upon indictments taken before themselves, or upon indictments taken before the sheriff, and returned to them as in the above case, that is, when the power of the sheriff, to make any process upon indictments taken before him, is taken away by that statute. 2 Hal. Hift. P. C. 199.

It is made a statute by Hal. whether a coroner can by law make out process of outlawry against a man indicted by inquisition before him. 2 Hal. Hift. P. C. 199.

It hath been held, that though the process in inferior courts be a capias, yet that they cannot proceed to outlaw the party. Telf. 158. Crs. Faz. 222, 201. Ruln. 128. 1 Sid. 248, 259. 1 Ed. 890, 928.

The process to the outlawry, viz. the capias and exijment, must be in the King's name, and under the judicial seal of the King appointed to that court that issues that process, and with the signature of the chief justice or chief judge of that court or seiffions. 2 Hal. Hift. P. C. 199.

2. Againsf whom proces of outlawry may be awarded; and whether it may be awarded against a peer, an infant, with a female, certain federalists, and principal and accessory.

If a nobleman, or peer of the realm, be indicted, and cannot be found, process of outlawry shall be awarded against him, and shall be outlawed pro judiciatum exijlentatum. 2 Hift. 49. 3 Ed. 31. Staunf. 130. 2 Haw. P. C. 424.

But in civil actions between party and party, regularly a capias or exijlment lies not against a lord of parliament of England, whether secular or ecclesiastical; yet in case of an indictment for treason or felony, yes or but for trespass of &c. arms, as an affault or riot, proces of outlawry may lie against a peer of the realm, because the suit is for the King, and the offence is a contempt against him; and therefore, if a receive be returned against a peer, or if a peer be convicled of a diliufion with force, or denies his deed, and be found against him, a capias pro fine and exijlment flall issue, for the King is to have a fine; and the same reason holds upon an indictment of trespass or riot, and much more in the case of felony. 2 Hal. Hift. P. C. 199, 200. Crs. Eliz. 170, 503. 5 Co. 54. 1 Rul. Abr. 220.

An infant above the age of fourteen may be outlawed, and the outlawry is not erroneous; but an infant under said age, or of the age of fourteen, cannot be outlawed, for if he be he is erroneous. 3 Hift. 5, 222, 234. 1 B. & C. Tit. outlawry 11. 2 Rul. Abr. 825. Dyer 104. 2 Hal. Hift. P. C. 207, 208.

But the outlawly of such infant is not void, it bring of record, but is voidable only by writ of error. Dyer 239. 2 Rol. Abr. 825.

A woman is said to be waived, and not outlawed; and if it be waived, it is by Lord Coke, why the outlawry of a woman is legally called treason, that is, because women are not sworn in leers or torns, as men are; who are above the age of twelve; and therefore, says he, men are called traitors, i.e. extra legem majestatis, but women are civitissa, i. e. director, left out, or not required, because they are not sworn to the law. Cr. Lit. 122, 6. Lit. fol. 106.

Therefore where a capias and exijlement were awarded against three men and two women, and the return was exijlentati exijlent, where, as to the women, it ought to have been unwaived exijlent, this was held to be error. Cr. Cas. 70, 71. 1773. Benchman's cafe. 1 Rol. Rep. 407. 3 S. Rul. Abr. 824. S. P.

If in an action against husband and wife, the husband is outlawed, and wife waived, and the is taken upon the capias exijlentat, though fine is to be discharged of the imprecision, (because the plaintiff cannot proceed against her alone) yet the deed remains waived, and when her husband is taken he must bring her in. For this rule Dyer 271, 1. Crs. Faz. 445. Crs. Eliz. 370. Aust. 86. 1 Sid. 21.

In an action for a debt due by the wife before marriage, the husband was returned outlawed, and the wife waived, but before the return was awarded, an attorney procured for the wife a supersedeas, forming an issue, where the wife had appeared before him as her attorney; and on motion that this appearance of the wife should be received, all the court conceived, that if upon the exijament the sheriff had returned reddidit se, or upon partes capias, the sheriff had returned capi causas upon the wife, then her appearance should be entered, but not by attorneys, as it is here, and the exijlent should only issue against the husband, & idem idem should be given to the wife; but when the husband upon the exijlent is returned outlawed, then it shall be entered alter fum juror for the wife, for the process i are not entered, and the sheriff may pursue his pardon, he shall not have any allowance therein, as in a feire facias, unless he appear for himself and his wife; but if for the husband, the sheriff should return capi capi upon a phias capias, and non civitissa for the wife, yet an exijlent shall issue against both, because it must be presumed that this was an issue in his own favor, but if upon the exijament the sheriff returned reddidit se for the husband and for the wife, and the wife is waived, the husband shall go free; but in this case, because the exijlent was returned against both to be outlawed, the supersedeas suspending the appearance of the wife is merely idle and void; whereas it was entered, and the exjament appointed to be filed against both. Cr. Cas. 598, 599. Smith ver. Ash & ne' Hutt. 86, S. C.

If two are sued in a joint action, and neither of them will appear, process of outlawly must be taken out against both, Oro. Eliz. 638. Beverly ver. Beverly. If an exijlent be awarded against both, and the return is prima facie faciens & non comparat, of a non faciens, without fovere, nec cum aliqua comparatibus, it is erroneous, 2 Rol. Abr. 802. Topornier's cafe.

If two in a writ of account are adjudged to account, and one is after outlawed in the suit, and the other appears, he shall account alone. 41 Ed. 3. 3. 1 Rol. Abr. 127. S. C. 1 Brow. 35. S. P. 1904.

When two are adjudged to account, and one is outlawed and accounts, if he discharges himself upon the account, this shall be a discharge to the other, when he uses a seire facias upon a charter of pardon, and if he be outlawed, and he account, this shall be a charge upon the other; because they were adjudged & non commutant juncturly. 41 Ed. 3. 13. 6, 1 Rol. Abr. 127, and wide Abr. 188. 2 Leon. 70.

If in debt upon an obligation against B. and C. and heirs of the obligor, and against D. the daughter and heirs of D. and if he will purchase the obligation, the other are another of the sons and heirs of the obligor in gavelkind, process is continued till the under
OUT are outlawed, and the niece waived, and after the uncles died took a fine against the plaintiff, who thereupon declares against them sumo et come the niece; and the uncle plead, his niece is but of the age of seven, unde non intendant quod duravit minori attata sum they ought to answer, &c. yet the parol shall not demurr for the niece is out of court, and quid her the defendant pleaded for this day, and asked could be fixed against her, but the uncles only, because the former appeared in court. Dyer 239. pl. 203. Haw.


An action of trespass brought against two, one was outlawed for the entry of the writ it was entred, ’by suidendum quod praedidit’ J. S. (one of the defendants) utractus est, and then counts against one of them; and on motion in arrest of judgment, the court held the declaration nought, and that the course of pleading in such cases, after the entry of the writ, was to fly quod praedidit J. S. utractus est in praec. illa, and that the last words are essential, because that he might be outlawed in another writ, and not in this. 1 Sid. 173. 1 Hed. 624. S. C. Guy vtr. Barnard.

As to awarding outlawry against principal and accessory, and the trespass of the peace, and the proceeding to the end of the writ, in such cases, the assize of outlawry was formerly in use, but the same is now disused. 1 Edw. 1. 14. It is declared, That it has been used in some counties to outlaw persons being accused if commandment, force, aid or receipt, within the same time that he which is accused for the deed is outlawed, and therefore it is provided, that none be outlawed upon appeal of commandment, force aid or receipt, unless he shall have been convicted by the writ of true workmen, and none shall be used therein this realm; nevertheless, he shall not appeal if he be outlawed on this interment, nor leave off to commence his appeal at the next county against them, no more than against their principals which be appealed of the deed, but their exequency of the appeal are outlawry or otherwise.

In the construction of this statute, the following particulars are laid down by Sergeant Hawkins as must remarkable.

4th. That it seems agreed, that it extends as well to judgments as to appeals, not only because the word appeal in the statute may in a large sense be taken for any accusation in general but because indictments are certainly within the reach of the statute as appeals; and the Common law, for the settling whereof his writ was made, did make any distinction in appeals and in indictments. 2 Ingl. 83. 2 Hawk. P. C. 306.

2dly. That it seems agreed, that where-ever one of the defendants are expressly charged as principals, and others as accessories, before the award of this exequency, the same or their chargers in action cannot but be retrievable, because it appears upon the record that the exequency issued contrary to the direction of the statute; but if several be outlawed on a writ of appeal, whichchargeth them all alike without any distinction, there can be no advantage taken of the appellant's not having pursued the statute, for it appears he might have charged them all as principals. 1 Hawk. P. C. 306. 2 Hale's Hist. P. C. 200.

3dly. That it is strongly holden, that if an appellant take out the exequency at the same time against all the defendants, he must, when they appear, count against them all as principals, and shall be concluded from charging any of them as accessories, because he has taken out such process as is erroneous where all are not principals; but he makes a doubt, whether this be law at this day, since all errors, as the law seems now to be holden, are 2 Hawk. P. C. 306, and vide 2 Hale's Hist. P. C. 200.

4thly. That it seems the better opinion, that where there are more than one principal, the exequency shall not lie till all of them are arraigned; and herein it is laid by Hale, that if A. and B. be indicted as principals against C, and both accessory to both, the exequency against the accessory shall lay till both be attainted by outlawry or plea; for that it is said, if one be acquitted, the accuser is discharged in so far as to both, and therefore shall not be put to answer till both be restrained; but hereof he adds a dubitatur, because though C. be accuser to both, he might have been indicted as accessory to one, because the felonies are in law several; but if he be indicted as accessory to both, he must be indicted in several, and not as accessory to both. 2 Hawk. P. C. 306. 2 Hale's Hist. P. C. 202. 207.

In treason all are principals; and therefore proceeds of outlawry may go against him that receives, at the same time as against him that did the fact. 1 Hale's Hist. P. C. 235.

3. To what place process of outlawry is to issue; and of the quinto exactus, and proclamation on an outlawry.

The exequency must be in the county where the party really resides, for there all actions were originally laid; and because that outlawries were at first only for treason, felony or very enormous trespasses, the process was to be executed at the Town, which is the sheriff's criminal court; and this held not only before the sheriff, but before the coroners, who were ancient conservators of the law; and when a man is outlawed to the side with the sheriff in his court, and who pronounced the outlawry in the county court on the party's being quinto exactus; and therefore anciently there was no occlusion for any proceeds to any other county than that in which the party actually resided; but this matter being since altered, and persons learning their title to be discharged, that the aids of parliament, it will be acccessory to take notice of the statutes themselves. Fiz. Exequency 26. Dyer 295.

And first, It is enacted by the 6 Hen. 6. cap. 1. That before any exequency be awarded against persons indicted in King's Bench for treason or felony, writs of capias shall be directed as well to the sheriff or sheriffs of the county whereof they be named in the indictment, the same capias having the space of six weeks at the least, or longer time, by the direction of the said justices, if the cause require it, before the return of the same; which writs so returned, the justices shall proceed in the manner as they have done before the statute; and if any exequency be awarded, or any outlawry pronounced against such persons, before the return of the said writs, the same capias so awarded, with the outlawry thereof pronounced, shall be set aside and held void; and it is enacted by the 8 Hen. 6. cap. 10. That upon every indictment or appeal, by which any subject dwelling in other counties than where such indictment or appeal shall be taken of treason, felony and trespases, before the justices of the peace, or before any other ministers having power to take such indictments or appeals, or other commissioners or justices in any county, franchise or liberty of England, before any exequency awarded, presently after the first writ of capias returned, another writ of capias shall be awarded, directed to the sheriff of the county whereof he who is indicted is or was supposed to be conversant, by the fame indictment, returnable before the same justices, before whom he is indicted or appealed at a certain day, containing the space of three months from the date of the last writ, where the counties be holden from month to month, and where the counties be holden from fix weeks to fix weeks, the space of four months, or the day of the return of the said writ, by which writ of second capias, the sheriff shall be commanded to take him which is so indicted or appealed by his body, if he can be found within his bailiwick; and if he cannot be found within his bailiwick, to be advertised by public proclamation in two counties before the return of the said writ, that he which is so indicted or appealed shall appear before the said justices, &c. at the day contained in the said writ, to answer, &c. after which writ so awarded and returned, if he which is so indicted or appealed, come not at the day of such writ returned, the exequency shall be awarded; and that every exequency and outlawry otherwise awarded or pronounced shall be holden for none and void.
But it is expressly provided, "That the above recited statute concerning process to be made before the King in his bench fland in force, and that this present statute shall not extend to indictments or appeals taken within the county of Chiltern; and if any person shall be indicted or appealed of felony or treason, and at the time of the same felony or treason superseded, was within the county whereof the indictment or appeal was mentioned, the like process to be made against them as was used before."

And it is further enacted by 10 Hen. 6. cap. 6, "That such second capias as is required by 8 Hen. 6. cap. 10, shall be awarded upon indictments or appeals removed into the King's Bench, or elsewhere, by certiorari or otherwise."

And by the 31 Eliz. cap. 3, it is enacted, "That in every action personal, where any writ of exigent shall be awarded out of any court, one writ of proclamation shall be awarded and made out of the same court having day of teft and return, as the said writ of exigent shall have directed, and delivered of record to the sheriff of the county where the defendant, at the time of the exigent so awarded, shall be dwelling; which writ of proclamation shall contain the effect of the same action: And that the sheriff of the county, unto whom such writ of proclamation shall have been delivered, shall make three proclamations in this form following, and not otherwise; that is to say, of the same proclamation in the open county-court, and one of the other of the same proclamations to be made at the general quarter-feelions of the peace in those parts where the defendant at the time of the exigent awarded shall be dwelling; and one other of the same proclamations to be made one month at the least before the quintus exaltus by virtue of the said writ of exigent, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling at the time of the exigent so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid, of the parish in the county, and next adjoining to the place of the defendant's dwelling, and upon a Sunday after divine service and sermon, if any sermon there be; and if no sermon there be, then forthwith after divine service and sermon, and he be also named under an alias dinitus of another, it hath been adjudged, that there is no need of any capias, with a command for proclamation according to 8 Hen. 6. because that which comes under the alias dinitus is no way traversable nor material: Also if a defendant be named of B. and late of C. there is no need of any capias to the sheriff of the county wherein C. lies; because that it appears, that the defendant is at present conversant at B. but if a defendant be named of no certain place at present, but only late of B. and late of C. and late of D. &c. being all of them in counts differed from that in which the prosecution is commenced, a capias shall go to the sheriff of every one of those counties. 2 Hawt. P. C. 304-5. 2 Hall's Hist. P. C. 159-6.

On a writ of error to reverse an outlawry upon the statute of 5 Eliz. of perjury, the first error alleged was, "That the said statute was enacted by the name of N. L. de parochia de Aligatre, and not from what county it was taken for that a county court was held 23 Feb. and the next county court was held 23 March following, so as there were not twenty-eight days between these two county courts, so as there ought to be by law, exclusive and not inclusive. And for the first cause it was alleged, that it was objected to be well enough, because Adalgarus was in the margin, for the parishes should be intended to refer thereto; but because an indictment shall not be taken for an intention, and because the county in the margin shall be referred to the place where the offence was committed, and not to the indictment of the party; and by the statute of 8 Hen. 6. there ought to be the addition of the place and county where the party indicted inhabited; the same thing was held to be ill, and reversed, as the second cause also, it was held to be erroneous; but Tufried field, that ought to be affidged for error in fact, for it might be leap-year, and then it is good, and that matter illusible, Cro. Ten. 167. Lezlee's case."

And exigent facias be delivered to the sheriff, and there are but two county-days before the return, and the sheriff return the first and second exaltus, &c. non comperit, and that there were no more county days between the delivery of the writ to him and the day of the return, there may issue a special exigent facias with an allecato comitatus, if it be prayed after the return, and before any new county-day be past; but if any county-day be past between the lat of the former county-days and the return, no exigent facias shall issue with an allecato comitatus but an exigent facias de novo; for the demand of the party must be at five county-courts successively held one after another, but the second exaltus the offender render himself, and his mainprize, and at the day of the return make default, n exigent facias with an allecato comitatus shall issue, because three county-days intervened, but a new exigent and capias against the bail. 2 Hall's Hist. P. C. 201-2.

"That if such an outlawry be laid, and the act ushers, if it be an outlawry with a venality, and the demand of the party be at four county-courts successively held one after another, and the second exaltus the offender render himself, and his mainprize, and at the day of the return make default, such an exigent facias with an allecato comitatus begins, but if an allecato Huting comes, they shall proceed without omitting any Huting. Palm. 287. 2 Lain. 14. 2 Hall. Hist. P. C. 202."

4. What the party must do in order to intitle him to reversal: and the effects and consequences of a reversal.

Regularly in all outlawries, as well personal as criminal, the party in order to reverse the same was to appeal in person, and could not appear by attorney. Lea. 22.

But now by the 4 & 5 W. & M. cap. 18. for it more easy and speedy revering of outlawries in the court of King's Bench, it is enacted, "That from and after the first day of Eastern term thence ensuing, no person perfons whatsoever, who are or shall be outlawed in the said court for any cause, matter or thing whatsoever (treason and felony only excepted,) shall be compelled to come in person into or appear in person in the said court to reverse such outlawry, but shall or may appear by a torney and reverse the same without bail in all cases where special bail shall be ordered by the court."

And it is further enacted by the said statute, "That if any person or persons outlawed, or hereafter to be outlawed, in the said court, (other than for treason,) shall from and after the said first day of Eastern term be taken and arrested upon any cappias ulcutorum of the said court, it shall and may be lawful to and the sheriff or sheriffs, who hath or shall have taken an arrested such person and persons, in all cases where special bail is not required by the said court, to take a attorney's engangement under his hand to appear for the same, and to take the same, and to deliver the same, and to discharged from the sheriff or sheriffs, and therupon to discharge the said defendant and defendants from such arrest, and in those cases where special bail is required by the said court, the said sheriff and sheriffs shall and may take security of the same defendant or defendants by bond, with one or more sufficient security or securities, in the penalty of double the said
for which special bail is required, and no more, for his
or her appearance by attorney in the said court at
the court, when no other perilous thing shall be
required by the said court; and after such bond taken to
discharge the said defendant and de
defendants from the said arrest.

And it is farther enacted by the said statute, "That
if any perilous or outlawed as aforesaid, and taken
by a bail for arrestment, for the payment of the
return of the said writ to give security as aforesaid,
in cases where special bail is required, so as he or they
are committed to gaol for default thereof, that whenever
the said prisoner or prisoners shall find sufficient security
to the sheriff or sheriffs, in whole custody he or they
had any lands shall never be released by writ of
said court, at some return in the term then next follow-
ning, to reverse the said outlawry or outlawries, and to
do and perform such other thing and things as shall be
required by the said court, it shall and may be lawful to
and for the sheriff and sheriffs, after such security taken,
to discharge and set at liberty the said prisoner and pri-
soners for the same; any law or usage to the contrary
now notwithstanding." It hath been held, that if the party outlawed comes in
by capi corporis, he shall not be admitted to reverse the out-
lawry without appearing in person, as in such case be
ordered in 1 Hen. 6, cap. 9, 2 Hen. 6, cap. 10. But
with the sheriff for his appearance, upon the return of
the capi corporis and for doing what the court shall order.

2 Salk. 496.

By Wilm. 1. cap. 9. it is expressly provided, that those
who are outlawed, have abjured the realm, and should
be detained in perpetuity; which is the order of the court,
always held, that the court of King's Bench may in thier
determination, in special cases, bail a person upon an ou-
lawry of felony; as where he pleads, that he is not of the
same name, and therefore not the same person with
him that was outlawed, or alleges any other error in the
court in his arrestment. For by the 3 Eliz. cap. 3. sect. 3. it is enacted, "That
before any allowance of any writ of error, or revering
of any outlawry be had by plea, or otherwise, through or
by want of any proclamation to be had or made according
to the form of this statute, the defendant and defendants
in the original action shall put in bail, not only to appear
and answer to the plaintiff in the former suit in a new
action to be commenced by the said plaintiff for the
cause mentioned in the first action, but also to satisfy the
condemnation, if the plaintiff shall begin his suit before
the end of two terms next after the allowing the writ of
arrest in the said suit of the said outlawry.

A. who was a foreign merchant and never in England,
was outlawed at the suit of B., in an action on several
promises for goods sold and delivered; and upon a special
sapias ulitatum a bill and other effects belonging to A.
were seised, as forfeited upon this outlawry; and it was
alleged, that this outlawry may be vacated, and restitution
awarded, upon affidavits produced and read, that the de-
defendant was never infra legem, i.e. that he never was in
England, and therefore could not be outlawed, because
that was putting him extra legem. Sed per curiam; This
outlawry shall not be vacated upon such affidavits, but
there came an error, where he was compelled to do, and thereupon to put in bail to the ac-
ction in which he was outlawed according to the new
statute of 4 & 5 W. & M. and then the plaintiff con-
fented to the reversal of the outlawry. 3 Car. 459.

Matthews v. Erbe.

H. was outlawed in two actions, one was for 10l. the
other for 40l. and upon revering the outlawry the court
took special bail for the first, and an appearance for the
other, upon the statute 4th & 5th W. & M. and the recog-
nization was taken pursuant to 31 Eliz. 2 Salk. 496.

It is clearly agreed, that an attainer of felony of a
person by a writ of capias ulitatum is a legal judgment
of error, without a fores facias against all the tenants
and lords mediate and immediate; but it is fetted, that
such fores facias is not necessary in the case of high treason.

Dyer 34. pl. 20. Cru. Eliz. 235. 1 Kb. 141. pl. 11.

1 Sid. 316. 2 Akb. 39. 3 Med. 47. 4 Med. 356. 2 Hall's Hyp. P. C. S. P.

Alfo it is agreed, that it is not necessary in the case of
felony, when it is suggeted on the roll that the party had
no lands, and the attorney general confesses it. 2 Salk.
495.

It is agreed, that after an outlawry of treason or felony
is revered, the party shall be put to plead to the indic-
ment, for the judgment of the court; but it is not neces-
sary, that the record be taken at the King's Bench bar; or the record may be remitted
into the country, if they were removed into the King's
Bench by certiorari, with a command to the justices be-
to proceed by the statute of 6 Hen. 6, cap. 6. Cru.
Joc. 454, for the return of the record. 2 Salk. 365. 3 Med. 42. 6 Med.
115. 2 Hall's Hyp. P. C. S. P.

If a man or outlaw be opened by process in an information,
and comes in and reveres the outlawry, he must plead
infinitive to the information. 1 Salk. 371. Rex v. Hill.
5 Med. 141. S. P.

The law is the same in civil cases; and therefore if
an outlawry in a personal action be revered, the original
remains. March 9.

Trespass for taking and detaining his beasts till he
made a fine; the action was laid in Sufax; the defen-
dant pleads, that the caufe of action did not arcurne within
five years before fuing of the writ. The plaintiff replies,
that he was brought as aforesaid, and was at a place
in London, intending when the defendant had appeared to
have declared for this trespass; and that the defendant
was outlawed in London; and that within fuch a time after
the reveref of the outlawry he declared here; the defen-
dant demurred; and for the defendant it was infiued,
that the suit was laid in London, where the defendant
in this action declare in another county, tho' the caufe of
action be tranfitory; but upon information by the pro-
thonotaries that the course of the court is, that altho' the
original be laid in London for expediting the outlawry,
yet when the defendant comes in, the plaintiff may de-
clare againft him in any other county, or the action be
local or tranfitory; and the statute 21 Jac. 1. cap. 16. gives
to plaintiffs generally a power to commence a new fuit
within the year after the outlawry reverfed; and that he
may do this in cace to warrant his declaration within the
course of the court; and judgment was given for the
plaintiff. 2 Lev. 245. Whitson v. Huthnurd.

It hath been adjudged, that if the King grant over the
lands of a person outlawed for treason or felony, and
afterwards the outlawry be reverfed, the party may enter
on the patentee, and need neither to sue a petition to the
King nor a fores facias against the patentee. 1 Med. 188.

A person hall, after outlawry reverfed, be restored to
his law, and to be of ability to sue. Co. Lit. 289. b.

If the goods of a person outlawed are fold by the sheriff
upon a capias ulitatum, and after the outlawry is revered
by writ of error, he shall be reftored to the goods them-
selves; because the Sheriff was not compellable to fell
these goods, but only to keep them to the life of the King.

If an adowfon come to the King by forfeiture upon a
outlawy, and, the church becoming void, the King pre-
ents, and then the outlawry is revered; yet the King
shall enjoy that presentment, because the presentment
is made in the name of the King as the profit of the adowfon.

But if the church be void at the time of the outlawy,
and the presentment is thereby forfeit as a chattel prin-
cipally and dlintinct of itself, there, upon the reveref of
the outlawy, the party shall be reftored to the prezent-
name, Cru. Eliz. 170. accorded for curiam.

If a termor being outlawed for felony grants over his
term, and after the outlawy is revered, the grantee may
have trefpas for the profits taken between the reveref of
the outlawy and the aflignment; for by the reveref it is
as if no outlawy had been, and there is no record of it.
Cru. Eliz. 170. accorded for curiam.

It is said, that if a man be outlawed in the King's
Bench, and the party's goods are feised into the King's
hands, and then the outlawy is revered, there can be
no reflitution; the reason whereof is, for that the court
6 D
OEY
OEY

of King's Bench cannot send a writ to the Treasurer; and the court of Exchequer have no record before them to issue out a warrant for refutation. 5 Med. 61.

It is contrary to Chancery, that if A. being possessor of several houses for a long term for years, mortgages the same, and is outlawed for high treason, upon which those houses are feised into the King's hands, and the same granted for valuable consideration to J. S. who likewise gets an assignment of the mortgage; that yet the receiver of the mortgage, or J. S., may feise into the King's hands; and that it was undoubtedly so as to a freehold or inheritance, and he saw no substantial difference in the case of a leasehold. 2 Vern. 312. Pottow, ver. 1st; and vide 2 Lev. 49. the case of Pinfold ver. Nerby.

For more learning on this subject, see 3 Bac. Abt. tit. Outlawry, and 22 Vin. Abt. tit. Urlawty.

Outparlers. (mentioned in flat. 9 H. 5. fl. 1. c. 7.)
A kind of thieves in Riddifdale, that flote cattle, or other things without that liberty: Some are of opinion, that those which in the future-guard of a town are termed outparlers, and as such are called outparlers, being such as fit matches for the robbing any man's cattle. 2 Cowell, ed. 1772. See Inturkers.

Outurkers. Are billiff servants, employed by the sheriff, or their deputies, to ride to the farthest places of their counties or hundreds, with the more speed to summon such as they thought proper to go to their county or hundred courts. 14 Ed. 3. fl. 1. cap. 9.

Dwelfy, Is when there is lord, mefne and tenant, and the tenant holds the mefne by the same device, that the mefne holds over of the lord above him; this is called a dower of services. 2 Cowell, ed. 1772.

Dwelfy. See a dower of services, above.

Dye, See Cattle.

Dyke, A franchise granted to the university of Oxford, excepted out of the general confirmation, 9 Hen. 4. c. 11. 13 Hen. 4. c. 1. Scholars outlawed for riots, to be banished the university, 9 Hen. 5. c. 8. See Title.

Dwerg, A vagabond lying in the land. Six oxgangs of land, so far as may be. Such oxgangs may be plowed. Cresp. 110 mov. 420. But an oxgang seems properly to be spoken of such land as lieth in Gwynnyr. Old Nat. Brev. fol. 117. Sime de urb. lignif. verbo bovata terra, faith, That an oxgang of land should always contain this much of land, and extend to a whole inland. Spelman says, Bovatae terrae si quantum sufficit ad virginem unius brui. Os enim est & gang vel gate iter. See Co. on Littl. fol. 69. 2 Cowell, ed. 1772.

Dwerg, Seems to have been anciently used for what is now called affish. Ann. 13 Ed. 1.

Oyer of a deed, Is when a man brings an action upon a deed, bond, &c. and the defendant appears and prays that he may hear the bond, &c. wherewith he is charged; and the same shall be allowed him. And he is not bound to plead till he has it, paying for the copy of it. L. P. R. tit. Oyer of a deed, &c. To demand oyer of a deed of obligation, is not only for the defendant's attorney to define the plaintiff's attorney to read the obligation to him, as the word seems only to import, or to have a sight of it, but that he may have a copy of it, that his client may confide by it what to plead to the action said. Ibid.

Upon formerly all demands of oyer were in court, as it is now in cases of appeals; but now it is demanded and granted between the attorneys, and where there ought to be oyer, one is not bound to plead without it; and if one attorney in time demand oyer of the other, and the other demands it, to that he may take it, it is what the former attorney may not be expected, to make a mortgage demand, and a giving of oyer; for if attorneys are admitted so to do, they will fet forth the matter falsly; though which could not enframe the other side, because they may produce the right writ, &c. and have it enter, yet it would be very tedious and inconvenient; as if a deed be pleaded, it remains in court all that term, yet the plaintiff may not be able to take oyer of it without leave of court, or of the attorney; and the very form of pleading it must be upon demand; an oyer of writ is in order to object to it. Per Pocwall J. Mod. 28. Mich. 2 Ann. B. R. Longvill. v. Hundred of Thirlwely.

In debt upon a bond, the defendant demanded oyer of the condition, which was to perform covenants in an indention, and then demanded oyer of the indention; and the plaintiff gave it to him, omitting an indoration, which was made before the execution of the writ. Upon this oyer the defendant pleaded performance; and the plaintiff replied, and fet forth the indoration, and prayed judgment for the variance; and per cur. the plaintiff was not obliged to give oyer of the indention; and tho' he did, yet being what he need not do, the setting it forth could not be used against him; and the court allowed it forth; nor is he concluded to fet, that there is no matter contained, but is at liberty, as well as if the defendant himself had fet it forth; and the court held, that as the defendant was bound to fet it forth, so he was bound to supply this omission, and make his plea complete; and for this judgment, was given for the plaintiff. 2 Salt 498, 499. Micb. 3 Ann. B. R. Cooke v. Remington.

Debt upon recognizance acknowledged in Chancery or in any other court, defendant cannot demand oyer of the condition; for the recognizance is not in court as an obligation is when debt is brought upon it. But if debt be brought before the recognizance acknowledged in the court, then the defendant may demand oyer of the recognizance. Pepo. 202. Mich. 2 Car. B. R. Chandler's cafe.

Defendant may plead without oyer if he pleases; for he may take upon himself to remember it without hearing it. L. P. R. tit. Oyer, and cites 18 April 1645. B. S 5.


In covenant the defendant demanded no oyer, but pleaded good in artillius illius ulterior conteninere, &c. To court held this to be ill, and his flying the counterparter for oyer of a deed, &c. But he ought to be in court; and the plaintiff had judg. nisi Eich. 513 pl. 88. Pafch. 15 Car. 2. B. R. Paffand v. Cooper.

Debt on bond conditioned to perform covenants; i the defendant pleads performance without demanding oyer, it is a good cause of demurrer, P.ent. 37. Trin. 21 Car. 2. B. R. Taylott v. Woldridg.

One cannot take advantage of an original, tho' never so vicious in recital, without craving oyer of it; for Hols. 12 Med. 35. Pafch. 5 W. & M. 4 Ann.

Cafe on several promises on original; defendant, with out craving oyer of the writ, pleaded a variance between the writ and the court, showing particularly wherein, upon a plaintiff demanded for; for though the writ was in court, yet is on a directi roll from the court; and advantage can be taken of it, without craving oyer good cur, annuilly, and a respond. the court awarded. 12 Ma. 186. Pafch. 10 W. 3. Bagg v. Digg.

I apprentices. I am not catching his four several trades in an indention of apprenticeship men tioned. Defendant, instead of craving oyer of the plain tit's indention sects fet an indention of his own, and pleads a performance of the covenants therein. Upon demurrer, the plaintiff had judgment; for the defendant was not charged with the indention, but crave oyer of the indention declared on. 6 Med. 154, 155: Pafch 3 Jo. B. R. Pavan v. Moyly.

Declarations, plea, replications and other pleadings an
And also over of writs, bonds and other deeds, shall be remedied by a note in writing. Rules and orders in C. B. L. 1 Geo. 1. 2. 1727.

Lycer and terminter, (Audireo et terminanda, in factum, audire & terminare) This commission especially granted to some eminent persons, for the hearing and determining one or more causes: This formerly was used upon some sudden outrage or infraction in any place, Temp. J. rul. 133, 134. Whif: 2. cap. 29. 13 E. 1. which you may see, which might grant this commission, and for the form thereof, and to whom it may be granted, F. N. B. f. 100. and Brebe liz. A commision of oyer and terminter is the first and largest of the ve commissions, by which our judges of assize do sit in their several circuits. In our statutes it is often printed or and determiner. See 4 H. 5. fol. 162. See Audite et terminer.

O per de record, (Audire recordum) It is a petition made in court, that the judges, for better proof-fake, shall be pleased to bear, or look upon any record. Cowell.

Oyers, (corrected from the French oyer, i. e. audite, ear ye,) is known to be used by our criers, as well in purs as elsewhere, when they make proclamation of any thing. Cowell, edit. 1727.

Oyllers, Regulation of the oyster fishery in the Medir, 2 Geo. 2. c. 19. Foreign oysters rated to the subby at 7 d. per bushel, 10 Geo. 2. c. 30.

P.

PAC, Pangium, The fame with Pallagium. Mat. Par. 757.

Parabasis, Payable, passible. Cowell, edit. 1727.

Parrar. To pay, as tontum pareae, to pay toll. Angl. t. m. p. 384. Hence

Paratro, Payment. Mat. Par. jub an. 1248.

Paracrat. Leg. Inc. cap. 45. Et rectip Agen: tium curiis, & cuminum, & pacentur de curate, i. e. et him be free or excilched for the time to come. (Pars, mentioned in 17 Car. 1. c. 17.) A peace-making, quieting or appeasing; relating to the wars betwixt England and Scotland, in 1638.

Pack of Wool, Is a loose-loading, which consists of ventemfone and two pounds. Fleta, l. cap. 12.

Sa Darlap. Packers, Are those that barrel or pack up herings, and they are sworn to do it according to the statute made 5 Car. 2. cap. 14.

Packet. Packet veils exporting or importing goods, what to forfeit, 13 Car. 4. c. 11. f. 25.

Packet white, A kind of cloth so called, mentioned in 1 L. c. 1. cap. 16.

Pagus, In old records signifies a county. Cowell, dit. 1277.

Pattare, To pay. Scot. W. 2. cap. 46.

Pays of honour, Their penalties not taxable, 20 Mile. 3. cap. 97.

Pay for 2 dure, (Panna fertis & dura) Signifies an especial punishment for thofe that being arraigned of dury, refuse to put themselves upon the ordinary trial of God and the country, and thereby are mute by the interpretation of the law. Briton mentions it in his fourth chapter, fol. 11. And Stannard, in his Picts of the statute of Whif: 1. cap. 1. describes it thus: "He shall be sent back to the prison whence he came, and laid in some low dark house, where he shall lie nailed on the earth, without any light, rufhes or other clothing, and without any raiment put him, but only something to cover his privy mem-

Passing white, A kind of cloth so called, mentioned in 1 L. c. 1. cap. 16.

Pay for 2 dure, (Panna fertis & dura) Signifies an especial punishment for those that being arraigned of duty, refuse to put themselves upon the ordinary trial of God and the country, and thereby are mute by the interpretation of the law. Briton mentions it in his fourth chapter, fol. 11. And Stannard, in his Picts of the statute of Whif: 1. cap. 1. describes it thus: "He shall be sent back to the prison whence he came, and laid in some low dark house, where he shall lie nailed on the earth, without any light, rushes or other clothing, and without any raiment put him, but only something to cover his privy members. He shall lie upon his back, with his head covered and his feet, and one arm shall be drawn to one quarter of the house with a cord, and the other arm to another quarter; and in the same manner let it be done with his legs; and let there be laid upon his body iron bond, as he can bear, or more; and the next day following he shall have three morse of barley-bread without drink, and the second day he shall have drink three times, as much at each time as he can drink of the water next unto the prison, except it be running water, without any bread: And this shall be his diet till he die." This kind of punishment, called by the law, pain far and dure, is that which we vulgarly call prizing to death. See dist.

Painters and painting. Plaisters not to exercise the trade of a painter in London, without serving an apprenticehip, 1 Jec. 1. 20. cap. 4. What wages painters servants or apprentices shall take by the day, 1 Jec. 1. 20. cap. 6.

Pattis, A county or region; Trial per Paity, which Spelman in his Geography faith, Non intelligendum efl de gratia populo, sed de commerce, hoc est enim quia et oclendum, sunt consimulati, quam maiora aufti, pagum dixere "Iudias, inde paifs, in iul y. coovers.

Plalper, A duty of excise granted to the town, 26 Geo. 2. c. 30.

Pallio, Fainage, or liberty for hogs to run in forests or woods to feed on masts. Min. Angl. tom. 1 p. 682. See Pallim.

Pallaces. The steward, treasurer and comptroller may inquire by a jury of the King's servants, if any of the servants confpire the death of the King, or of any counsellor, &c. 3 H. 7. cap. 14.

The yeomen of the crown and grooms of the chamber shall attend their offices, 4 H. 7. c. 7.


The great matter of the King's house to have the same authority as the lord steward, 32 H. 8. c. 39. Repealed, 1 M. fl. c. 4.

Penalty of striking in the King's court, 3 H. 8. c. 12.

Enquiries of treasons, murders, &c. within the verge, 33 H. 8. c. 12. fett. 1. & 3. Inquisition by coroner of the household, Ibid.

Entering into the King's house with intent to steal, made felony, 33 H. 8. c. 12. f. 27.

Pallagium, Is a duty to the lords for exporting and importing veils of wine in any of their ports. Cowell, edit. 1727.

Pallatine, See County Palatine; and as Caffus de Consecrated, Berg. pag. 14.

Pallatines, How intituled to naturalization, 1 Geo. 1. b. 2. c. 29.

Pales. See Palatines.

Palfeps, (Polfreadus, palfreadus, polfreadus, palfredus.) Is one of the better sort of hores used by noblemen or others for state: And sometimes of old taken for a horse fit for a woman to ride. Camden says, that William Fow-

Pallac, A park pale. Cowell, edit. 1727.

Pallagman, (mentioned in flat. 22 Ed. 4. c. 23. and 11 H. 7. c. 23.) Seems to be a merchant denizen, one born within the English pale. But Dr. Skinner judges it to signify a filthmerchant, or merchant of fish. Cowell, edit. 1727.

Palla A canopv; also often used for an altar-cloth. Cowell, edit. 1727.

Pallio rooperire. It was a custom formerly, that where children were born out of wedlock, and their parents afterwards intermarried, the children, togethe, with the father and mother, fled under a cloth extended whilst the marriage was solemnized, which was in the nature of an epistle, and signified a legitimacy; and that In juxta legitimationis natum ante matrimonium confecutorum posu jub palio paurum parentes exum extentus in matrimoniae solemnizatione: Which epistle is mentioned by Mr. Selden, in his notes upon Fleta, wholikewise tells us, that in the reign of R. 2. the children of John of Gow, Duke of Lancaster, which he had before his marriage by Catharine Saufinford, tho' they were made legitimate by act of parliament, yet they were covered by the pall at the very time of the marriage of their parents. Cowell, edit. 1727.

Pallium,
PAP

Pallium. Is in many places taken for the silk with which garments were made: "Tis a word often mentioned in our old historians, but little understood at this time. Durandus, in his Rationale, tells us, that it is made of white wools, and dyed every year on the feast-day of their saint, offer two white lambs on the altar of their church, whilist they sing Agnus Dei in a solemn Mass; which lambs are afterwards taken by two of the canons of the Lateran Church, and by them given to the pope's sub-deacons, who put them to pasture till the following year, then they are burned, and the pall is made with their wool mixed with other white wool. "Tis a garment of three fingers breadth, cut round, that it may cover the shoulders: It hath two fringes on each side, before and behind; that on the right side is single, but that on the left is double. It hath likewise four fringes of the right and left, before and behind; and 'tis fastened with three pins made of gold, whose heads are spirally. The pall then made is carried to the Lateran Church, and there placed on the high altar by the deacons of that church on the bodies of St. Peter and St. Paul: And after the usual watching, "tis carried away in the night, and delivered to the sub-deacons, who lay it up very safe. And because it was taken from the body of St. Peter, it signifies the plenitude of ecclesiastical power, and therefore it was the prerogative of popes, who pretend to be the immediate successors of that saint, to invest other prelates with it, which at first was always done by the but at Rome; but at present, by procuration, in other places in this form, viz. Inflanter, Infantis, Infantis in confessioni a jamno pontifice spectatum. Cowell, edit. 1727.

Palta. (Pallia, mentioned in flat. 25 H. 8. 20.) Are veletures made of lamb's wool, in breadth not exceeding three fingers; and having two labels hanging down before and behind, which the pope gives or sends to archbishops and metropolitan, who wear them about their necks at the altar, above their ornaments. The pall was first given to the bishop of Offilia, by pope Marcus the Second, anno 336. And the preface to an ancient fynod here-mentioned, is in the words of Odo, and Cardinal Canterbury, prefided, begins thus, —Ego Odo humilis & extrumen, divina largitio Clementis, alim præfûlû & pallisti honore diiatus, &. Selden's History of Times, pag. 17. See more of this in Spelman's Glossary, verbo Pallium. See Gryffy's Church History, fol. 97z. And the book called Blaym in the Preocr. Office; and Sir Roger Twifden's Hist. Indication, fol. 47.

Palmyra. (Mentioned in plat. 1 P. & M. cap. 4.) A kind of divination, practised by looking upon the lines and marks of the fingers and hands. This was practised by the Egyptinius, mentioned in the said flatutes, and there mingled, with Palmistry.

Pamphlets. See Stamps.

Pandects, Are the books of the Civil Law, compiled by Jafthus. They are mentioned in Bede, and several other historians of this nation: Tres pandectae nova transl. in Roma attulit. Brev. cap. 15.

Pandoratz. An afo-wife that both brews and sell ale or beer. Cowell, edit. 1727.

Pant. Pantale, vel Pantalan; so written both by Fortesqui in his book de Laudibus Legum Ang. cap. 25, and Co. on Lit. pag. 158, who says it denotes a little part. But the learned Spelman, in his Glossary says, His of minus condite: it properly signifies a schedule, or paper, or rather pegula, a schedule or page: Hence comes the law-term impanindle, to impeanl; and to impeanl a jury, that is, to write in a schedule or roll the names of such jurors as the sheriff returns, to pass upon any trial. Reg. Orig. fol. 336. So we say, a pantil of parchem, and these are the books of an Register. See Altho, Litt. 35.

Pants armigerum, The bread distributed to ser vant. Mon. 1. pag. 420.

Pants bils, Coarse bread. Id. ib.

Pantotta, A pantry, or place to let up cold viﱡculs. Cuck. Rull. Ed. 1732.

Pants, called Blackybeltof, Bread of a middle fort, between white and brown, such as in Kent is called Ravel-bread. In religious houses it was their coarfer bread, made for ordinary guests, and distinguished from their hoofstof loaf, or pants conventials, which was pure manchet, or white bread. Cowell, edit. 1727.

Pap, The name of a hard billet, blog, point, camp-brake, coarse and black. Cowell, edit. 1727. The pain and convent of Ely grant to John Greve, a credulous or al lowance, —ad faum olim quibus die us nunam panem mosebalem, i. e. a white loaf; and to his servant iunam panem nigrum militarem, i. e. a little brown loaf or billet. See Ath. Eburn. 360. f. 47.

Pants forteis & bilvns. When a felon upon his trial stands mute, and obstinately refuses to plead, one of the penalties imposed for contempt of court, is to be condemned ad panem fortem & durum, i. e. To have only hard, dry barley-bread and puddle-water. Cowell edit. 1727.

Pannage, or Pavanaging, (Pannonium,) is that feast that the cerine feed on in the woods, as mast of beast acorns, &c. which some have called Pannus. It is all the money taken by the agymns, for the food of hogs with the mast of the King's forest, or the money due the owner of the fame for it. Cowell, edit. 1727.

Pannus, A garment made with fleins. Cowell, edit. 1727.

Pantiles, To what duties liable, 4 Will. & M. 5. 7. sect. 2. See Births.

Paper, See pape.

Pape, Or paper. Paper is a thin, thin paper, pape-board, &c. 2 Wili. M. 18. Il. fol. 4. 7. Id. 3. 10. sect. 32. 1 Ann. fl. 2. 17. 9. Penalty on removing painted paper before survey. I. Ger. i. 36. f. 17. 7. Rags may be imported free, 11 Ger. 1. c. 7. f. 10.

Papists, The drawback on exemption of foreign paper taken away. 10 Ger. 2. c. 7. f. 4. See Books, Customs.

Paper-books, Are the illus in law, &c. upon special pleadings, made up by the clerk of the papers, which is an officer for that purpose. And the clerks of the papers of the court of King's Bench, in all copies of ple and paper-books by them made up, shall subscribe to the paper-books, the names of the council who have seen such pleas, as well on behalf of the plaintiff as defendant; and in all paper-books delivered to the judge of the court, the names of the counselors, who sign those pleas, are to be subscribed to the books, by the clerks or attorneys who deliver the fame. Poeb. 18 Car. 2 Litt. fl. 268.

Paper-office, All acts of the council-board, oc casional proclamations, dispatches and instructions for the reign ministers, letters of intelligence, and many other publick papers communicated to the King's council, the two secretaries of state, are afterwards transmuted the paper-office, within which they are all disposed in a place of good security and convenience within the King's Res. place at Whitchell. See Mr. Nichol's Engl. Hist. Lit. Part. 111. pag. 9. Also an office so called, belonging the King's Bench.

Papists, The laws for restraining the growth of papistry, and by which papists are subjected to diverse penalties, forfeitures, disabilities and inconveniences, may be considered in general, as relating to papist recusants, so who refuse to make the declaration against papistry, as such who promote, encourage or profess the papist religion; and these laws, tho' made for the advancement religion and the publick good, yet being considered penal laws have, like all other penal laws, been currantly. 3. See Act. 779.

1. Of the offence of not making a declaration against papistry.

2. Of the offence of prescribing or promoting the papist religion, viz. in saying or hearing mass, giving or receiving papist books, keeping or selling papist books, keeping fasts, withholding a competent maintenance from a protestant chib and presenting to a church.

3. Of the disabilities of papists to paroches.
1. Of the offence of not making a declaration against paper.

By the 30 Car. 2. stat. 2. cap. 1. it is enacted, "That no peer shall vote or make his proxy in the house of peers, or sit there during any debate; and that no member of the house of commons shall vote or sit there during any debate after the speaker is chosen; until such peer or member shall take the oath of allah, or conformed to any other oath, and make a declaration of his belief that there is no transubstantiation in the sacrament of the Lord's Supper, and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and pernicious; and that no peer or member shall be admitted to adjudge a papist recusant convict, and disabled to hold or execute any office, &c. or from thenceforth to sit or vote in either house of parliament, to sue in law or equity, or to be guardian, executor or administrator, or capable of any legacy or deed of gift, and shall forfeit for every offence 50l."

By the 30 Car. 2. stat. 2. cap. 12. it is enacted, "That every person who shall be a sworn servant to the king shall take the said oath, and subscribe the said declaration in Chancery the next term after he shall so be a sworn servant, &c. and that if any such servant shall refuses to subscribe to any declaration, or to subscribe in the presence of the King or Queen, or shall come into the court or house where they are, or of any them refuse, he shall suffer all the penalties expressed in the foregoing section; unless such person coming into the king's presence, &c. shall have licence fo to do by warrant under the hands and seals of six privy counsellors, by order of the privy council, upon some urgent occasion herein to be expressed; which licence shall not exceed en days, and shall be first filed, &c. in the Petty-bag-office, for any body to view without fee, &c. and no person to be licensed for above thirty days in one year."

By the 1 W. & M. cap. 9. it is enacted, "That every office of peace in London and Westminster, and within ten miles thereof, shall cause to be arrested and brought before him all reputed papists, (except foreigners, being merchants or ministerial servants to some ambassadoi or publick interest, and except all such as used some trade, mystery, or some manual occupation at the time of the act 37. in London. &c. and also except all such persons as had their dwelling in London. &c. within six months before the 3d of February 1688. and no dwelling elsewhere, and entitled their names to the felonies before the 5th of Au gust 1689.) and that every such justice shall render the said warrant to the person so arrested within forty eight hours after he shall have refused the same, and afterwards remaining in London. &c. or within ten miles thereof, or being certified to the king's Bench or quarter-sessions at the next term or sessions as having refused to make the said declaration, and neglecting to make the same in due court, shall suffer as a papist recusant convict, &c."

By the 1 W. & M. cap. 15. it is enacted, "That any two justices of peace may and ought to tender the said declaration to any person whom they shall know or suspect, or have information of as being a papist, or suspected to be such; and that no such person so required, and not making and subscribing the said declaration, or not appearing or not making a declaration upon notice to him given or left at his usual abode, by one authorised by warrant under the hands and seals of the said justices, shall keep any arms or ammunition or horse above the value of 5l. in his own possession, or in the possession of any other person to his use, (other than such necessary weapons as shall be lawful to keep) and that the said justices shall deliver the said arms of his house or person, and that any two justices of peace, by warrant under their hands and seals, may authorise any persons in the day-time, with the assistance of the constable or his deputy or township, to search for all such arms, &c. and horfes, and seize them to the King's use, and that the said justices shall deliver the said arms and ammunition at the next quarter-sessions in open court, and that whoaver shall conceal, &c. or shall be aiding to the concealing any such arms or horfes, shall be committed to the common gaol by warrant under the hands and seals of any two justices of peace, and also forfeit the value of the same; and that those who discover any such arms or ammunition shall be entitled to any value of the same, and if they have the full value thereof, to be awarded to them by the feotions, &c. and that such refusers of the said declaration, &c. shall be disfranchised whenever they make the same."

2. Of the offence of professing or publishing the popish religion, viz. in laying or bearing marks, giving or receiving popish education or books, or holding popish books, keeping school, withholding a competent maintenance from a protestant child, and professing to a church.

By the 23 Eliz. cap. 1. sect. 4. it is enacted, "That every person who shall pay marks, being thereby lawfully convicted, shall forfeit two hundred marks, and be committed to prison in the next gaol, there to remain by the space of one year, and from thenceforth till he have paid the sum of two hundred marks; and that every person who shall willingly hear mass shall forfeit the sum of one hundred marks, and suffer a year's imprisonment." 2 Show. 216.

Alfo it is enacted by the 11 & 12 W. 3. "That every person who shall apprehend any popish bishop, priest or jefuit, and deliver him to the charge of the mayor, or exercising any other part of the function of a popish bishop or priest, shall receive 100. of the sherif; and that every such popish bishop, &c. (except, being a foreigner, he be entered in the secretary's office, and officiate only in the house of a foreign minister,) shall be adjudged to perpetual imprisonment."

By the 1 Jac. 1. cap. 4. sect. 6. 7. it is enacted, "That if any person or persons under the king's obedience shall go or fend, or cause to be sent any child, or any other person under their or any of their government, beyond the seas out of the king's obedience, to the intent of being enter'd, or re-fend in, or repair to any college, &c. or to any other place, border, province, or dominion, &c. or shall assist, or be aid'd, or shall be seduced, persuaded, or strengthened in the popish religion, or in any fort to profane the same, every such person for fending such child, &c. shall forfeit 100. and every such person for being, or being. &c. shall in respect of him or herself only, and not in respect of any of his heirs or posterity, be disabled to inherit, purchase, take, have, or enjoy any profits, hereditaments, chattels, debts, legacies or sums of money, &c. whatsoever; and that all estates, terms, and other interests whatsoever to be made, suffered or done to the use or behoof of any such person, or upon such use or behoof, in respect of any of his heirs or posterity, according to the act of the 11th and 12th of W. 3. cap. 15, clauses 2. 3. 4. sect. 6. shall be to the sole use and benefit of the person who shall discover the offence." 1 Kbe. 263.

6 E. Alfo.
Alfred is enabled by 3 Car. 1. cap. 2. 4 That if any person under the obedience of the King shall go, or shall convey or fend, or cause to be fent or conveyed, any part of the King's dominions into any parts beyond the seas, out of the King's dominions, to the fide of any rebel, or to the forces of any rebel, or trained up in any priory, abbey, nunnery, popish university, college or school, or house of jutes, priests or in a private popish family, and shall be there by any popish person infrufed, perfuaded or strengthened in the popish religion, in any fort to profec the fame, or difaffemblies, or fends, or car fends, or fent any thing towards the maintenance of any person fgoing or fent; and trained and infrufed as aforefaid, or under the colour of any charity, towards the relief of any priory, £t. or religious house whatsoever; every person fending, &c. any fuch person or thing, and every person paffing, conveying or conveying any part of the King's dominions to any foreigner, or fent any thing in law or equity, or be executer or administrator to any perfon, or capable of any legacy or deed of gift, or to bear any office within the realm; and shall forfeit all his goods and chattles, and shall forfeit all his hereditaries, offices and eflates of freehold, during his life.

In the construction of the 3 Jac. 1, it has been holl- den, that if E. T. being the King's ward of lands holden of the King by knight service in chief, die the King's ward, and it is found that A. and B. are his heirs and heirs, both of full age, and that A. in the life-time of her brother departed this realm contrary to this statute, and the King was profefled this act may then take no reftoriny in his own hands till thefe, according to the 1 Ef. take the oath of supremacy required on fuc- king out livery; for the words of the statute 3 Jac. 1. are, shall take no benefit by defent, &c. not that the party should not take by defent; and therefore the eflate does not veft absolutely in B. the fifer and next heir, but her right is to the King's rents and profits during the non- conformity of her filter, for which in cafe of common lands fie might enter; but in this cafe the King is inten- tered, and is not oblid to give livery to the heir, till fuch time as the oath of supremacy be taken. Hob. 73. 74. Le 59. Thedely's cafe.

So if such an heir being beyond Seas, shall bargain and fell his lands to a stranger, the bargain in fuch cafe will prevent the next of kin, and the bargainee may take the lands out of the hands of the next of kin, in cafe he had entered; for the eflate never vefted absolutely in fuch next of kin, but in fuch cafe the King may refufe to give livery to the heirs, if he refufes to take the name of the heir, except the heir himfelf appears and takes the oath of supremacy in his proper perfon. Hob. 74. per Herbart.

G. Lord Gerard in the year 1660. fettled the eflate in question to the ufe of himfelf and the heirs male of his body, remaining to the heirs male of the body of Thomas fitf Lord Gerard,without the death of Digby Lord Gerard (only fon of the faid G.) without ilue male, entred, claiming the eflate as heir male of the body of Thomas fitf Lord Gerard, by virtue of the fain limitation in the feelement; and by virtue of this ticle enjoyed that eflate above twenty years, during which time he suffered fervical recoveries, and fettled the eflate upon his marriage in 1680, and died without ilue in the year 1707. leaving Philip his only brother then furviving, who was heir male of the body of Thomas fitf Lord Gerard; upon the death of Lord Charles, the Dutches of Hamilton claimed to the eflate as right of G. Lord Gerard, notwithstanding the eflate-tail limited to the heirs male of the body of Tho- mas Lord Gerard subsififying in Philip, alleging, that Lord Charles and his brother Philip, being fent abroad and educated in a popifh seminary, were fo utterly inca- pable of taking any eflate, that the had the right of entry in this right of G. Lord Gerard, notwithstanding the eflate-tail limited to the heirs male of the body of Tho- mas Lord Gerard subsififying in Philip, alleging, that Lord Charles and his brother Philip, being fent abroad and educated in a popifh seminary, were fo utterly inca- pable of taking any eflate, that the had the right of entry in this (by 1 Jac. 1. cap. 4. fet. 6. had fo far difabled Lord Charles to take the eflate by defent, that the recovery fuffered by him was void, and that the fame difability being ftili flill upon Philip, that there being no perfon in being who could take the eflate-tail, the Dutches as heir at law, must be intituled to take at præfent, as if the eflate were actually flipp'd. But it was refolved, that the words of the defent, being that the offender fhall be difabled as in refpect of himfelf only, and not in refpect of any of his heirs or pofterity to inherit, purfuà, &c. this qualifies and re- frains the difability; fo that the defent does not extend beyor the perfon offending, nor beyond the time of his non-conformity; so that the defent hath preferred in the offender an ability to inherit, &c. for the benefit of pofter- itvity; and this defent having made no application of the pro- priety to infubftance, and this being a difability particu- lated for a publick offence, the King is intituled to the nahty; and to create in the offender a total difability would be very in inconvenient, for in the cafe of an inte- ritude, it would be difficult to know when or in what manner the heir fhould take; it could not be in the hie- time of the conformation, but this defent is made void by the per- son living; and if there be a fon under no difability cannot take, it would be merely by conftitution to carry the eflate over his head for the benefit of a remainder- man, who was not intended to take as long as there was any ilue of a prior tenant in felf; and an heir can intitle himfelf only through his ancestors, and fuch as are inhe- ritable; that this is not like the cafe of a monk, for in times of popery he was civillly dead; the 3 Jac. 1. gives the pernuity of the profits, in cafes of difabilities, to the next of kin, that is not a popifh recufant; and R. Ow. was the next proteflant of kin; the 3 Car. 1. does not repeal the 1 Jac. 1. but was made to explain, amend and apply the cafe of the 1 Jac. 1. Herein it is evident that act was to arise; the 3 Car. 1. has provided, that it fhall be upon convicion, and expressly makes a for- feiture for life, and a refitution in cafe of conformity, in which the former act was flent; fo that if the former act were to be put in execution, under the explanation of 3 Car. 1. there being no conviction in the cafe, the Dutchefs could have no title, but the land on convicion would be forfeited for life, which must be to the King Hill. 12 Ann. in C. B. and afirmed in the boufe o Lords; Thorby ver. Fledwood, alias The Dutchefs of Hamilton's cafe.

By the 3 Jac. 1. cap. 4. fett. 25. it is enabled, "Tha no perfon fhall bring from the feas, nor fhall print, bu or fell any popifh primers, ladies palfers, manuals, rof- ries, popifh catechifs, miiffifs, brevaires, portals, le- gends and lives of faints, containing superflitious matter printed or written in any language whatsoever, nor any other fuperflitious book, printed or written in the English tongue, on pain of forfeiting forty fhillings for every book, &c. and the book to be burnt."

By the 11 & 12 W. 3. cap. 4. fett. 3. it is enabled, "That if any papifh, or peron making prefumption of the popifh religion, fhall be convict of keeping school, or taking upon himfelf the education of government, or taking upon himfelf the education of youth, in any place within the realm, or the dominions therunto belonging, they fhall be adjudg- ed to perpetual imprisonrment."

By the 11 & 12 W. 3. cap. 4. it is enabled, "Tha if any popifh parent, in order to compel a proteftant child to a change of religion, fhall refuse to allow such child a fufficient maintenance, fuitable how the require- ability of fuch parent, and to the age and education of fuch child, the Lord Chancellor upon complaint may make fuch order therein as fhall be agreeable to the intent of the faid act."

By the 3 Jac. 1. cap. 5. fett. 18, 19, 20, 21. Popifh recufants convif are difabled to prefe to a church; and by the 1 W. & M. cap. 26. this difability is extended to perons refusing to make the declaration against popery mentioned in 30 Car. 3. And by the faid statute 1 W. & M. cap. 26. fett. 4. it is enabled, "That if the truftee, mortgagee or grante of any avoidance, whereby this statute was enacted, be in any perfon recufant conviction, he fhall be without giving notice in writing of the avoidance to the university, &c. within three months after the avoidance, he forfeits 500 l."

And by the 12 Ann. cap. 14. This difability is exten- ded to all perons making prefumption of the popifh religion, to which purpofe it is enabled, "That every papifh 3 perf. be
upon making profession of the popish religion, &c., and every mortgagee, trustee or person any ways intrusted for such papist, &c., with or without writing, shall be disabled to prefer to any benefice, college or hospital, or to grant any avoidance of any benefice, prebend or collation, or that in all such cases the faculties shall prefert.

Also by force of the said statute, "The ordinary may under the declaration against transubstantiation to any related papist making a profession, and upon a refusal to take the same, the profession shall be void; also the faculties, upon any such preference or bill, shall be at law evidence against such person, in respect of such a profession, but not as to any other purpose."

In the construction of the 3 Jac. 1, the following insults, which are said to be likewise applicable to the 1 W. & M. and 12 Ann. have been held.

1 Harw. P. C. 32.

That where a preferment is pro bono, note verified in the inquisitor, by reason of the patron's being a papist recent at the time when the church became void, it shall be revolved again by his conferring himself to the same.

20 C. 57. b.

That such a person is only disabled to prefer, and not to administer as to all other purposes, and therefor he shall confirm the leaves of the incumbrance, &c. Const. 230.

That such a person, by being disabled to grant an advowson, is no way hindered from granting the advowson itself in fee, or for life or years, bona fide, and for good consideration.

That if an advowson or avoidance belonging to such person come into the King's hands by reason of an outlawry or conviction of recusancy, &c., the King, and the university, shall prefer. H. 126. Wisch. 7.

3 Mer. 372. 1 Jac. 20.

On the statute 12 Ann. the following was resolved by my Lord Chancellor Talbot, in the case of Mr. Brett, who was censured by the university of Oxford to a living belonging to Mr. Fitzherbert of Quorn, 

In the 11 & 12 W. & M. it is enacted, 'That from and after the 29th day of September, which shall be in the year of our Lord 1700, any person shall not hold or be intrusted in the popish religion, or professing to the same, shall, not within six months after he or she shall attain the age of eighteen years, take the oaths of allegiance and supremacy, and also subscribe the declaration set down and exprested in an act of parliament made 30 Car. 2. intit. An act for the more effectual preventing the King's perfon and government, by disabling papists from fitting in either house of parliament, to be by him or her made, repeated or subscribed in the courts of Chancery or King's Bench, or quarter-seals of the county where such person shall reside; every such person shall in respect of him or herself only, and not to or in respect of any of his or her heirs or potties, be disabled or made incapable to inherit or take by descent, devise or limitation in possession, reversion or remainder, any lands, tenements or hereditaments within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and that during the life of such person, or until he or she shall take the said oaths, and make, repeat and subscribe the said declaration in manner as aforesaid, the next of his kindred, which shall be a tenant, shall have and enjoy the said lands, tenements and hereditaments, without being accountable for the profits by him or her received during such enjoyment thereof as aforesaid; but in every and all such lands, tenements or hereditaments obtained from such papist, without a full and valuable consideration, grants of such favours, and right of presentation, nomination and onston, upon confidence only that such grantees will, at the request of such papists, prefer to such benefice or ecclesiastical livings clerks nominated by such papists, without a full and valuable consideration, grants of such favours, and right of presentation, nomination and onston, upon confidence only that such papists will, at the request of such papists, prefer to such benefice or ecclesiastical livings clerks nominated by such papists, who have been uncles or relations of such papists, and that the said papists, upon confidence only that such papists will, at the request of such papists, prefer to such benefice or ecclesiastical livings clerks nominated by such papists, who have been uncles or relations of such papists, and that the said papists, shall be free from such papists, and that the said papists, shall be free from

3 Of the disabilities of papists to purchase.

The statutes relating to estates conveyed by or to papists, and the disabilities they are under to take by purchase, &c., are the 11 & 12 W. 3. 3 Geo. 1. and 11 Geo. 2.

By the 11 & 12 W. 3. cap. 4, it is enacted, "That from and after the 29th day of September, which shall be in the year of our Lord 1700, any person shall not hold or be intrusted in the popish religion, or professing to the same, shall, not within six months after he or she shall attain the age of eighteen years, take the oaths of allegiance and supremacy, and also subscribe the declaration set down and exprested in an act of parliament made 30 Car. 2. intit. An act for the more effectual preventing the King's perfon and government, by disabling papists from fitting in either house of parliament, to be by him or her made, repeated or subscribed in the courts of Chancery or King's Bench, or quarter-seals of the county where such person shall reside; every such person shall in respect of him or herself only, and not to or in respect of any of his or her heirs or potties, be disabled or made incapable to inherit or take by descent, devise or limitation in possession, reversion or remainder, any lands, tenements or hereditaments within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and that during the life of such person, or until he or she shall take the said oaths, and make, repeat and subscribe the said declaration in manner as aforesaid, the next of his kindred, which shall be a tenant, shall have and enjoy the said lands, tenements and hereditaments, without being accountable for the profits by him or her received during such enjoyment thereof as aforesaid; but in every and all such lands, tenements or hereditaments obtained from such papist, without a full and valuable consideration, grants of such favours, and right of presentation, nomination and onston, upon confidence only that such grantees will, at the request of such papists, prefer to such benefice or ecclesiastical livings clerks nominated by such papists, who have been uncles or relations of such papists, and that the said papists, shall be free from such papists, and that the said papists, shall be free from

By the 11 & 12 W. 3. cap. 4, it is enacted, "That from and after the 29th day of September, which shall be in the year of our Lord 1700, any person shall not hold or be intrusted in the popish religion, or professing to the same, shall, not within six months after he or she shall attain the age of eighteen years, take the oaths of allegiance and supremacy, and also subscribe the declaration set down and exprested in an act of parliament made 30 Car. 2. intit. An act for the more effectual preventing the King's perfon and government, by disabling papists from fitting in either house of parliament, to be by him or her made, repeated or subscribed in the courts of Chancery or King's Bench, or quarter-seals of the county where such person shall reside; every such person shall in respect of him or herself only, and not to or in respect of any of his or her heirs or potties, be disabled or made incapable to inherit or take by descent, devise or limitation in possession, reversion or remainder, any lands, tenements or hereditaments within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and that during the life of such person, or until he or she shall take the said oaths, and make, repeat and subscribe the said declaration in manner as aforesaid, the next of his kindred, which shall be a tenant, shall have and enjoy the said lands, tenements and hereditaments, without being accountable for the profits by him or her received during such enjoyment thereof as aforesaid; but in every and all such lands, tenements or hereditaments obtained from such papist, without a full and valuable consideration, grants of such favours, and right of presentation, nomination and onston, upon confidence only that such grantees will, at the request of such papists, prefer to such benefice or ecclesiastical livings clerks nominated by such papists, who have been uncles or relations of such papists, and that the said papists, shall be free from such papists, and that the said papists, shall be free from
By the 3 Geo. 1. cap. 18. reciting, that some doubts have arisen upon the act therein recited, as also upon one other act made and passed in the parliament held in the 11 & 12 W. 3. intituled, An act for the further preventing the growth of popery, and upon another act made in the 13 Geo. 1. for the due execution and effectuation of the statute made in the 1 & 2 W. 3. intituled, an act for making certain other publick offices, tenements, and other acts made against papists and papish recusants, touching the sale of the real estates of persons professing the popish religion, or incurring the disabilities and incapacities in the said acts mentioned, it is enacted, "That no sale for a full and valuable consideration of any manor, messuages, lands, tenements or hereditaments, of any interest therein by person or persons, being reputed owner or owners, or in the possession or receipt of the rents or profits thereof herebefore made, or hereafter to be made, or to for protestant purchaser and purchasers, and merely and only for the benefit of protestants, shall be avoided or impeached for or by reason, or upon pretence of any of the disabilities or incapacities in the said acts, or any of them contained, incurred or supposed to be incurred, by any of the persons making or joining in such sale, or by any other person or persons, from or through whom the title of such manors, &c. is derived, or supposed to be derived; unless the person buying or having, by law, the same title of such manors, messuages, lands, tenements and hereditaments, by reason of such disability or incapacity shall have recovered such manors, messuages, lands, tenements and hereditaments, with prejudice to any person or persons intitled to any of the disabilities or incapacities in the said acts, or any of them contained, incurred or supposed to be incurred, by any of the persons making or joining in such sale, or by any other person or persons; and it is enacted, that the said sale shall not pass to the use of any popish person or persons, unless the same be disallowed and declared a fraude against the publick peace and quiet and community, and that the person that is to buy the same, or any other person or persons that are the representatives, executors, or assigns of the person that is to buy, shall be and remain in full force as if this act had never been made.

And it is farther enacted by the authority aforesaid, "That from and after the 29th of September 1712. no manner of lands, tenements, hereditaments or any interest therein, or rent or profit thereout, shall pass, alter or change as the benefit of such in the possession of, or persons intitled to, any person or persons intitled by law, to the benefit or to the use or to the benefit or to the possession of such disability or incapacity, who now is or are in actual possession of, or shall have, precedent to the making of such record, been in quiet possession of any such manors, messuages, lands, tenements and hereditaments, b the space of two calendar months.

Provided always, and it is further enacted, That if any such person or persons, so conforming as aforesaid, afer such conformity return to or profess the popish religion, every such person and persons full shall for ever after wards be disabled from, and be incapable of, having or enjoying any benefit, privilege or advantage of this act and shall from thenceforth be liable to the same disabilies and incapacities as if he, she, or they, had not taken the said oaths and subscribed the declaration aforesaid.

Provided always, That nothing in this act contains shall extend to take away or prejudice the right of any person intitled to any remainder or reversion in any such manors, messuages, lands, tenements or hereditaments, in cafe such person shall pursue his or her right b some action or suit to be commenced within the space of twelve calendar months next after the precedent eftates, on which such remainder or reversion depends, and is expextant, shall be determined; or within twelve calendar months from and after the 29th of September 1738. If such precedent estate or estates be already deternined by the death or deaths of any person or persons whose whole death has been concealed from or not known
the person intituled to such remainder or reversion, by cause of the having and holding the fee or of the private and clandestine manner at home, and shall possess such action or suit with due diligence.

On the first of these statutes there have been the following cases and resolutions.

"John Roger, Esq; being seized of several manors, lands, and all debts and legacies paid, which were legally done; whereafter was the lord reserved the decree, principally for this reason, that if the devise of the residue to the plaintiffs was good, they would in equity be intitled to pay off the antecedent debts and legacies, and when that was done, keep the estate, which would be a means of evading their trusts, and enabling a papit to take the estate contrary to the intention of the testator, and accordingly it was also resolved in this case, that a devise is a purchase within the meaning of this act."

The Earl of Dorsetwater was tenant in tail, with remainder in fee to himself, and intending to marry Sir John Webb's daughter, he by advice of counsel suffered a common recovery without declaring any use, it being intented, what he should thereby become tenant in fee, and be enabled to make a proper settlement; accordingly by indentures of lease and release he forfeited his estate to the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.

The commissioners of forfeitures, on a claim exhibited before them in the name of the said Earl's son, determined that the whole estate was in them on this foundation, that the Earl continued tenant in tail notwithstanding the recovery, and consequently nothing more than an estate for his use during his life, and for the use of himself for life; remainder to trustees for preserving contingent uses; remainder in tail successively to the fifth and other sons of the intended marriage, with remainders over; the marriage took effect, and there was issue a son and a daughter; the said Earl was attainted of high treason on account of the Pretender; the marriage was executed; and by an act made thereupon, all the forfeiting persons lands were vested in commissioners for the use of the publick; and it was expressly provided, that where the forfeiting peron was forfeited of an estate-tail at the time of the forfeitures, the same should be vested in the commissioners as an absolute fee, discharged of all remainders and reversions.
due arising by such sale she devised to her said grand-
daughter Frances, when she should attain her age of 21
years, or be married with the consent of the said traitfees,
and soon after died. The said Frances, at the age of
fifteen, was married to Flilius, according to the ceremo-
nomy and ushe of the church of Kames, and a week af-
fterwards, was married to Thomas Roper, and at the age
of 18 she conform'd according to the directions of the
foature; it was held, that she was within the first
clause, and that a devise to a pa'ipit under the age of 18
years is good, if he conforms within six months after he
comes to that age; and the age of 18 was a proper pe-
riod by itself, as they were their own, whether they would
conform or not; and the bill exhibited by the protestant
heir was dismiifled with cost. 3 Bat. Ad. 757. Hill v.
Flilius. Trin. t Geo. 1.

J. S. a papilt, made a fettlement of his effe to tra-
utees, to the ufe of the traitfes and their heirs, in ufe
for A. for life; reminders to the faid traitfes to pre-
serve contingent remainders; remainder to the fifth
and every other fon of A, and for default of fuch effe, in
ufe for B, and his effe; A. was a papilt, and B. a
protestant; B. exhibited his bill in Chancery, fuggel-
thirg, that A. was a papilt, and had no fon, and that
therefore the traitfes might account to him for the rents
and profits of the land, to make the heirs of B, and de-
and and hearing, this caufe before the Lord Macleiflidh,
and afterwards by the Lord King, they both held, that
though the truft to A. was void, he being a papilt, yet
that notwithstanding, the legal effe was full in the
traitfes, because they were traitfes not only for the pa-
paints, but for the fettlement, to the fons of A. who were yet unborn; and as they were traitfes to pre-
serve contingent remainders for fuch fons who might
be papifts, they thought, that the effe should remain
in the traitfes for that purpofe; and they held, that the
heir at law was intituled to receive the profits during
the life of A. as a truft unfidoed; but that B, the remain-
der, had no right to the death of A, without a
fon capable of taking; and this decree was affirmed,
in the house of Lords. 3 Bat. Ad. 757. Carrick v.
Errington, Trin. 9 Geo. 1. in Chancery.

The caufe upon a special verdict in ejciement was:
Thomas Dorrel had one brother and four fifters, and
being fed in fee by will 4 Decemb. 1750, devised the
lands in quceton to traitfes, to the ufe of them and
their heirs, in ufe for his fift, and every other fon in
tail male; and for want of fuch effe, removed to his
brother Arthur for life, remainder to his fift and every
other fon in tail male; and for want of fuch effe, that
there might be land and be fent to the fole and proper
ufe and benefit of fuch eldelt and fift fon law-
fully begotten, or to be begotten of John Dorrel, as
shall not be heir at law and inferior to the faid John
Dorrel, and the heirs of his body, and for default of fuch
iffue by him, remainder to the third, and fourth and
fift, and every other fon of the faid John Dorrel, and
the heirs of their respective bodies. The traitfes,
by a clause in the will, were impowered, by the rents
and profits of the effe, or by mortgage and fale, to
raise fo much moneys as would satisfy the traitfes's
debs: Thomas and Arthur both died without effe, John
Dorrel is living, and has feven fons: George the defen-
dant, and all the fons of John Dorrel are papifts, and educated in the popift religion, except his
younger fon, who is too young to be faid, as yet, to be
of any religion; George Dorrel was under eighteen
years of age when the limitation by the defevle fell
upon him, but is now above eighteen years, and has not
received his portion by virtue of 11 & 12 W. 3, and is
married, has now two fons and a daughtcr, who, as well
as for his wife, he has made a fettleinent of two lands;
the four fifters of Thomas Dorrel are lefl'ees of the
plaintiff, as heirs at law; and the queation is, whether
George the fohn of Arthur, or the heirs at law, be ini-
title to the fale. For the plaintiff, the heirs at law,
it was urged, 1f, That George was not a pawnit, and that pa-
plaintiffs who fall refeu, above six months after they arrive
at the age of eighteen, to take the oaths of allegiance,
are by the faid edufe disabled from purchafing; and
therefore as a defevle is a purchafe, and be to hold Cor.
18, and by the Lords, in the caf of Roper and Rodiffe,
confequently George Dorrel takes nothing by it. 2dly.
That the defevle was void for uncertainty, being to
fuch effe and first fon of J. D. as shall not be heir at law
nor any one cay fay who will be heir to J. D., in the
ufe of the faid propertv in the fole and property, and
veniens; and he who is to be heir is not to fale, for
none but a fon who will not be heir can take, for
both defevlements muft coincide. Hob. 29; Hardwicke Ch. J.
in breaking the caufe faid, two objedions have been made
to the defendant's title; 1f, That the limitation, under
which the defendant baue to perform is void; 2dly: That the
description to certain enough, yet by 11 & 12 W. 3, the defendant
is disabled from taking the effeate, as being a papift; there
feems at prefent to be good deal of weight in the first
objedion, and yet it may possibly be reduced to a
certainty, and if fo, may be made good; and it seems na-
tural to imagine, that by the words of the will, the
fettor intended the second fon of John Dorrel should take,
and the rather, as the fettor had made the next limita-
tion to the third, fourth and fifth fons, Gt. of the fain
John Dorrel but if the second fon cannot take, yet it
the third, &c. fons are well defcribed, the fitters of
have taken place, and at prefent yet void, it cannot be
ceffarily described. As to the fecoid objedion, I think
myfelf bound by the determination of the house of Lords
in the caufe of Roper and Rodiffe, that the word pur-
chafe extends to a defevle, and therefore that a papift is
in capable of taking an effeate by will; but yet, be the de-
endant's title as it will, the plaintiff muft recover on his
own ftrengct, and not on the weaknefs of the de-
endant's title; and my greatest doubt is this; the def-
here is to traitfes to the ufe of them and their heirs,
and I think this would clearly be a defevle to the ufe of
traitfes, though the clause of raffing' mofly by ren-
fale, as it here appears; fo here it is a defevle to traitfes
in ufe not only for the faid fon of John, but for all
other his fons now living, one of which is to be
found to be a papift; it has been faid indeed, that this
dife being for the benefit of papifts, the ftrait trulst
void; but the queation is, if the entire ftrait should
be for the benefice of papifts, in the prefent caufe, a
younger fon of John Dorrel may be able to take
ought appears to the contrary; and therefore I think
this latter part of the traitfes being lawful will support
their legal effeate in the traitfes; and here he put the cafe
fepa. Carrick v. Errington, and faid, that according to the
folution in this caufe, the lands in question cannot be
fale, because here it is a ftrait for a fon of John Dorrel, who was a papift, and well for other children yet unborn, so that the plai-
tiffs have no title to recovery in this action, but have
taken their remedy; for if they have any, it seems to
by bill in equity againft the traitfes for an account
the profits and extent, in the above-mention
cafe, that the effeate could not refl in the remainder-
main because he being then in by purchase, it could never
awards deferved, for the benefit of fuch child as
should happen to have; but he faid, that he did not gi
this as his abfiolute opinion, but only to point out the
effecies which fluck with the court; it was adjourn
and no further proceeding was had therein. 3 Bat. Ad.
A mortgage was made to a fohn, who affigned to
protestant for a full confideration; an efciement was
brought againft the affigner by a fubfequent mortgag
who recovered by reafon of the defability of the first
mi" AS the fettlement was made in Chancery,
and my Lord Chancellor was of opinion that the
mofage to a papift is void; but in this cafe the affignm
a protestant, and the trial in ejciement, were both
the 3 Geo. 1. which were in otherwise, would it f bev
made an alteration. 3 Bat. Ad. 799. Pulham.

In a cafe which came on before my Lord King in e
court of Chancery, it appeared, that my Lord Der

14
was polluted of a long term for years, and made his will, and his lady, who was a papist, executrix thereunto. It was thought, and very well observed here, that the
filing the disabling act 11 & 12 W. 3. the term vefted absolutely in her, and that this was not a purchase within
that act; and he said, that a papist may be tenant in
law, or by the curtesy, because in all these cases it is
by operation of law, and not by any act of the party,
that the estate comes to him. 3 Bac. Ab. 799. 4 Ed. 
Dyer's will.
It had been adjudged, that a papist may devolve to
a pretended; in which case it was agreed, that where an
actor died deafer of an estate of inheritance, it descends
upon and vests in his heir, (though a papift) for the
behalf of his children and the next Protestant akin has only
a right to the perception of the profits during the non-
uniformity of the heir. 3 Bac. Ab. 799. Mislum v.
Bringles, Puch. 1738. in C. B.
Upon the marriage of Mr. Paine with one Mrs. Gage,
and in the county of Surrey were settled and conveyed
the use of the husband and wife for their lives, and he
life of the survivor of them; then to the use of
the rift and every other son in tail, remaining to the right
issues of the husband; the marriage took effect, and Mr.
Paine the husband died in the life-time of Mrs. Paine,
without leaving issue, having first devolved all his lands
to his wife. In 1739 Mrs. Paine married Mrs. Johnson,
her real estate to the defendant, subject to a few legacies
mentioned in her will, but lived and died a papist; but
not being able to prove at law, the plaintiff Mr. Smith
who had married Elizabeth Paine, heir at law to Mrs.
Paine, he and his wife filed their bill against the de
defendant to set aside the marriage settlement that will Mr.
Paine the husband, under which Mrs. Paine claimed;
and in particular prayed, that the defendant might dis
over whether Mrs. Paine the wife, under whom he will
aimed, was a papist or not. To which the defendant
pleaded the statute of 11 & 12 W. 3. Upon arguing his
plea it was insisted upon for the defendant, that it
made no difference, whether Mrs. Paine was a papist or
not; and his discovery of that fact, whether he is or not,
can never be a forfeiture of his estate, because he
ever had the right to sell it; so the case of a baffard who
is nullius filius, and incapable of claiming any estate,
he shall discover whether he is fo or not, for the same
reason; so a perfon claiming under a bankrupt, whose
goods are vested in the affignees of the commission of
bankruptcy, for the benefit of creditors, must discover
whether the perfon under whom he claims, was a bank
rupt or not at the time of the claims, for none of the
telese cases depend upon the same reason, and were no
forfeitures, because the estates were never in them; so
if Mrs. Paine was a papist, she was incapable of having
the estate herself, and could not give it away; and there
fore the defendant could never forfeit it, because the ef
tate was never vested in him. From which point of opinion,
that the defendant was not obliged to disco
over whether Mrs. Paine was a papist or not; that there
is no rule better established in this court, than that a
man shall not be obliged to answer what may subject
him to the penalty of an act of parliament; no perfon can
doubt whether this act is not a penal law, and whether
the clauses relating to papists are not disabilities or inca
pacities, imposed by way of penalty upon all persons ex
ercising that religion. It is objected, that this is not the
case of a forfeiture, because the estate was never vested,
and therefore cannot be devolved; yet it all falls un
der the statute, for every man is subject to the disability
to hold at all by act of parliament, is certainly as much a
penalty as the forfeiture of an estate by a perfon who had
a right to enjoy it before the forfeiture. That if a bill
is brought against a perfon for a discovery, whether he
is a papist or not, he is not bound to discover; and
where is the difference between him and the perfon
claiming under him; here is a disability imposed by par
liament, by way of penalty, upon a particular set of men
upon the account of their religion, and the discovery of
that fact subjects him to a penalty; and this is not like the
case of an alien or baffard, who are incapable by the general
law of the land, because of their religion, before they
had the estate; it is, as much is the great inconvenience that would follow,
should this plea be disallowed; we should have nothing
in this court but bills of discovery, whether such persons
were papists or not, and nobody knows what confusion
would follow; the plea must be allowed. 3 Bac. Ab.
799. Smith v. Read, 12 Gr. 2.
A papist tenant in tail suffers a recovery to the use of
himself in fee, in order to make a marriage settlement;
this is not a purchase within the flat. 11 & 12 W. 3. c.

Platt. In exchange of money, is a certain number of
money or gold; at the rate of the coin of another country, containing in them an equal quantity of silver to that rate was marrowed, or the pieces of the coin of another country, v. gr. supposing 36 shillings of Holland to have just as much silver in them as 36 English shillings, bills of exchange drawn from England to Holland at the rate of 36 English shillings for each pound Sterling, is according to the par. Lack's Confideration of Money, fig. 18.

Parcatrinium. The tenure that is between parceners, viz.,
that which the youngest oweth to the eldest. Densfay.

Parage, (Paragem) Equality of name, blood or
dignity; but more especially of land, in the partition of
1610. 1. Hanc terram tenantis dux homini duxit in
Densfay. Hence we have differentiation and to dif
parage.

Paragium, (Parage, Pepper) Commonly taken for
the equal condition betwixt two parties to be contracted
or married. For the old laws of England did strictly
provide that such an union should be called a paragium
parage, with percons of equal birth and fortune, free
differentiation, without disagreement. Couell, ed. 1727.

Paramount, (from French word par, that is, per,
and moter, ofsender) Signifies in our law, the supreme
lord of the fee, for there may be a tenant to a lord,
that holdeth the fee; but the second lord, or master
is called lord moft, and the second lord paramount, E. N.
B. fol. 135. And a lord paramount (with Kitcho, sol.
289,
PAR

289) confiders only in comparison, as one man may be
great, being compared to a lea; and little, being com-
pared with a grain of barley, to that none can fairly be
lived, any one; but only the King, who is patron pam-
raman of all the benefits of England. Doct. and Sent.
cap. 36. See Parallels, Sign, 1st, and Stat. 
Paraphernalia, or Paraphernalia, (from the Gr. 
\(\text{παραφερναλια} \) preter, and \(\text{παραφερναι} \).) Are those good
wife, before her dower or jurebus, is after her husband's
death allowed to have, as furniture, for her chamber,
wearing apparel and jewels, if she be of quality; which
are not to be put into her husband's inventory, especially
in the province of York. Cowell, ed. 1727.
A wife, after the death of her husband, may claim her
paraphernalia; that is, every apparel given to the body,
and clothes given to make a garment, &c. besides her dower;
soth that the husband cannot give them away by will:
but the shall not have executors, beyond her rank.
Pearl necklaces, chains of diamonds, gold-watches, &c.
may be included under paraphernalia, if they were usuall
owed by the wife, and were suitable to her quality and
the fashion of the times, and they are affeys to pay
debts and legacies; provided the husband does not give these
away by will, 1 Roll. Abr. 911. 3 Cro. 343. Kitch.
It was adjudged in the Viscountess's boudoir's case, that
paraphernalia ought to be allowed to a widow, in having re-
so that her husband being a Viscount, the shall be allowed her jewels to the
value of 500 marks, &c. 2 Leon. 166.
A widow retained a chain of diamonds and pearls,
against the devise of her husband; and two judges held,
that the might delay them, because they were convenient
for a woman of her quality; but two other judges were
of a contrary opinion, that paraphernalia should be not
only convenient but necessary; otherwise the widow shall
delay them against the express devise of the husband:
though it is said it was adjudged, that the widow might
delay necessary apparel, and likewise ornaments, against
the devise of her husband; and that she cannot dispose of
them by will, thou' he might have told them in his lifetime;
for immediately upon his death, the property is
1225.
All the wife's wearing apparel, more than that which
is necessary and convenient, is a chattel in the husband;
and after the husband's death shall go to his executors:
but what is necessary for her condition and state, and
comes under paraphernalia, the shall have as own
and dispose of at her death; or take after the death of
her husband. Br. 9. 1st & 2nd. 
Though by our law the wife may not make a will of
and dispose of, with the consent of the husband whiff
he lives; because the property and possession is in him.
Parallels, Is a compound of two French words, par,
and, and avager, demitiers. It signifieth in our Common
law the lowest tenant, or him that is tenant to one
that holdeth his fee over of another, and is called tenant para-
ergale, because it is presumed he hath profit and avantage
by the land, 2 Inf. fol. 206. and Co. 5 Rep. Camp's cafe.
For the use of this word, see F. N. B. fol. 135.
Parcella terrae, A small piece of land. Cowell, ed.
1727.
Parcell-makers, Are two officers in the Exchequer,
that make the parcels of the exchequors accounts, wherein
they charge them with every thing they have levied for
the King's use, within the time of their office, and deliver
the fame to one of the auditors of the court, to make an
account with the exchequer thereof. Cowell, ed. 1727.
Parceners, (Quasi parcelar,) i. Rom in parcelis al-
dicens. Are quality and wages, according to the course
Common law, or according to custom: Parceners ac-
cording to the Common law are, where one feated of
an estate of inheritance, hath sile other daughters, and
dies, and the lands descend to the daughters; then they are
called Parceners, and are but as one heir. The same law
is, if he have not any issue, but that his sisters be his
heirs. Parceners according to custom are, where a man
is freed of lands in gevelkind, as in Kent, and other
places franchises, and hath issue divers sons and dies,
then the sons are parceners by the custom. Cowell, ed.
1727. See Cor. ev Lit. 3, cap. 1, sect. 241.
Parceners holding in capite shall all do homage, 14
Hoc. 3. Parceners and joint-tenants shall do but one
fuit of court, St. Marg. 52 Hen. 3. cap. 6. Shall be
in public in one suit, and though of different degree
St. Cloure. 6 Ed. 1. c. 6. See COParceners, joint
 tenants, Partition.
Parcennar, Is the holding of lands jointly by parceners,
when the common inheritance is not divided. Lit. 55.

36. Pardonn. See Dumps. Pardon para, Is a writ that lies against him who vio-

ently breaks a pound, and takes out beass thence, which
for some trespasses done were lawfully impounded. Reg.
of Writs, fol. 166. and First. Nat. Gr. fol. 100. For the
word parea was more frequently used for a pound, to
confine trespassing or flying cattle; whence impardons,
and impardors, parding, &c. Cowell, ed. 1727.
Pardon, (Pardemont, venia,) Is the remitting or for-
giving of a felony, or other offence committed against
the King; and this is two-fold, one ex gratia Regis, that
the sole only whole cafe, and being between the law
and that, &c. Pardonn. Pl. Cor. f. 47. Pardon ex gratia Regis, is that which the law
affords for a light offence; as to mere assaults, or
which of the Crown, or for what offences it may be granted.
1. By whom a pardon may be granted; and in what
cases and for what offences it may be granted.
2. Where a pardon is grantable of common right; or if
validity of a pardon; and by what words treading, murder,
felonies and other offences may be pardoned.
3. Statutes concerning general and other pardons.

Parcens in se, is that it seems, that anciently the right of pardon
offences within certain drifts was claimed by the long
marchers and others, who had Iura regalia by ancient
grants from the Crown, or by prescription. But now
by the 27 H. 8. cap. 24, sect. 1. it is enacted, that
The no person or persons, of what estate or degree ever the
be, shall have power to pardon or remit any trespass or
felonies whatsoever, nor any necessities to the same,
in any outlawries for such offences, whether committed
in England or Wales, or the marches of the fame, but the
the King shall have the whole and sole power and author-
ity thereof, united and knit to the imperial crown of
this realm, as of good right and equity it appertaineth
Cor. Lit. 3, fol. 233.
It is laid down in the king, that the King may pardon
any offence whatever, whether against the Common
wealth Statute law, so far as the publick is concerned in it,
for it is over, and consequently may prevent a popular action
in a statute, by pardoning the offence before the suit
is commenced; but it is feared, that he cannot wholly pardon
it continues such, because书法 pardon would take away the only means of compelling
redress of it; yet it is said, that such a pardon will save
the party from any fine to the time of the pardon. Plato
487; Kelle. 134. 12 Co. 29, 30. 3 Inf. 237
Voeb. 333.
But it seems agreed, that the King can by no previous licence, pardon or dispensation make an offence dispensable which is made in fe as being either against the public law or in subversion of the public good as to be indestructible at common law; and that a grant of this kind, tending to encourage the doing of evil, which it is the chief end of government to prevent, is plainly against reason and the common good, and therefore void. 

*Dev. 73.* 5 Co. 35. 12 Co. 29.

And hence it has been insisted, that the King's grant to the bishop of Salisbury and his successors, having the custody of a prison, that they shall be quiet from all escapes, which has been adjudged to be a good grant, is not law; as being but a single inference, and contrary to this rule; because a grant of this kind, tending to make a greater evil to be lawful, is a discharge of his negligence, is plainly against the common good.

2 Hawk. P. C. 389. 3 H. 7. 15. pl. 30.

But where a thing in its own nature lawful, is made unlawful by parliament, as the carrying bell-meal, &c., out of the realm, importing merchandise in foreign ships, selling wines beyond a certain price, or without a licence, multiplying gold, &c., coined money of a base alloy, &c., it was formerly taken as a general rule, that the King might dispense with it, as to a particular time or place, or person, so far as the public was concerned in it; unless such dispensation could not be attended with an inconsequence, and contrary to the public interest; the general benefit of the end for which the law was made; or as the licensing a particular person to import foreign cards or wines, &c., in which case it was commonly taken to be void; also, where a statute gives a particular interest or right of action to the party griev'd, as the statutes of mortmain, theft against maintenance, forfeiture entries, carrying difficulties out of the hundred, escape, &c., it has been always agreed, that no charter from the King can bar the right of the party grounded on such statute; also where a statute is express, that the King's charter against the purport of it, and with the clause of non obstante, shall be void; it seems that if any statute has been always generally agreed, that no such clause could dispense with it. 2 Hawk. P. C. 386, 390, and several authorities there cited.

It seems to be agreed, that no dispensation of any nature, except the statutes of mortmain, was of any force, without a clause of non obstante; neither is such clause of any efficacy against a statute, enacted by W. & M. eff. 2. cap. 2. That no dispensation by non obstante of or to any statute, or any part thereof, can be allowed; but that the same shall be held void, except a dispensation be allowed in such statute; but it is provided, that no charter, grant or pardon, granted under any other religion than the Protestant, will be allowed by that act, but that the same shall be and remain of the same force, and none other, as if the said act had never been made. 2 Hawk. P. C. 391.

The King can by no charter whatsoever bar any right of entry or action, or any legal interest or benefit before vested in the subject; and therefore it seems clear, that he cannot bar any action on a statute by the party griev'd, nor even a popular action commenced before his pardon, nor a recognition for the peace before it is forfeited. 


Neither can the King pardon an appeal, except only where it is carried on at his suit, after a non suit; and therefore if a pardon attainted, on an appeal carried on as the suit of the party, get the King's pardon, he must sue for a feire facias against the appellant before the pardon shall be allowed. 2 Hawk. P. C. 392.

When a defendant appear on a feire facias, he may pay execution notwithstanding the pardon; but if the return find a feire facias, or two nolites, and the appellant appear not on demand; or if he return the appellant dead, the appellee shall be discharged; but some have held, that in this last case a feire facias shall go against the heir, and the death supersede it, 3 Hawk. P. C. 393.

But there is no need of any feire facias against the lord by eichers, because the pardon no way tends to re-
the King shall take him to his grace, if it please him." 2 Hid. 316.

But it seems to be settled at this day, agreeably to the ancient Common law, in affirmation whereof this statute was made, that in such a case, or where one indicted of homicide set defendendo confesses the indictment, the party cannot be convicted unless the crown, as the Chancellor well of course make him a pardon without speaking to the King," and that by such pardon the forfeiture of goods may be saved; for these words, "If it shall please the King," shall be taken as spoken only by way of reverence to him, and not intended to make such a pardon diabolicum. But if the party be found to have lied, it is made a quare factum, if the pardon save the forfeiture of the flight, for that is not grounded on the homicide, but on the contempt of the law. 2 Hawk. P. C. 380, 381.

If an approver convict all the appellees, whether by battle or veridil, the King ex meritis justitia ought to pardon him as to his dues, and what wages he had earned from the time of the appeal to the time of the conviction. 3 cf. 139. 2 Hawk. P. C. 209. 2 H alf. Hilj. P. C. 233.

By the 4 or 5 W. 3 & M. cap. 8, it is enacted, "That if any person or persons out of prison shall commit any robbery, and afterwards discover, two or more who then had or afterwards shall commit any robbery, so as two or more of them shall be convicted, any such discoverer shall be intituled to a pardon for all robberies committed before the discovery, which shall bar an appeal." And by the 6 or 7 W. 3 & M. cap. 17, it is enacted, "That if any person or persons out of prison shall be guilty of clipping, forgery, counterfeiting, walking, filing, or otherwise diminishing the coin of this realm, and afterwards discover two or more who then had or afterwards shall commit any of the said crimes, so as two or more of them shall be convicted; any such discoverer shall be intituled to a pardon for all his crimes committed before the discovery." By the 10 & 11 W. 3, c. 23. (which excludes clergy from those who shall in any shop, warehouse or flable, privately steal any goods, &c. of the value of 5s. of thofe shop, &c. not broken open, and tho' no person be therein, or thall affit, hire or command any person to discovers offence.) 44 If any person or persons shall commit any burglary, house-breaking or felony, in feating of any horse or horses, or any money, wares or goods, from whom clergy is by that act taken away, and being out of prison shall discover two or more who then had or after shall commit any such felony, and shall be convicted thereof, and again, any such discoverer that he be intituled to a pardon for the felonies aforesaid committed before such discovery, &c." And by the 5 Ann. cap. 31, it is enacted, "That every person who shall be guilty of burglary, or of the felonious breaking and entering a house in the day-time, and after shall discover two, who shall have committed such felony, so as they be convicted, &c. shall have 40l. and a pardon of all felonies, except murder, &c."

It is laid down as a general rule, that wherever it appears by the recital of the pardon, that the King was misinformed, or not rightly apprized, both of the heinousness of the crime, and also how far the party stands convicted, it is allowed that the pardon was made upon a prejumption that it was gained from the King by imposition. Yel. 43, 47. Cro. Jac. 18, 34, 548. 2 Rot. H. 188. Dyer 352, pl. 26. Rym. 13. 1 Sid. 41. 3 Hif. 338.

And upon this ground it seems agreed, that if a man attainted of felony get a pardon, which doth not mention the crime, it is granted, and the pardon will be void. If it be held, that the pardon of a person convicted by verdict of felony is void, unless it recite the indictment and conviction; allo it hath been questioned, if the pardon of a person barely indicted of felony be good, without mentioning the indictment; but it hath been adjudged, that such a pardon is void on the words the words free indebitum free

2 Hawk. P. C. 382-3.

It hath been held, that anciently a pardon of all felonies, included all treasons as well as felonies; and it seems to be taken for granted in many books, that such a general pardon is even at this day pleading to any felony, except murder and rape, and piracy; and that the only reason why it may not also be pleaded in murder and rape is, because 13 Rich. 2. requires an express mention of them; and that the only reason why it is not pleaded in rape is, because it is the subject of the Statute of Attainder. 52 Haw. P. C. 383-4. 1 Hal. Hilj. P. C. 466. 2 Hal. Hilj. P. C. 45.

By the 37 Ed. 3. cap. 2. it is enacted, "That in every pardon of felony granted at any man's suggestion, the name of him who makes it, shall be comprised; and if any other man shall be attaindered, and the charter shall be alleged, shall inure of the same suggestion, and if they find it untrue, shall disallow the charter. No pardon of felony shall be carried beyond the express purport of it; and therefore if the King, reciting an attainder of robbery, pardon the execution, he thereby neither pardons the felony itself, nor any other consequence of it besides the execution. 6 & 7 Ed. 3. Hawk. P. C. 384.

It is enacted by 2 Ed. 3. cap. 2. that charters of pardon of manumissions shall not be granted but where the King has a rule of law, oath, that is, a new man layereth another in his own defence, or by misfortune; neither is there any precedent in the Register of the pardon of any other homicide, but such as is done either in self-defence or by misadventure, or by infants or madmen, and from hence some have disputted the King's power o the word pardon, and the nature of the pardon of a man疮 in the general tenor of the books, and also to the plain text of 13 Ric. 2. cap. 1. which reciting, that treasons murder, and rape, had been frequently committed, cause pardons had been easily granted in such cases, or dialect. That no pardon shall be allowed for murder or for the death of a man slain by, in avert, or in one of a woman, unless the said murder be, &c. be specifed in the same charter; and as charter of the death of a man be alleged before any juror; in which it is not specified that the party was mutinied or slain by avert, or malice preponted, it is specifed, that in the voyage where the dead was slain, if he were murdered or slain by avert, &c. and if they find that he was murdered or slain by avert, &c. the charter shall be disallowed. Hawk. P. C. 385-6. and several authorities there cited.

It hath been formerly often adjudged, that murder might be pardoned under the general description of a fit murder, and a publica murder, lifting out of the rule of 4 W. & M. justf. 2. cap. 2. it is declared, that no dispension by non offensae of or to any statute shall be allowe 1 Sid. 366. 2 Bow. 238. Keiling 24. 2 Med. 37. But pardons of manumissions remain as they were: Common law; and therefore the pardon of the felon's killing of 7. 5. may be pleaded to an indictment of manumission in killing him; but where such a pardon is pleaded to a coroner's inquest of manumission, the court may refuse to allow it, till the fact be found manumitted by a jury directed by a higher court. 2 Kebl. 303, 415. Keiling 24. 2 Jem. 56.

If a general act expressly pardon petit treason, and except other treasons, it cannot be avoided by incurring a pernicious guilty of petit treason for murder only, omitting it word prudtoriae; for the less offense being included in the greater is pardoned by the pardon of it; and these are such an exception of murder is to be intended, such murder only as is specially fae called, and doth amount to petit treason. Dyer 50. pl. 4. 235. pl. 14. 6 Gra.

Neither doth the exception of murder in a general act of pardon of all felonies extend to feo de feo; for his offence be of a kind that is, murder in common speech, according to which statutes are commonly ex pounded, it is generally underwritten or preceded with prima facie to import the murder of another. 1 Lev. 8, 120. 1 Sid. 50. 1 Kebl. 66, 548.

It is said, that a general act of pardon of all felonies, misdemeanors and other things done before such a day.
adorns a homicide from a wound before the day, where-

If a trial, it is laid down that all mifpriving, trea-

murs, and granted, H. 24. 22 c. 21. 37, 40. 55.

for, and refusing to plead has-

The person cited, or the public perso-

in the general word of all com-

Square, Whether he may be arranged for the

piracy; but by the better opinion, he may be ar-

piracy: and by the general word of all com-

pardon, be of such a nature, and in the hands

where the person cited, or the public perso-

piracy, and that the judgment of paine

dure, and by the general word of all com-

pardon, by the general word of all com-

by the better opinion, he may be arraigned

On account of the kingdom, in reference to ci-

Commons, though many authors differ much here-

In his Disputations, De Feudis, cap. 2, concerning this

Before the council of Lateran there were no pari-

Per Hort. Ch. 1. Hdb. 246. contra by Richardson,

There is an allegory in general, this shall be

and not to contain more villain unlesse it be speci-

and a villain is all one, and it is sufficient to ac-

whether a villain which a villain is required, as

Or for this purpose the Long Quaest. of Ed. 4. 141.

When a parson is alleged generally, this shall be

and their baniets at first was to officiate at the altar, for

which they have a competent maintenance by offerings;

and these laws they must eke out, mainain and defend

and the Divine law; and by these laws they must eke

the law of nature, and the Divine law; and by

children. Woolf's life. 63. The parent or father

interest in the profits of the children's labour while

rife, with, and are mainained by him. But the fater

then no interest in the estates

or personal of a child, otherwise than as his guar-

dian. Ibid. The eldest son is heir to his father's estate;

and if there are no sons, but daughters, the daughter

shall be heirs, &c. And there being a reciprocal interest

in each other, parents and children may maintain the

suit of each other, and justify the defence of each other's

persons. 2 Ed. 5. 64.

Parentela, or De Parentela te tollere, To re-

nounce his kindred; which was done in open court

before the judge, and in the presence of twelve men, who

made oath, that they believed it was done lawfully, and

for a just cause. We read it in the laws of H. 1. cap.

88. Si quis parentem solat et cunium aliam de parente

ta solat tellere, & eam foriusse vivit, & de factitate

ereditatis & tota illius ratione se separat, si polle alia

gnant a parentibus abjuravit meriurus, vol ecosantr, nihil ad

eam de hereditatis vel compositione pertinent, &c.

Parity, (Parochia.) Signifies the precinct of a pari-

and the particular charge of a secular priee; for

every church is either cathedral, conventual or parochial:

Cathedral is where there is a bishop seated, so called:

Conventual confiht of regular clerks, professing feme

order of religion, or of dean and chapter, or other col-

lege of spirifual pryesthood and laymen. Parochial is the

instituted for the paying of Divine service, and mini

the holy sacraments to the people dwelling within a cer-

tain compass of ground near it. Our kingdom was first di

vided into parishes by Honorius, archbishop of Canter:


104. And that preface is now followed by parochial con:

though many authors differ much herein. See Hasted

in his Disputations, De Feudis, cap. 2, concerning this

word parochia. Cowell, edit. 1727.

Before the council of Lateran there were no par-

To Horat. Ch. 1. Hdb. 246. contra by Richardson,


fell. 8, where parishes are argued to have been ere:

before that council. Originally the kingdom, in reference
to civil matters, was divided into vills only, and par-

ishes were divisions only in reference to ecclesiastical af-

airs, and the Common law took no notice of them, in so

much as a freehold of land was not admitted to be a pa-

rish, but in process of time parishes became divisions taken

notice of in reference to civil matters, and are now used

in fines, and though a place spoken of simply is inten-

ded a vill, yet shipstou præfumptum dono præstans in con-


Where a parish is alleged generally, this shall be

intended to be a vill, and to be the name of the vill, and

not to contain more Villains unless it be specially alleged.

And a vill and a parish is all one, and it is sufficient to ac-

knowledge a parish where a vill is required, as appears by
dives certificates upon a full parliament, or a full parl

ditions, which requires that the vill be named, yet it be-

ing alleged that he was of such a parish suffices; and for

this purpose the Long Quaest. of Ed. 4. 141. and divers

other books were cited, and 2 Inst. 659. per Hall; and

therefore the alleging it as a parish suffices; for the pa-

riah of St. Giles is a vill. Sid. 554. Mich. 6 W. & M. B. R.
in case of Wilson v. Pusey. See Dowl.

Parity Clerks. In every parish the parson, vicar, &c.

hath a parson clerk under him, who is the lowest offi-
cer of the church. There were formerly clerks in orders,

and their baniets at first was to officiate at the altar, for

which they have a competent maintenance by offerings;

but now they are laymen, and have certain fees with the

parson, on churifications, marriages, burial, &c. besides


34. They are to be twenty years of age at least, and

known to be of honest conversation, sufficient for their

reading, writing, &c., and be well skilled in reprobate

divine learning, reading of lectionary, reading of lectionary

for psalmers, &c. And in the large parishes of London,

they have some of them deputies under them for the dispa-

chant of the baniets of their places, which are more gainful

than common recclary. Ibid. The law books upon

them as officers for life: And they are chosen by the mi-

niister of the parish, unless there is a custom for the pa-

riahs or churchwardens to chuse them in which case
safe the cannon cannot abrogate such culson; and when
choosen it is to be signified, and they are to be sworn in
their office by the archdeacon. *Cra. Cor. 389. Com. 91.
He may make a deputy without licence, by writing in
the form of the principal court for fees as being a temporary officer.
3 Swarga 1128.
Parliament. (Pareikonion.) An inhabitant of or
belonging to any parish, lawfully settled therein. *Jae.
Parishioners are compellable to put things in decent order;
but the judgment of the majority is the only rule for the
degree of the punishment, and the court inculpated, that a
rate for that purpose is binding; as for moving the com-
mission-table out of the body of the church into the
canal, or raising it higher, *C. Par. 70. Mich. 1 Ann.
Parishioners have right to view parish books. 11 Mod.
Parishioners are a body politic to many purposes; as
to vote at a vestry if they pay foot and lot; and they
have a sole right to raise taxes for their own relief, without
the interposition of any inferior court; may make by-laws
to mend the highways, and to make banks to keep out the
feep, and in raising the church, and making a
bridge, *C. or any such thing for the publick good, and
by the 3 & 4 W. 3. and 7 Ann. to tax and levy poor
rates, and to make and maintain fire-engines, and by
9 Geo. for purchasing workhous for the poor. Arg.
8 Mod. 534. Impb. 11 Geo. 1. Philibrown v. Ryland.
*Chaf. 7 (from the French paroisse, or paroisse,
loccufa, congregation). Signifies with us a piece of ground
inclosed, and fenced with wild beasts of chase, which a man
may have by prescription, or the King's grant. Grum.
Jur. fol. 148. Manwood in his *Forj. Laws defines it
thus: A park is a place of privilege for wild beasts of
venery, and also for other wild beasts that are beasts of the
forest, and of the chase, tam fulguros quam cornefrontes;
and such a park differs from a chase or warren, in that it
must be inclosed, and may not lie open; for if it do,
that is a good cause of feizeur into the hands of the King,
as a thing forfeited, as a free chase is, if it be not inclosed;
bene the owner cannot have an action against such as hunt in his park, if it be open. See *Forj. Chaf.
Chafe, Warren. Guillem. Comp. Liberum facit ecclefiwm
de bello, de opere parcouram. Spelman's *Giff. And Hen. 1.
had a park at Woolwick, where were lions, leopards,
camels, &c. brought thither from foreign parts. Srew.
An. 1117.
Leads shall not have the imprisonment of malesaffers
in their parks, &c. St. Mert. 20 H. 3. c. 11.
Malesaffers in parks and ponds may be punished by
three years imprisonment and ranom, &c. or outlawed,
St. Witon. 1. 3 Ed. 1. c. 20.
Survey to be taken of parks, extensa manus, 4 Ed. 1.
1st. 12 Ed. 3. c. 4.
Parks not to be within 200 feet of a highway, or to be
walled, &c. 13 Ed. 1. 2. c. 5.
Malesaffers in forests and parks who will not stand to
the King's peace, may be killed, St. de Malefaff. in
Parc. 21 Ed. 1. 2. 2. extended to enclosed grounds where
deer are kept, 3 W. & M. c. 10. feft. 5, and to
the lords and game-keepers in the night, 4 & 5 W. & M.
c. 23. feft. 4.
Penalty on pulling down the pales of a park, &c.
3 W. & M. c. 10. feft. 9. 5 Geo. 1. c. 15. feft. 6.
Recompense to be made by the township to owners of
parks for destroying their fences, &c. 6 Geo. 1. c. 16.
See *Forest. &c. in *Parc. &c.
Parkbote, Is to be quit of inclosing a park, or any
part thereof. Co. 4 Inf. fol. 208.
PartieDill. A place where people met to determine
their differences. Crowell, edit. 1727. See Spelman's
description of it in his
Parliament. (Parlamentum). Is deduced from the
French, vni. parler, to speak, and ment, ment, the
mind; and the writ which summons it, says, Ad
confellandum, &c. de ardira Regni negotii. It is indeed a
solemn conference of all the states of the kingdom com-
munioned together by the King's only authority, to treat of
the weighty affairs of the realm. The ancient Britons
had no such assemblies; for Taciatus says, That although
Othin Regibus pareábant, nunc per principes solabimur &
studia trahamur; ne aliud adventus buildimur; gentes
praebemus alligam quaedam in commune non consulant; turma,
bardos et tribus profarum, communi pariter atque
culum, convenerint, ita domos fugiendi metu victoriosi.
That the Saxons had something like it, will appear from
King Ina's laws, who flourished anno 712. Contiis (inqui-
) & Document Cornubi parl. maj. Hedda & Erken-
uld, epiftolam ourum, animosius alteriorum ourum
magna, sublimem antiquam papuli met, magnam etiam for-
verum Dei frequentem. But to come a little nearer,
William the Conqueror divided this land among his fol-
lowers in such manner, that every one of them should
hold their lands of him in capite; and they again distrib-
uted part thereof among their friends and servants; who
for the same were bound to do them service in their
houses. The chief of these were called Baron, who thrice every year assembled at the King's court
viz. at Christchurch, Ely, and Whitby; among
whom the King was wont to come in his royal robes,
and his Crown on his head, to consult about the publick af-
airs of the kingdom. But this ancient custom, as well as
the three estates of the realm, viz. the lords spiritual,
the lords temporal, and the commons, for the debate of
matters touching the commonwealth, especially in
making and altering of laws. Smith of Rep. Anglor. Li-
cap. 1 & 2. and Camden, Brit. pag. 112. concern-
ing which, Ge. on lit. 2. c. 2. fol. 164, and in the
fourth part of his Institutes faith, Si vestrum domi-
cum antiparum, &c. certes metu, &c. jurisdicti-
un. This in an ancient charter:
King Jofua was called *Commune Consilium Regni—
Nuldum fontium mit illum potestatem in regna regnorum, &c.
in commune consilium regni nfferi. But besides this
premote court, there are other inferior parliaments,
the abbots of Croyland was wont to call a parliament of
the monks, to consult about the affairs of his monastery.
And at this day the socities of the two Temples, or in a
court, do call that assembly a parliament, wherein the
consult of the common affairs of their several house.
Crowell, edit. 1727.
1. Of the original and antiquity of parliaments.
2. Statutes concerning parliaments.
3. Of the original and antiquity of parliaments.
To trace out exactly the original and antiquity of the
supreme court of parliament, whole transcendent jur-
diction, says my Lord Coke, is such, that it maketh,
large, and diminisheth, abrogateth, repealeth and re-
viveth laws, statutes, acts and ordinances concern-
ing our free and personal liberty, as well sense, as
civil, maritime, maritime, &c. And to point out the several
aerations it met with, and how it came to be modelled;
the shape we see it at this day, seems indeed, if not in
possible, a work of the greatest difficulty; but this diffi-
culty is not to be attributed to any peculiar defect in or
constitution, but only to time, the loss decreed, and
the progress of consummation, especially in the Barons
wars; nor have the prejudices and different views, which conducted the
pens of those who wrote on this subject, helped little to obscure and perplex the matter. Co. Lit. 111.
In fol. 36.
However, it appears by those lights which we have
received, and from the inquiries and revisions of so
beft antiquaries, that there hath always been sometiml
of the nature of a parliamentary assembly, as ancient
thing any which we know of our constitution, in what
the people feared the prince in the legislative power;
this assembly was sometimes called Magnates regni, regi
nobles, priferes & fetes regis, uniconigii regii
community
communis regni, deditio totius regni, generale succussion
In the Saxon times, the general court of the whole
kingdom, or the Witan-gemot, to which the Earls
and lords of each sect; and likewise representatives
towns, which were chosen by the burgesses of the
town, and appeared on the King's summunum; this court met once a
year at leat, and generally twice, about Eglofr and Mil-
Upon the coming of William the Conqueror, every
person found out in arms against him forfeited his whole
estate, in which he placed his Norman; and he com-
pelled all those, who were not in arms against him, to
take out patents of their lands to hold of himself; and in
order to the making a general survey of the whole
kingdom, which was called Domesday, and changed the nature
of the tenures, which in the Saxon times were al-
lodial, into feudal, to be holden of himself by knight-
service; and by this means made the property of their
estates depend on their allegiance to him: and hence it
follows, that all lands are holden mediately or im-
mediately from the Crown. See Wright's Tenures.
The baronies and feudoms were anciently created by
granting to many knights fees, viz. If the grant consisted
of 13., knights fees, the party was compellable to hold
for baronum; and he that had twenty knights fees, to
hold for baronum. But in order to the making a general survey of the whole
kingdom, which was called Domesday, and changed the nature
of the tenures, which in the Saxon times were al-
lodial, into feudal, to be holden of himself by knight-
service; and by this means made the property of their
estates depend on their allegiance to him: and hence it
follows, that all lands are holden mediately or im-
mediately from the Crown. See Wright's Tenures.
Alto William the Conqueror erected a new court, called
Curia or Aula Regii, composed of his principal officers of
state; to thefe, when any matter of moment was in agi-
atization, as levying a new war, raising an echeage, &c., were called lord of the barons, and chief persons who
held in curia, and they transferred all business civil and
military, and also relating to the revenue, and were
the great court-baron of the kingdom; where every thing done therein, was found to be done per concilium
regni; it was in the election of the King to summons the barons and other freemen to plead to this court,
and such attendance being deemed a burden in former days, they barons were seldom called, especially when they rove
that grandeur as to make such a concourse formidable to the King. See Middex. cap. 2. 3.
In this great assembly of parliament, it seems plain,
looked upon by the commonwealths of England were no part; and therefore the tenants in
ancient cemenne, who used to maintain the King's table, and also those who held by burgage tenure, as by certain
court, setting out ships in the navy, &c. according to the
duty of their parents, were wont, upon any extraordin-
ary occasion, besides the duty of the tenure, to grant an aid to the King, which was demanded of them
by the justices itinerant; and which, if they refused to
pay, the King, at the end of the expedition might, with
the advice and consent of his council, call them to a
tenant of all their estate, but not to more; for none could
be taxed at pleasure but villains, and those who held by
the King. Middex 491. See Ryly 516.
The great controversy, with respect to the original and
antiquity of parliament, relates chiefly to the power and
full formation of a house of commons after the conquest.
Some have affected that they have always been part of the
kingdom, and are therefore of the same nature by
their representatives, have always composed a part of
that august assembly; others hold, that the house of
common was formed 49 Hen. 3. when the King had
given an overreach, at the battle of Evesham, to Simon
Munster, Earl of Leicesters, and the barons that adhered
Vol. II. No. 111.

The controversy, with respect to the original and
antiquity of parliament, relates chiefly to the power and
full formation of a house of commons after the conquest.
Some have affected that they have always been part of the
kingdom, and are therefore of the same nature by
their representatives, have always composed a part of
that august assembly; others hold, that the house of
common was formed 49 Hen. 3. when the King had
given an overreach, at the battle of Evesham, to Simon
Munster, Earl of Leicesters, and the barons that adhered
Vol. II. No. 111.
Tenements that have been contributory to the knights' wages, shall be charged though they be purchased by peers, &c. 12 R. 2. c. 12.

A committee appointed to answer and determine petitions to the King, 21 R. 2. c. 16.

Repeal of the parliament, 21 R. 2. 1 H. 4. c. 3. Of the parliament held, 9 Ed. 4. by King Henry 4. 17 Ed. 4. c. 6.

Appeals shall not be pursed in parliament, 1 H. 4. c. 14.

For enormous battery of a servant of a member, the offender shall be proclaimed, and if he do not render himself to the King's Bench, he shall be attaint and pay double damages, &c. 5 H. 4. c. 6. For affluats on members the like proclamation, 11 H. 6. c. 11.

After delivery of the writ for election, the sheriff shall proclaim the day of the parliament in the next county, and then all persons shall attend the election, and the knights elected shall be returned by indenture, 7 H. 4. c. 15.

The justices of assize shall inquire of false returns, and the sheriff offending shall forfeit 100l. 11 H. 4. c. 1. But the defendants shall have their traverse, 6 H. 6. c. 4.


Electors of members and the elected, shall be resident in the counties, &c. 1 H. 5. c. 1. 8 H. 8. c. 7.

A parliament summoned by the King's lieutenant, not to be dissolved by the King's arrival, 8 H. 8. c. 1.

Electors for counties shall have freethings of 40l. a year, 8 H. 6. c. 7. Within the county, 10 H. 6. c. 2.

The manner of affixing and levying the knights wages, 23 H. 6. c. 14.

Penalty of 40l. for the false return of a citizen or burgess, 23 H. 6. c. 14.

None but sufficient gentlemen to be chosen for a county, 23 H. 6. c. 14. feft. 3.

Repeal of the parliament of Country, for undue elections, 39 H. 6. c. 1.

Proscriptions contrary to privilege of parliament, vacated, 4 H. 8. c. 8.

No member of parliament shall depart without leave of the house, 6 H. 8. c. 10.

The county of Monmouth shall fend two knights, and the town of Mowmane one burgess, 27 H. 8. c. 26. f. 28.


The Royal affent by letters patent shall be good, 33 H. 8. c. 21.

Knights and citizens to be chosen for the county and city of Chester, 34 & 35 H. 8. c. 13.

For the election and payment of the members for Wales, 35 H. 8. c. 11.

Where the prifoner in execution is delivered by privilege of parliament, the prifoner shall have another execution, 1 Jac. 1. c. 13. Not to diminish confines of parliament for making such arrests, ibid. feft. 3.

For triennial parliaments, 16 Car. 1. c. 1. Repealed 16 Car. 2. c. 1.

The Crown refrained from adjourning the parliament, 16 Car. 1. c. 7.

The parliament of 1660 affected, 12 Car. 2. c. 1. Orders or ordinances of both or either houses without the King void, 13 Car. 2. c. 1.

A parliament to be held every three years, 16 Car. 2. c. 1.

The county and city of Durham to send knights and citizens, 25 Car. 2. c. 9.

Members not making the declaration against popery, to lose their seats, 20 Car. 2. f. 2. feft. 8.

The convention at the revolution declared a parliament, 1 W. & M. c. 1. 2 W. & M. c. 1.

Lord wardens of the cinque ports not to nominate members, 2 W. & M. c. 1.

No members of the house of Commons to be concerned in collecting new duties, Members of the house of Commons may be members, &c. of the Bank, 5 W. & M. c. 20. feft. 32.

15 Geo. 2. c. 13. feft. 8.

Officers of excise prohibited to sollicet at elections, 5 W. & M. c. 20. feft. 48.

Parliaments to be triennial, 6 W. & M. c. 2.

Candidates prohibited to treat or bribe the electors, 7 & 8 W. 3. c. 13. 2 Geo. 3. c. 24.

Perjury at false and double returns, 7 & 8 W. 3. c. 7.

Returns to be entered by the clerk of the crown, 7 & 8 W. 3. c. 7. feft. 5.

For continuing the parliament in caze of the death of the King, 7 & 8 W. 3. c. 15. 4 Ann. c. 8.

Directions for the speedy delivery and execution of the writs of election, 7 & 8 W. 3. c. 25.

The freeholders oath, 7 & 8 W. 3. c. 25. feft. 3.

Conveyances for sifting freeholds, prohibited, 7 & 8 W. 3. c. 25. fext. 7.

Mortgagor or esjuit quo trafl in possification may vote, 7 & 8 W. 3. c. 25. feft. 7.

Liabilities to be charged or to be elected, 7 & 8 W. 3. c. 25. fest. 8.

Persons who refuse the oaths, not to vote at elections, 7 & 8 W. 3. c. 27. f. 10. 6 Ann. c. 23. fext. 13.

The sheriff shall return his writ within 14 days after the election, 10 & 11 W. 3. c. 7.

The fees of the clerk of the crown on a writ of election, 10 & 11 W. 3. c. 7.

No member of the house of Commons shall be capable of any office in the excise, 11 & 12 W. 3. c. 2. fext. 150.

Suits may be prosecuted against privileged persons during the recess of the seessions, 12 & 13 W. 3. c. 3.

Extended to all courts in Great Britain and Ireland, 11 Geo. 2. c. 24.

Plaintiff raid by privilege of parliament, shall not be barred by statute of limitations, 12 & 13 W. 3. c. 3. fext. 3.

Suits against the King's debtor not stayed by privilege, 12 & 13 W. 3. c. 3. f. 6. 13 Geo. 2. c. 24. feft. 4.

Officers of the customs disabled from being members, 12 & 13 W. 3. c. 10. f. 89.

Officers of the customs prohibited from soliciting votes at elections, 12 & 13 W. 3. c. 10. fext. 91. 9 Ann. c. 11. fext. 49.

Persons having places or pensions, disabled from being members of the house of Commons, 12 & 13 W. 3. c. 2. fext. 3. Repealed, 4 Ann. c. 8.

Officers may be prosecuted for misdemeanors in publick truft, notwithstanding privilege of parliament, 2 Ann. c. 18.

The parliament of Great Britain formed, 5 Ann. c. 8. art. 22.

Particular offices disabled, 6 Ann. c. 7. fext. 25. 15 Geo. 2. c. 23.

Parliament to meet upon the death of the King, and to continue fix months, 4 Ann. c. 8. 6 Ann. c. 7. f. 4.

Directions for the elections of the 16 peers for Brit¬

tain, 6 Ann. c. 23.

Votes to take the oath of abjuration, 6 Ann. c. 23. fext. 13.

Qualification of members of the house of Commons, 9 Ann. c. 5.

Not to incapacitate the heir apparent of any peer, or of any peer qualified to serve as knight of the shire, 9 Ann. c. 5. f. 2.

Exceptions as to the universities, 9 Ann. c. 5. fext. 22.

33 Geo. 2. c. 20. fext. 3.

Poll officers not to sollicet in elections, 9 Ann. c. 10. fext. 44.

Annual returning officers not to be re-elected the next year, 9 Ann. c. 20. f. 8.

Certain officers not to sollicet votes, 10 Ann. c. 19. fext. 188.

Multiplying votes for county elections prohibited, 11 Ann. c. 23. 12 Ann. f. 1. c. 5.

Extended to towns and boroughs, 13 Geo. 2. c. 20. Repealed, 19 Geo. 2. c. 2. fext. 23.

Quaker's affirmation admitted, instead of elector's oath, 10 Ann. c. 23. feft. 8.

Rules for the elections of members in Scotland, 12 Ann. f. 1. c. 6. 7 Geo. 2. c. 10. Provision the
Parliament to have continuance for seven years, 1 Geo. 2. c. 38.

Penal for having pensions for terms of years, disabled from being members of the house of Commons, 1 Geo. 2. c. 38.

Suits and penalties appointed against bribery in elections, 2 Geo. 2. c. 24. Prosecutions for the penalties shall be commenced within two years, 9 Geo. 2. c. 38.

Legality of votes to be according to the determination if the house of Commons, 2 Geo. 2. c. 24, sect. 4.

Penalty for perjury in returning officer, elector, or pest, 1 Geo. 2. c. 6, sect. 5.

Penalty on elections taking bribe, 2 Geo. 2. c. 24, sect. 7.

County courts not to be adjourned to a Monday, Friday, or Saturday, 6 Geo. 2. c. 23. Repealed, 18 Geo. 2. c. 18, sect. 11.

Judges in Scotland not to be members of the house of Commons, 7 Geo. 2. c. 10, sect. 6.

Troops quartered, to withdraw before an election, 8 Geo. 2. c. 30.

Suits may be commenced in the intervals of sessions, and against privileged persons, 11 Geo. 2. c. 24, sect. 1.

Suits against the King's debtors not heard, 11 Geo. 2. c. 24, sect. 2.

Directions for making up the freeholders roll in Scotland, 16 Geo. 2. c. 11.

Directions for elections for boroughs in Scotland, 16 Geo. 2. c. 11, sect. 26.

The act against bribery, extended to elections of de- gresates in Scotland, 16 Geo. 2. c. 11, sect. 33.

Directions for striking the writs and precepts in Scotland, 16 Geo. 2. c. 11, sect. 40.

A new freeholders oath appointed, 18 Geo. 2. c. 18.

Statutes of Jeofails extended to proceedings on this act, 3 Geo. 2. c. 18, sect. 15.

Alterations of the regulations of freeholders votes in Scotland, 23 and 12 Ann. c. 1, sect. 5, 18 Geo. 2. c. 8, sect. 22.

When the county court is held within six days after receipt of the writ, sheriff not to adjourn court longer than sixteen days, 18 Geo. 2. c. 18, sect. 10.

Sheriff, &c. offending to be indicted, 18 Geo. 2. c. 3, sect. 12. 19 Geo. 2. c. 28, sect. 8.

The freeholders oath at elections for cities and towns, which are counties of themselves, 19 Geo. 2. c. 28.

Statutes of Jeofails extended to proceedings on this act, 3 Geo. 2. c. 28, sect. 11.

Elections for cities and towns that are counties, regulate.

Conractors for circulating exchequer bills, not dis- disabled from being members of parliament, 30 Geo. 2. c. 17, sect. 167.

Copyholders not to vote for knight of the shire, 31 Geo. 2. c. 14.

Statutes of Jeofails extended to proceedings on this act, 3 Geo. 2. c. 14, sect. 4.

Members to deliver in their qualifications on oath, 33 Geo. 2. c. 20.

Not to incapacitate the heir apparent of any peer, or any person qualified to serve as knight of the shire, 3 Geo. 2. c. 20, sect. 3.

Freeholders at elections but such as have been admitted to their freedom 12 months before his election, 3 Geo. 3. c. 15.

In what manner peers are to vote in right of an anuity or rent-charge, 3 Geo. 3. c. 24.

See Peer, Privilege, and 16 Vin. Abr. tit. Parlia- ment de la house, A parliament so called in Edward the Second's time, to which the barons came against the two Spencers, with coloured bands upon their fleaves for distinction. Doug. Bar. 2 part.

Parliaments de blazon, W a parliament held at Oxford, 24 H. 6, wherein Edward Earl of March (afterward King) and divers of the nobility were attain- ded. But the acts then made were annulled by the next parliament. Hol. Chron.
An use will not pass by parol without deed, but the Lord Ch. J. Pemberton laid, it would be a good true or Chancel of a church, &c. for money. 15 Pecch. 32 Carr. B. R. in case of Bervis v. Bevew. A parol release is good to discharge a debt by simple contract, Arg. 2 Snd. 417. Mich. 36 Carr. 2. B. R. in case of Hauusen v. Denham. A promise merely executory on both parts; as if I promise B. 5. i. to make a will to Paulus, before B. goes, I may change his will, and fo shall discharge myself of payment of the 5 l. for no debt was yet due, nor anything executed on either side. 3 Lev. 238. Mich. 1 Jac. 2. C. B. Meyer, Et. of Stairborough v. Butler. An agreement in writing before the statute of frauds and perjuries may be discharged by parol. Vern. 245. Pag. 274, Comyns, Salter. A rent afgiffed in lieu of dower may be by parol without deed, though it be a freehold created de novo: And though a rent lies in grant, because this is not properly a grant, but an appointment. 12 Med. 201. v. Trin. 10 W. 3. Saunders v. Owen. Letters for years surrendered to the lefser by parol referring rent; adjudged, this was a good reformation up on the contract, and that an action of debt would lie for the rent after the first day of payment incurred, though the reformation was by way of contract, and without any deed. 3 Salk. 512. pl. 7.

If one has a contract by parol, he may authorize another to do some thing upon it by parol, and when that is done, it is all one as if he had done it himself; per Holt Ch. J. at Nike prius. 12 Med. 564. Mich. 1701. Amos. An insuance was made from Archangel to the Downs, and from the Downs to Leghorn, but there was a parol agreement at the same time, that the policy should not commence till the ship came to such a place, and it was held, that the parol agreement should avoid (or defeat) the writing; cited per Holt Ch. J. as adjudged in Pemberton's time. 2 Salk. 444. 445. December 3. 1703. Bates v. Graham.

If a thing is granted by a writing, which is grantable by parol, it may be revoked by parol. Vid. 10 Med. 74. Hill. 10 Ann. B. R. in the case of The Queen v. Sutton.

Deputation of an office is in it's own nature grantable by parol, and therefore though it should happen to be granted by writing, yet since it is in itself grantable by parol, it may be revoked by parol. 10 Med. 74. Hill. 10 Ann. B. R. in the case of The Queen v. Sutton.

Parol agreements of the right of justice of peace may, by word of mouth, authorize one to arrest another who is guilty of a breach of the peace in his presence, &c. Dal. 117.

Parol damarum, is a privilege allowed to an infant, who is sued concerning lands which came to him by descent; and the court thereupon will give for judgement, quibit, upon the evidence, whether the infant comes to the age of twenty-one years. And where the age is granted on parol damarum, the writ doth not abate, but the plea is put fine diis, until the infant is of full age; and then there shall be a re-fummons. 2 Eild. Abr. 280. 2 Inf. 256. Roif. Entr. 363. The granting of a parol damarum is in favor of an infant, and for his benefit, that he may not be prejudiced in his right for want of well knowing his estate, &c. And if his ancestor dies seised, and the lands depend to him, and he enters and takes the profits, it would be a prejudice to the infant to lose the possession which he hath; so that in that case it shall lay until his age. 6 Rep. 3. The tenant in an action, cannot make a demand, until the infant demandant comes of age; this is expressly provided for by 6 Ed. 1. cap. 2. And it would damage the infant, if he should be so delayed upon an action brought by him, where an estate is defended to him from his ancestor. 6 Rep. 3. 5.

In parol damarum when it may be proved, that two are voided, to the end of null parol damarum for the nonage of the one; it shall be for the other also. 45 Ed. 3. 23. See Age piet.

Paritricides. (Paritricidae,) Is properly he that kills his father, and may be applied to him that kills his mother. Law. Lat. Dilt. 1.

Parturens. (Parturium,) Signifies the rector of a church.

He is called parjue, because of his office; for the profits of the church were to maintain magnam perjunea or rather, because he is bound by virtue of his office in perjuria perjuneas. Deo. Cowell, edit. 1727. See Socj categoria. courts, &c.

Partunage, (Partun, partuni,) Is sometimes taken to be a church, and sometimes for the benefice itself. Cowell, edit. 1727.

Partunage, or Rittery, Is a spiritual living, composed of land, tithe, and other oblations of the people, separated or dedicated to God in any congregation, for the service of his church there, and for maintenance of his clergy, that the charge of the same is committed. Spelm. De non tenerasque Eccles. 2.

Parson impotenture, (Perjima impotentera,) Is he that is in possession of a church, whether a proprietor, or not appropriate. In the New Book of Entries, perjuma seems to be the patron, or he that hath right to give the benefice, by reason that before the lateteren Council, he had right to the tithes, in respect of his liberty used in the erecting and endowing the church, quasi solitaris perjuna ecclesie et perjima impotentera, to be he to whom the benefice is given in the patron's right, for we may read in the Register Judicial, perjima impotentera, for the rector of a benefice pretentive, and not appropriate. Int. 2 Par. 405. 1632. A deed and chapter be perjima impotentera of a benefice appropriated unto them; and sol. 221. expressly fresh. That perjima impotentera is he that is included, and is in possession of a benefice. So that perjima seems to be termed impotentera, in respect of the possession that hath of the benefice or rectorly, be it appropriated, or by the act of another. C. 3 Rich. 30. Cowell, edit. 1727.

Parson mortall. The rector of a church instituted, and inducted for his own life, was called perjuna mortalis and any collegiate or convivial body, to whom the church was for ever appropriated, were called perjima mortalis. Cowell, edit. 1727.

Partes fins nihil habentum, &c. Is an excepted taken against a fine levied. 3 C. 3 Rep. sol. 88. The co of Fins.

Partepatricio, Is the charity to be called, by which the poor are made partes of other men goods. We re it in several places in the Afrunti. 2 tom. pag. 371. Parties, Are those which are named in a deed a fine, as parties to it; as those that levy the fine, and whom the fine is levied: So they that make any deed and to whom it is made, are called parties to a deed. Cowell, edit. 1727. See 16 Fin. Abr. tit. Party.

Partition, (Partitio,) Is a division of land, or by custom, among coheirs or part owners, where there are two at least; and this partition made four ways, whereof three are by agreement, a fourth by compulsion. The first partition by agreement is, when they themselves divide the land equally into many parts as they are coparceners, and each to one part of each, according to order. The second when they chuse certain of their friends to make the division for them. The third is, by drawing lots thus: Having first divided the land into as many parts as the be parcorners, they write every part severally in a dinner scroll, and wrapping it up, throw each of them into hat, bason or such thing, out of which each person draws a piece according to their seniority, and so the lot is feverally allotted. The fourth partition, which is by compulsion, when one or more of the parcorners, by reason of the refusal of some other, fouls out a writ a partition, facundito, by force whereof they shall be compelled to part. In Kent, where the land is not divided of two in height, from the same fusciner, to divide. In Latin it is called bercificer. Partition also may be made by joint-tentants, or tenants common by assent, by deed, or by writ. 1. 324. 32 H. 8. 31. 9. 32. See joint-tenants, Partners.

Partitio familiae, (Mentioned in civ. Lim. H. 1 cap. 1.) Is a writ that lies for those who hold lands
tenements pro indiviso, and would suffer to every one his part, against him or them that refuse to join in partition, as copartners, tenants in great levelland, &c. Old Nat. Rec. fol. 142. P. N. B. fol. 61. See Partition.

The word where or more persons agree to come in share and share alike to any trade or bargain. If there are two partners in trade, and judgment is recovered against one of them, the moiety of the goods in partnership only shall be taken in execution. Shoe. Rep. 174. See 16 Fin. Adu. tit. Partners.

Partners, Are those that are concerned in ship matters, and who have joint share therein. And when there are part-owners of a ship, the majority may sit her out, without the consent of the rest; and if they do, such majority run all the hazard, and are to partake of the profits. Shoe. 13, 30. Action lies as well against a part-owner of a ship, for the loss of spoiling of goods delivered to the master, as against the master; for as the master of a ship is chargeable in respect of his wages, so are the part-owners in respect of the freight; but the action against the part-owners must be brought against all of them, or the defendants may take advantage of it by pleading in abatement, &c. Shoe. Rep. 30, 105. 3 Lev. 259. Particunity. 14 Cor. 2, cap. 11. See Particulars.

Particcull. See Buildings, Fire.

Partida clausum, The Order of Easter or Law Sunday, which clarifies that (already) Die (still) soft partula clausum is a date in some of our old laws. And the first statute of Wm. the first, anno 3 Ed. 1. is said to have been made Landsmain de la clau de Pobere, i.e. The Monday after Easter week.

Patia Fidbium, Palm-Sunday, or the Sunday before Easter, when the proper hymn or gospel song was Overzeus turke cam floribus & palmis. &c. Cowell. edit. 1727.

Patral rents, Are rents or annual duties paid by the inferior clergy to the bishop or archdeacon, at their Easter vacation. They are also termed Symudn. See Synods.

Pattuage, (Pattuageum, E. patago), Grazing, feeding or pasturing of cattle. Man. Ang. 2 par. 21. 8. 16. The same with Pannage.

Pattage, (Pattagem), Is a French word, signifying ransefum. By the statutes of 4 Ed. 3. cap. 7, and Wm. the first, it determines the hire that a man pays for being ransefum over seas, or over any river. Cowell. edit. 1727.

The prices of pastage at Dover, &c. limited, 4 Ed. 3. 8. None to pass out of the realm without the King's licence, 5 Ric. 2. i. 4. 2. Retained to Dover and the parts 13 Ric. 2. i. 4. 20. Pastage from Kent to Key to that retained to Dover, 4 Ed. 4. i. 10. See Articles.

Patagittim, A voyage or expedition to the Holy Land, when made by the Kings of England in person, was called Patagium. Cowell. edit. 1727.

Patagiotio, Is a writ directed to the keepers of the villages, to permit a man to pass over sea or land, by the King's licence. Reg. Orig. fol. 193.

Patagio, Is he that has the interest or command of the passage of a river, or the lord to whom a duty is paid or pastage. Cowell. edit. 1727.

Patagio, A compound of two French words, viz. Par, pangs, and pat, pasto, a haven. It signifies a licence made by any that hath authority, for the safe pastage of any man from one place to another. 2 E. 6. 192. 2.

Pattagittatti, A ferry-man. We meet with the word in T own's Chronicle, viz. in anno 1287. Patagio, Part kneaded dough before it is baked. Cowell. edit. 1727.

Patago, See Paper.


Patruyal. The form of it was freight, which signified redsum regimen. All the top part of it was crooked, and the other part sharp: The crooked signified, that the bishop professed over the people; and the sharp signified, to punish the stubborn. Cowell. edit. 1727.

Pattis, Is generally any place where cattle may feed; and feeding for cattle is called paffa, wherefore we call feeding grounds common of paffa: But common of paffa is properly a right of putting beasts to paffa in another man's foil; and in this there is an interest of the foul and of the tenant. Wood's In. 195. 197. See Natural Law.

Pattis, Is the same by procuration, or the provision which the tenants of the King, or other lords, are bound to make for them at certain days or seasons, or as often as they make a progres to their lands: And this in many places was turned into money. Ies mdo per annum libereis a pallu Recti quod nobilis. Monall. raz. tom. 123.

Patentee, Is he to whom the King grants his letters patent. 7 E. 6. cap. 3. See Letters Patent. The form of patents of confirmation of grants and liberties, St. Form. Cowell. 13 Ed. 1. fi. 6.

Letters patent shall not have date before the day of the delivery of the warrant, 18 Hen. 6. c. 1. But before the King's title found, void, 18 Hen. 6. c. 6. The fees of the clerk of the sign, 27 Hen. 6. c. 11. Confirmation of patents, 1 Ed. 6. c. 8. Involvment of part of letters patent may be given in evidence, 3/4 Ed. 6. c. 4. A settlement or exemption of part of letters patent may be pleaded and take effect.

Pattis, Properly signifies the country; but in the law it denotes the men of a neighbourhood; so when we say inquisition per patrimoniam, we mean a jury of the neighbourhood. In like manner, Alia per recognizant per eijam, idem per good recognizant. Paton, edit. 1727.

Pattircb, (Pattircb,) Is a Greek word signifying a chief father. Ann. 385. In the general council held at Constanimate, it was decreed, That the bishop of Con- stantine should for ever be called a patriarch.

Patrimony, An hereditary estate, or right derived from ancestors. The legal endowment of a church or religious house, was called ecclesiastical patrimony; and the lands and revenues united to the see of Rome, are called St. Peter's Patrimony. Cowell. edit. 1727.

Patruinus, A godfather. Id. 18.

Patttor, (Pattorum,) Is used in the Civil law for him that hath emancipated a servant, and thereby is both juftly accounted his great benefactor, and challengeth certain reverence and dignity in his name, during his life. See De jurc Patronato in the Digest, with the Frangipolc pro autore fuddit. Humano verbo Patronus, in his Comment. de verbis feudal. Both in the Canon and Common law it signifies him that hath the gift of a benefice; and the reason is, because the gift of churches and benefices belonged unto fuch good men as either built, or else endowed them with some great part of their revenue. The King is patron paramount of all ecclesiastical benefices in England, Cowell. edit. 1727. See Patronage.

Patron-makers, Shall not make patterns of asp. 4 Hen. 1. c. 3. May use such asp as is not fit for asfhs, 4 Ed. 4. c. 6.

Pavage, (Pugagusum), Money paid towards the paving the streets or highways. Rex (Edw. i.) conscripti pavagum villae de Huntingdon per quinquennium. Pla. Parl. 35 Edw. 1.


For other streets in London, 34 & 35 H. 8. c. 11.

The mayor, &c. of London may bring water to their conduits from Aldgate, 25 H. 8. c. 10.

Streetes near Aldgate to be paved. 26 H. 8. c. 23.

For the paving of Saffo, 13 Eliz. c. 34.

For the paving the Minories, 25 Eliz. c. 18.

For paving of Chefcoty, 18 Eliz. c. 19.
For paving Drury-Lane and St. Giles's, 3 Geo. 1. c. 22.
For paving, cleaning and lighting the streets of London, &c. 3 Geo. 1. c. 2. 22 Car. 2. c. 12. sect. 5.

Powers given to the Lord Mayor and Common Council for paving and cleaning the streets and fewers in London, 19 Car. 2. c. 3. 22 & 23 Car. 2. c. 17.


For lighting the streets of London, &c. 2 W. & M. 2. c. 8.

S. sect. 15. 9 Geo. 2. c. 20. Repealed, 17 Geo. 2.

r. 29.

For cleaning and paving the streets, 8 & 9 W. 4. c. 37.

For adorning John's square, 12 Geo. 1. c. 7.

For paving, &c. the streets of Westminster, 2 Geo. 2. c. 6.

For filling up the channel of Fleet-Ditch, 6 Geo. 2.

For paving Oxford-street, 8 Geo. 2. c. 8.

For regulating the watch in St. James's, Westminster, and St. George's, Hanover-square, 8 Geo. 2. c. 15.

Adorning Limehouse-in-Fields, 8 Geo. 2. c. 26.

For regulating the watch of St. Martin's in the Fields, 9 Geo. 2. c. 8.

For regulating the watch of St. Paul's, Covent-Garden, 9 Geo. 2. c. 13.

For regulating the watch in St. Margaret's, and St. John's, Westminster, 9 Geo. 2. c. 17.

For regulating the watch in St. Ann's, Westminster, 9 Geo. 2. c. 19.

For adorning Red-Lion-Square, 10 Geo. 2. c. 15.

For regulating the watch, and cleaning the streets and fewers in London, 10 Geo. 2. c. 22.

For regulating the watch in Elly rents, 10 Geo. 2. c. 25.

For lighting and watching Spinfields, 11 Geo. 2. c. 35.

For adorning Charter-House Square, 16 Geo. 2. c. 6.

Common council to order lamps within the city of London, 17 Geo. 2. c. 29. J. 1.

Cart's may be drawn by three horses on the paved streets, notwithstanding 2 W. & M. 2. c. 8. sect. 10.

10 Geo. 2. c. 33. sect. 2.

For lighting and watching the parishes of St. John's, Southwark, 23 Geo. 2. c. 18.

For cleaning and watching St. Martin's in the Fields, 23 Geo. 2. c. 35.

For lighting and watching Bethnal Green parish, 24 Geo. 2. c. 56.

For adorning Golden Square, 24 Geo. 2. c. 77.

For paving and watching St. Margaret's and St. John's, Westminster, 25 Geo. 2. c. 23.

For St. George's, Hanover Square, 26 Geo. 2. c. 97.

For St. Bartholomew's the Great, London, 28 Geo. 2. c. 37.

For St. Mary le Bone, Middlesex, 29 Geo. 2. c. 53.

For St. John's, Wapping, and other parishes, 2 Geo. 2. c. 87.

For repairing the pavements belonging to churches, markets, &c. Westminster, 31 Geo. 2. c. 17.

For widening the streets and pavements in London, 33 Geo. 2. c. 20.

Inhabitants to be witnesses, 33 Geo. 2. c. 50. sect. 30.

For paving the streets of Westminster, the parishes of St. Giles in the Fields, St. George the Marter, &c. explained by 3 Geo. 3. c. 23. and farther by 4 Geo. 3. c. 39.

For lighting the streets in the borough of Dockfier, in 34. & 35 Geo. 4. c. 104.

Stat. See &c. pauperis. By the stat. 11 Hen. 7. cap. 12, it is enacted in the words following, "Prayin the Commons in this present parliament assembled, that where the King our Sovereign Lord, of his most gracious disposition, willent and intended indifferent justice to be had and ministered according to his Common laws to all his true subjects, as well to the poor as rich, which poor subjects be not of ability, ne power to sue according to the laws of this land, for the redres of injuries and wrongs to them daily done, as well concerning their persons and their inheritance as other causes; for remedy whereof in behalf of the poor persons of this land not able to sue for their remedy after the course of the common law, be it ordained and enacted, That every poor person or persons, which have or hereafter shall have cause of action or actions against any person or persons within this realm, shall have, by the direction of the Chancellor of this realm for the time being, writ or writings original and writs of juflamina, according to the nature of their causes, therefore nothing paying to his highness for the writing of the same, nor for the writing of the fame writs to be hereafter used; and that the said Chancellor for the time being shall affign such of the clerks, which shall do and use the making and writing of the same writs, to write the same ready to be sealed; and also learned counsel and attorneys for the time being shall attend taking their fees for the said writ or write be returned, if it be before the King in his bench, the justices there shall affign to the same poor person or persons counsel learned, by their directions, which shall give their counsel, nothing taking for the same; and likewise the justices shall appoint attorneys and attorneys for the same poor person or persons, and all other officers requisite and necessary to be had for the redres of the said writs to be had and made, which shall do their duties without any reward for their counsels, help and bufines for the same; and the same law and order shall be observed and kept of all such writs to be made afore the King's juftice of his Common Place and Barons of the metropolis, and all other justices in the court of record where any such fuit shall be."

Before a person is admitted to sue in forma pauperi, he must have a counsel's hand to his petition, certifying the judge to whom the petition is directed, that he conceives the petitioner hath good cause of action; he must also make application to his petition, that he is not worth 5 l. all his debts paid, except wearing apparel, and his right to the matter in question. Lit. Reg. 653.

On motion to dipauper one who was plaintiff in an action, he had a living of 40 l. per annum; Turton and Gould juftices, were against it, because he was in debt more than it was worth; but Hot Ch. J. directed, if for his being indebted for his being indebted, in effect, being mortgaged, is no reason, it is enough that he has a considerable estate in possession. 2 Salk. 507.

A person admitted to sue in forma pauperi, can only sue in that cause for which he is admitted, &c. fett. 1. tit. 5. Lit. Reg. 633.

It seems that, after the statutes which introduced either plaintiff or defendants could sue or defend in forma pauperis, for that was a means of depriving the other party of the costs given him by the statute; and the above-mentioned statute 11 Hen. 7. enables peror only to sue as paupers; and as the statute 23 Hen. 8 hereafter fet forth, excepts only plaintiffs who are paupers from the statute, it feems, that the defendant cannot not be admitted in a civil action to defend as a pauper. But it hath been adjudged that a person may be admitted to defend an indictment in forma pauperis for a milde nor, such as a conspiracy, keeping a disorderly bower &c. for in such proceedings there being no costs, it judges have a discretionry power of admitting or reful ting them by the common law. Post. 9 Geo. 2. Tit. King v. Wright. Also by 2 Geo. 2. cap. 28. sect. 8. it is enacted "That in cafe any person, arrested and imprisoned b virtue of any writ of capias, or information relating to the culprits, shall make affidavit before the judge a judgment of such facts, that the defendant shall shall be brought, or before any other person committed by such court to take affidavits, that he is not worth, over and above his wearing apparel, the sum of five pounds (which affidavit the said judge or judge of such court, and such person to committed, is at an expense of his own), and required of such person shall thereupon petition such court to be admitted to defend himself against such action or information in forma pauperis, that then the judges of such court shall according to their discretion, admit such person to defend himself against such action or information in forma pauperis, that to the suitor such court shall not in any manner, and with the same privileges, as the judge of such court are by law directed and authorized to
an allignment to himself of the bond, and likewise pays other money to other creditors by vendor's order, but took security for re-payment, on certain conditions. De- creed to be no payment to the vendor, so long as the allignment of the bond was kept on foot, and not delivered up to be paid. Fin. R. 84. Hill. 25 Car. 2. Magfain & Sitwell v. Fane, Clinton & al. A note drawn on A. to pay money for value received, is a good discharge of a debt, though the note be not made, unless the creditor return the bill in convenient time. Per Holt Ch. J. Storyn. 155. Peoples. 8 W. 3. Darrac v. Savage. A. gives B. a bill of exchange on C. in payment of a former debt; this is not allowable as evidence on non as- sumptio, unless paid; for a bill shall never go in discharge of a precedent debt, except it be part of the contract that it should be paid. And it is said, that it ought not to be admitted to remove causes out of inferior courts, but ought to save themselves with the jurisdiction within which their actions properly lie. 1 Mod. 388. per North. By the orders of the courts, if the party admitted to a in forma pauperis give any fee or reward to his coun- sel or attorney, to make any contract or agreement with them, he shall from thenceforth be dispaupered, and no afterwards admitted again in that suit to prosecute in forma pauperis. Ord. Cur. 94. Also it is said, that if a pauper gives notice of trial, and does not proceed, he shall be dispaupered. 1 Sail. 506. In the statute 23 Hms. 8. c. 15, there is a provison, that whoever procures in forma pauperis shall not pay costs, but shall suffer such other punishment as the age of the court shall think fit. But notwithstanding this statute, if he be dispaupered nonuit, the usual practice is to tax the costs, and r non-payment to order him to be whipped. 1 Rol. 19. 3 Sail. 506. Site. 356. A. brought a bill in forma pauperis, to which the de- fendant put in a plea and demurrer, which were both over-ruled; and it was instituted upon, that he should not owe costs, being at none; but my Lord Samers, after long debate and inquiry of all the ancient counsel and clerks, and after much discussion, it was thought more fit to ask it like other suitors; for though he is at no costs, but small costs, yet the counsel and clerks do not give his labour to the defendant, but to the pauper. 125. Paton, See Clerks, Plaguing. Maint. See Plaguing. Payment, is the discharge of a debt or promise. "Jauff, What amounts to a payment, and what is a good plea of ament. A. paid B. 100 l. in redemption of a mortgage; B. as C. put it into his cloths, which C. did. Then A. paid for the security, which B. refused to deliver, whereupon A. required his money again; B. bid C. fetch it, to deliver it back to A. which C. did, and turned it out on the table for A. to take it in presence of B. had he a good payment of the mortgage; but A. re- taking the money is accountable to B. for the money as his own money. Cro. E. 614. Trin. 40 Eliz. B. Jenner v. Bartolomew. A. brought 100 l. to pay to B. who was B.'s son, fratched 20 l. out of the hundred, and went way with it. A. shall not be chargeable with the 20 l. he shall recover the fame of the daughter; and an a. in the former. Accordingly. Chan. R. 68. 9 Am. Plumer v. Plumer. Giving security for purchase money is payment; ad- mitted. Chan. Cafes 99. Hill. 19 & 20 Car. 2. Sir Topham Douglas v. Wade. 950 l. is to be paid by vendor to vendor; ven: be by ven- dor's order pays 500 l. part to a bond creditor, and takes
P E C

Peace. (Pap.) In the general signification is opposite to war or strife: But particularly with us it intends a quiet and harmless behaviour toward the King and his people. Lamb, Eirenarch. lib. 1. cap. 2. pag. 7. And if any man goes in danger or harm or bodily prejudice from another, and makes oath of it before a judge of peace, he shall be secured by good bond, which is called binding to the peace. Lamb. Eiren. lib. 2. cap. 2. pag. 77. Crump, Jus of Peace, fol. 118. and 126. And also from frank-pledge and confessors of the peace. Time of peace is when the courts of justice are open, and the judges and minifters of the same may by law protect men from wrong and violence, and administer justice to all. See Eiren. fol. 299.

Breakers of the peace to be imprisoned, and to find sureties, &c. 2 Ed. 3. c. 6. 34 Ed. 3. c. 1.

Other statutes enforcing the keeping of the peace, 1 R. 2. c. 2. 1 H. 4. c. 1. 2 H. 4. c. 1. 7 H. 4. c. 1.

Recognitions for keeping the peace to be certified to the quirins-fections, 3 H. 7. c. 1.

The Chancery and King's Bench restrained from granting process of the peace or behaviour without motion and affidavit, and to give costs and damages to persons wrongfully vexed by such process. 21 Jac. c. 8. f. 2.

Refrainted from granting specialties, unleas the process is framed in the manner required by the statute. 21 Jac. c. 1. f. 8.

To punish insufficient sureties. 21 Jac. c. 1. f. 8. sect. 5. See Suresly.

Peace-officers. Actions against peace-officers made local. 21 Jac. c. 1. c. 12.

Peace of God and the church, (Pax Dei & Eccel-

sein') Was anciently used for that real and sealing which the King's peace did from trouble and suite of law be-


Peace of the King, (Pax Regis, mentioned in stat. 6 R. 2. sect. 1. cap. 13.) Is that peace and security both for life and goods, which the King promiseth to all his subjects, or others taken into his protection. See Shift of the King's peace. This point of policy sufficient has been borrowed by us from the Feudalists, which in the second book of the Feuds, cap. 53. intitled. De pace tenenda, &c. Holman proved. Of this Hudson feteth down divers branches for pare, jurat. Juram Annul. in H. 2. fol. 114. and there is also Peace of the Church, for which see Sanctuary. And the Peace of the King's highway, to be free from all annoyances and molestation, See Watling-Street. The peace of the plough, whereby the plough and plough-cattle are secured from distrifees; for which see F. N. B. fo. 90. So that we may be said that the nature of man in them may be troublesome for any debt elsewhere contracted. Cowell, edit. 1727.

Pears, May be imported or exported, duty-free, 6 Gez. 2. c. 7.

Pearl-men. To what duties liable, 10 & 11 Will. 3. c. 21. sect. 30.

Pearl-berley, To what duties liable, 22 Car. 2. c. 13. sect. 3.


Pears. See Fruit.

Pee. See Can.

Pecopea. A word often met with in old writings. Most authors agree that it is the same with that garment called Rationale, which the high-priest in the old law wore on his shoulders, as a sign of perfection. 'Tis written also in the high-priest of the new law, as a sign of the greatest virtue. Quae gratia & ratioe præstet, for which reason it is called Rationale. 'Tis by some taken to be that part of the pall which covers the breast of the priest, and from thence it is called Pectorela. But all agree that it is the richest part of that garment, embroidered with gold, and adorned with precious stones. Cowell, edit. 1727.
PEE

16. *For Parsa* sunt conservulis, *quam* finemus, suesfallus
nuper felamiam o condemnunt, *Bartigius de Regno,*
&c. cap. 2. *Et pars* sunt qui ab edam dominis feudum

**Peers of the realm.** (Peers regni, process.) *Are the
sovereign of the kingdom, and lords of parliament; who
are divided into Dukes, Marquises, Earls, Viscounts,
and Barons: And the reason why they are called peers, is
for hat notwithstanding there is a distinction of dignities
in our nobility, yet in all publick actions they are equal;
so in their votes of parliament, and in posing up the
laws, and in the Peers' investigation of matters of
necessity, or a voluntary act, it is necessary that you have it
under his hand, or his solicitor's hand, for your indemnity
for parol waiver, in such case, will not be sufficient.

2. *In what cases peers are to be sworn; and for what
degraded.*

In the pleas of parliament, 18 Ed. I. between the Earl of
Gloucester and Earl of Hertford, *John de Holping a baron,*
upon long debating the suit ought to be sworn because
he was a peer of the realm, it was resolved, that he ought
to lay his hand to the book. The like was resolved, to 
10 Car. in B. R. by the court where the Lord Dover's
testimony was requisite. See D. 314. b. marg. p. 68.

A bill was against a peerers to discover deeds, the
answers on her honour and confesseeds deeds. She shall
produce them only upon her honour and not on oath.
Gerrard.*

Where a peer is to answer to a bill, his answer put
in on his honour is sufficient; but where a peer is to
answer interrogatories, to make an affidavit, or be examined
as a witness, he must be on his oath; *per Harcourt
Lord Keeper.*

*George Neville, Duke of Bedford,* was degraded by force
of an act of parliament, 16 June 17 Ed. 4. which act,
reciting the matter of the said Sir George Duke, doth
express the cause of his degradation, in these words, viz.
And forasmuch as it is openly known, that the said George
hath not, nor by inheritance may any livelihood
to support the said name, estate and dignity, or any name of
estate; and oftentimes it is so feen, that when any lord
is called to high estate, and hath not convenient livelihood
to support the same dignity, it induceth great poverty and
indigence, and caufeth oftentimes great extortion,
embracery and maintenance to be had, to the great trouble
of all such countries where such estate shall happen to be:
Wherefore the King by advice of his Lords spiritual and
 temporal, and by the commons in this present parliament
assembled, and by the authority of the same, ordaineth,
affiduedeth and enacteth, That from henceforth the same
creation and making of the said Duke, and all the names
of dignity given to the said George, or to John Neville his
father, be from henceforth void and of none effect, &c.
In which act these things are to be observed: First, That
although the Duke had not any possessions to support his
dignity, yet his dignity cannot be taken from him without
an act of parliament. Secondly, The inconveniences do
appear, where a great state and dignity is, and no live-
lihood to maintain it. Thirdly, It is a good reason to take,
away such dignity by act of parliament, and therefore the
said act of the 16 June 17 Ed. 4, which act is to the
general words of the writ, to take away such in-
convenience. 12 Rep. 106, 107, in the Earl of Shrews-
bury's cafe.
3. Of the trial of peers, and the power of peere of trial.

All the barons of parliament shall be tried for treason, felony, misprision, or as accessory, at the suit of the King by their peers. By Magna Charta c. 6, 9, 39. Non ju'per eum eum, &c. nisi per legals judicium parliam fuerunt. 2 Inst. 49. 9 Co. 30. b. Sta. 152, 153. So of all the nobility, who are peers of parliament. So by the Common law, which is now affirmed by the flat. 20 H. 6. cap. 9. All dutchesses, countesses and baro-
ness, who are noble by descent, creation, or marriage. 2 Inst. 50. All marquises and viscountes, &c. though not named by the flat. 20 H. 6. 9. 2 Inst. 50. So of lords in waiting or dowagers. 2 Inst. 50. And any peer cannot waive his trial by his peers. Kel. 56. in marg. Med. 631. 1 Tr. 265. 2 Reg. 94.

But the nobles of another kingdom, or who are not barons of our parliament, shall not be tried by the peers of our parliament. By the Common law, confirmed by parliament, 4 Ed. 3, 2 Inst. 50. 7 Co. 15, 16, Gal-
wart. 2 Inst. 50. Nor a woman, noble by marriage, who has lost her dignity by subsequent marriage under the degree of nobility. 2 Inst. 50. Nor an archbishop or bishop; for they are not peers inheritable. Sheld. J. P. If he be not accursed in parliament. 4 Seld. 3 vol. 2. p. 1541. 3 Inst. 50. If they make proxies after plea, save in cases of necessity. 2 Inst. 50. If any baron of a baron of parliament shall not be tried by his peers in an appeal, which is the suit of the party. 2 Inst. 49. 9 Co. 30. b. Sta. P. C. 152. a. 10 Ed. 4. 6. 3 Inst. 30.

By flat 7 W. 3. cap. 3. f. 10. it is enacted. That upon the trial of any peers or peersesses, either for treason or misprision of treason, all the peers who have a right to sit and vote in parliament, shall be duly summoned 20 days at least before the trial, and every peer so summoned and appearing shall vote in the trial, first taking the oaths of allegiance and supremacy required by t W. & M. and subscribing and repeating the Teft enjoined by 30 Ga. 2. 12.

Sed. 11. Provided, That this shall not extend to impeachments or other proceedings in parliament. Sed. 12. Nor to the treasons of counterfeiting the coins, the Great seal, Privy seal, Sign manual or Privy signet. But the 6 Ann. cap. 23. f. 12. Peers shall be indicted in Scotland as in England. If a peer be impeached by a commoner, yet such cause shall not be tried by peers, but by a jury of the coun-
ty; for 'tho' the peers are the proper pares to a lord of parliament in capital matters, where the life and nobility of a peer is concerned; yet in matter of property, the trial of such a peer is not by them, but by the inhabitants of those counties where the facts arise, since such peers living through the whole kingdom could not be generally cognizant of facts arising in several counties, as the inhabitants themselves where they are done; but this want of having noblemen for their jury was compensated as much as possible, by returning peroms of the best quality; therefore a knight is necessary to be summoned in any cause where a peer is party. G. Hil. C. B. 78, 79. cap. 8.

It has been adjudged, that if a peer on an arraignment before the lords refuse to put himself on his peers, he shall be dealt with by the laws that the bands mort for it; for it is as much the law of the land, that a peer be tried by his peers, as a commoner by commoners; yet if one who has a title to peerage, be indicted and arraigned as a commoner, and plead Not guilty, and put himself upon his country, it has been adjudged, that he cannot afterwards forget this he is a peer, and pray a trial by his peers. 2 H. 3 H. & C. Hil. C. B. 44. f. 19.

The order and process of this trial appears anno 1 H. 4. r. and anno 13 H. 8. 13. That when a lord of the parliament is to be arraigned of treason or felony, of which he is indicted, the King by his letters patents shall make one great and gage lord to be the High Steward of England for the day of the arraignment, who before the flat day shall make precept to his serjeants in arms, (who is appointed to serve him during the time of his commis-
sion,) to cause to come before him twenty or eighteen lords of the parliament at the same day; and after at the day when the trial shall be used, shall have the benefit of utmost from upon the arraignment of the prisoner, and has cau- sed to be read his commission, the said serjeant shall return the flat precept, and the lords shall be thereupon demanded and when they have appeared, and are seated in their places, the court of the Lords shall be demanded to be opened, when the clerk of the crown shall be conducted by him to the bar, and then the said High Steward shall shew to the prisoner the caufe for which the King has assembled thers the lords and him, and command him anfwer without any dread, and thereupon shall cause the clerk of the crown to read the indictment to him, and to demand of him if he be guilty or not, to which, at that, he has answered Not guilty, the clerk shall demand further of him, how he will be tried? To which he may say, by God and his peers; and immediately upon the said fentence and King's attorney shall give evidence against him; to which, when the prisoner has answered the said confable shall be commanded to retire with the said precept from the bar to some place for the time being, and the lords severally shall take in the said court together and thereupon the lords shall rise from their places, as confult together, and that which they do they upon their honour without any oath to be administrated to them, therefore of them, or the greater part of them as they agreed they shall return to their places to the further of thecau-
se; and then the High Steward shall demand of the young lord himself, by him, if he is arraigned be guilt or not? and so of him who is next to the youngest, as to the of the seftariam, till he has perused all; and eah of the lords shall answer by himself; and then the fa

...
Pen

Pembroke College in Oxford. The matter intituled a prebend in the church of Gloucester, 12 Ann. R. 2. 76.

Pen, signifies an high mountain, as Mr. Camden tells us in his Britannia. It was so called by the Britains; and not only by them, but by the old Gauls: From whence those high hills which divide France from Italy, are called Appennines. Cowell, edit. 1727.

Pension, or annuity, a sum of money, or golden, which is to be paid, either by the State, for the benefit of the poor; or by a private person, to a friend, or an ally. In the latter case, where a person stands, see Pat. post. See Pow.

Pennyweight. As every pound contained twelve ounces, each ounce was formerly divided into twenty parts, called pennyweights; and though the pennyweight be altered, yet the denomination still continues. Every pennyweight is sub-divided into twenty-four grains. Cowell, edit. 1727.

Penion, (mentioned in lat. 11 Ric. cap. 1.) Is a standard, banner or ensign, carried in war. Cowell, edit. 1727.

Pent balls, Cofl, &c. A way of fult, or cheeks, containing 256 pounds. Cowell, edit. 1727.

Penfam, Ad penfam, The ancient way of paying into the Exchequer as much money for a pound sterling, as weighed twelve ounces Troy. Payment of a pound of nummus, imported just twenty thilings; of an ounce twenty thilings and fix-pence; and ad penfam, imported the full weight of twelve ounces. See Lavoisier's Essay on Coin, p. 4.

Penfion (Fr. Penfion) An allowance made to any one without an equivalent. John. And to receive pension from a foreign prince for the sake of our King, has been held to be criminal, because it may incline a man to prefer the interest of such foreign prince to that of his own country. 1 Haw. P. C. 58. Six-pence in the pound to be deducted of all salaries, 7 Geo. I. 1. c. 27. Jeft. 13. 12 Geo. I. c. 2. What pensions are chargeable with the land-tax, and what exempt, 30 Geo. 2. c. 3. Edw. 3. 94, 95, 96, 97. See Parliaments.

Penfions of churcheis. Are certain sums of money paid to clergymen in lieu of tithes. And some churches have settled on them annuities, pensions, &c. payable, or the interest of pension, to their clergy or prelates, by virtue of some decree made by an ecclesiastical judge upon a controversy for tithes, by which the tithes have been decreed to be enjoyed by one, and a pension instead thereof to be paid to another; or they have arisen by virtue of a deed made by the consent of the parson, patron and congregation. But where they have been paid during twenty years, then it may be claimed by the curate, and be recovered in the spiritual court; or a parson may prosecute his fuit for a pension by prescription, either in that court or at Common Law, by a writ of annuity; but if he takes his remedy at law, he shall never afterwards sue in the spiritual court: If the prescription be decreed, that must be tried by the Common Law. 4. N. B. 51. Hardt. 230. VIN. 120. A spiritual person may sue in the spiritual court, for a pension originally granted and confirmed by the ordinary; but where it is granted by a temporal person to a clerk, he cannot; as, if one grants an annuity to a parson, he must sue for it in the temporal courts. Gra. Edit. 675. See Eccles. tribunal.

Penfion of the inns of courts, That which in the two Temples is called a parliament, and in Lincoln's Inn a council, is in Gray's Inn termed a penfam; that is, an annual allowance of thirty pounds a year, to the members of that house, to consult of the affairs of the house. And in the inns of court, pensions are certain annual payments of each member to the house. Cowell, edit. 1727.

Penfurers, (Penfmurers.) Are a band of gentlemen so called, that attend as a guard upon the King's person. They were first established 1539, and have an allowance of fifty pounds a year, to maintain themselves and two horses for the King's service. See Stow's Annals 973.

Penfion-Wrife. When a pension-wrife is once issued, none freed thereby in any inns of court, shall be discharged or permitted to come into commons, till all duties be paid. Order in Gray's Inn, wherein it seems to be a pernicious order against such of the society as are in arrear for pensions and other duties. Cowell, edit. 1727.
P R E

Perstantials, (Perstantials.) Were certain pious oblations made at (Staff of any church by parishioners, and sometimes by inferior churches or parishes, to the principal mother church. Which oblations were also called Whitsun farthing, and were divided into four parts, one to the parish-priest, a second to the poor, a third for repair of the church, and a fourth to the bishop of Pershambus or Persantiall. See Benediction's Glories in Persantiall.

Perp (Saxon Pend.) Was our ancient current fiver. 2 Pf. tol. 575. The Saxons had no other sort of silver coin. It was equal in weight to our three pence: Five of these pence made one Shilling Saxem, and thirty pence made a mark, which was valued as three as three of our half-crowns. The English pfy called farling, is round, without clipping, and weighs 32 grana frumenti in mediis fiscis; twenty pence make an ounce, and twelve ounces make a pound. Stat. 1. It was made with a crofs in the middle, and broke into half-pence and farthings. Constell. edit. 1727.

Perpetual. See Penny-weight. Pepper. See Spices. Perambulation of the forest. (Perambulatio foresti.) Is the surveying or walking about the forest, or the limits of it, by justices, or other officers thereto appointed, to set down the meters and bounds there of, and what is within the forest and what without. See 17 Car. 1. cap. 16. 20 Car. 2. cap. 3. 4 Inf. tol. 30. See 16 Fin. Abi. 356. See Privilege. Perambulations factiendi. Is a writ that is issued out by two or more lords of manors lying near one another, and confenting to have their bounds formally known. It is directed to the sheriff, commanding him to make perambulation, and to set down their certain limits. F. N. B. tol. 133. See Internabulitius, and Reg. Oris. tol. 157.

Perca, for Perca. A perch. Et unam acram prati per majorem percam. Manes. tol. 2. p. 87. Peracurrate, as wealt, or place in a river made up with banks, damns, Gt. for the better convenience of preserving and taking of fish: of which kind there were several artificially contrived in most waters and streams. Couell. edit. 1727.

Perch. (Perica.) Is used with us for a rod or pole of sixteen foot and a half in length; whereas forty in length, and four in breadth make an acre of ground. Cump. fur. tol. 22. Yet by custom of the country it may be longer, as he thereof ; and several counties differ herein, for in Staffordshire it is twenty-four foot, in the forest of Sherwood twenty-five. In Herefordshire a perch of walking is sixteen foot and a half; A perch of ditching rules the one foot above the forest of Castl twenty-five: In the forest of Grealondon twenty, Gt. Couell. edit. 1727.

Per ci et pot. See Enty. Perings, (Mentioned in Leg. H. 1. cap. 49.) Signifies the dregs of the people, viz. men of no substance.


Peremptory, (Peremptorium, from the verb perimere, to cut off,) Joined with substantive, as aiton or exception, signifies a final and determinate ait, without hope of renewing or altering. So Fitzherbert calleth a peremptory aiton. Nat. Brev. tol. 35. 38. 104. 108. and mosquit peremptor, Idem, fol. 5. 11. A peremptory exception. Bradton, lib. 4. cap. 20. Smite de Rep. Anglar. lib. 2. cap. 13. calleth that a peremptory exception, which will not suffer a plea to be taken in a case. If a defendant in an aiton, tender an issue in abatement of the plaintiff's writ, and the plaintiff demurs upon the issue, if on arguing the defendant the issue is overruled as not good; the court will give the defendant a day over to answer peremptorily, viz. to plead a plea to the issue; the former plea which was overruled, being only in abatement of the writ: But it is otherwise where such an issue and demurrer is in bar of the aiton; for there the merits of the plea are put upon

it. Trin. 24 Car. 1. B. R. 2 Litt. Abi. 190. A peremptory day is when a business is by a rule of court to be spoke to at a precise time; but if it cannot be spoken unto, by reason of other business, the court at the prayer of the party concerned will dispence with the no speaking to it at that time, and give a farther day without prejudice to him; and this is called the putting off of peremptory, and is used to be moved for by counsel at the rising of the court, when it is granted of course. 2 Litt. ibid.

Perind baleet. Is a term in the Ecclesiastical law and signifies a dispensation granted to a clerk, that being defective in his capacity for a benefice, or other ecclesiastical function, is de fatto admitted to it; and it hath the apellation from the words, which make the faculty as of fequal to the party dispended with, as if he had been as fully capable of the thing, for which he is dispenced with at the time of his admission. 25 H. 8. cap. 21. i


Periphrasis, Circumlocution; use of many words to express the sense of one. "Yabof. No periphrasis, or circumlocution will clothe words, which the law hath appropriated for the description of offences in inden mens: And not any periphrasis, intention or concision shall make good an indenim, which doth not bring the fact within all the material words of a statute unless the statute be recited, Gt. Cor. Edia. 353. 749. 2 Kin. 24. 149.

Perjury and Substitution. Perjury, (Perjura est mendacium cum juramento foradam.) Is a crime committed, when a lawful oath is administered by any that have authority to any perfon in any judicial proceeding, who swears absolutely and falsely in a material matter to tlie issue, or cause in question, by their own ait, or by any substitution of others. And if a man call me perjur man, I may have my aiton upon the cafe, but it must be intended contrary to my oath in a judicial proceeding. But for calling me a false man, no aiton lies; but the cause the forswearing may be extra-judicial. Coke's In 3 part. fol. 163.

Perjury by the Common law is defined a willful false oath by one who, being lawfully required to depone a true and any proceeding in a court of justice, swears a falsely in a matter of some consequence to the point question, whether he be believed or not. 2 Haw. C. 273.

Perjury by the Common law is an offence in procuring a man to take a false oath amounting to perjur man, who actually takes such oath; but it seems clear, that if the perfon, incited to take such an oath do not actually take it, the perfon by whom he was incited is not guilty of falseamoration; yet it is certain, that he is so liable to be punished, not only by fine, but as by infamous corporal punishment. 1 Rol. Abi. 5: Yev. 72. Cre. Jec. 158. 2 King. 399. 3 Mod. 12: 1 Hawk. P. C. 177.

1. What is perjury by the Common law, and how restrained and punished.
2. How restrained and punished by statute.
1. What is perjury by the Common law, and how restrained and punished.
2dly, It is necessary to confrate the offence perjur that the false oath be taken willfully and of some publick service to the King or the nation, or before committing, and not merely owing to curping e inadvertency, or a mistake of the true state of the quo.

5 Mod. 350.

2dly, The oath must be taken either in a judicial proceeding, or in some other publick proceeding of the like nature, wherein the King's honour or interests are affected. It is suspected by the King's or the卿 of the forgeries of his tenants, or of defec titles wanting the supply of the King's patents; but it is not material whether the court, in which a false oath

3
tels, debts or damages in any of the King's courts of Chancery, Whitehall or elsewhere, within any of the King's dominions of England or Wales, or the marches of the same, where any perfon or perfoons shall have authority by virtue of the King's commiption, patent or writ, to hold plea of land, or to examine, hear or determine any such lands, or any matter relating to the merits of a cause, or in a collateral matter; as where one, who offers himself to be bail for another, swears that his subsistence is greater than it is, &c. but neither a false oath in a mere private matter, as in making a bargain, &c. nor the breach of a promissory oath, by a man who is bound in such an oath, &c.

2. How restrained and punished by statute.

By the 7 Eliz. c. 3, it is enacted, "That whosoever unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other fraudulent and unlawful means or means whatsoever, to commit any willful and corrupt perjury in any matter or cause whatsoever depending in fuit or variance by any writ, action, bill, complaint or information in any writing concerning any lands, tenements or hereditaments, or goods, chattels, debts or damages in any of the King's courts of Chancery, or Whitehall, or elsewhere, within any of the King's dominions of England or Wales, or the marches of the same, where any person or persons shall have authority by virtue of the King's commission, patent or writ, to hold plea of land, or to examine, hear or determine any such lands, or any matter relating to the merits of a cause, or in a collateral matter; as where one, who offers himself to be bail for another, swears that his subsistence is greater than it is, &c. but neither a false oath in a mere private matter, as in making a bargain, &c. nor the breach of a promissory oath, by a man who is bound in such an oath, &c."

1 Haw. P. C. 173. 4.

3. What is a false oath.

A false oath is, when any person, upon oath taken, swears falsely.

1 Haw. P. C. 174. 5.

4. For what cause an oath is taken.

An oath is taken for the purpose of enabling the parties to make their proceedings wholly or in part.

1 Haw. P. C. 175.

5. When the oath is taken.

The oath is taken by a person sworn to depose the truth; and therefore a false verdict comes not under the notion of perjury, because the jurors swear not to depose the truth, but only to judge truly of the depositions of others; but a man may be convicted of perjury who swears falsely in an answer in Chancery, or in an answer to interrogatories concerning a contempt, or in an affidavit, &c. as by an oath taken by him as witness in another's cause.

1 Haw. P. C. 175.

6. What the oath is.

The oath must be taken absolutely and directly; and therefore if a man only swears as he thinks, remembers or believes, he cannot be guilty of perjury.

1 Haw. P. C. 175.

7. When the oath is taken.

The oath ought to be taken in some way material, and altogether immaterial, and neither any way pertinent to no matter in question, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give the reader credit to the substantia part of the evidence, it cannot amount to perjury, because it is wholly inexcusable; as where a witness gives his evidence, with an impertinent preamble of a florid concerning previous facts, no way relating to what is material, and is guilty of a falsity as such facts; but it seems a reasonable opinion, that a witness may be guilty of perjury in respect to a false oath concerning a mere circumstance, if such oath have a tincture of and change the more material part of the evidence; as if a trepass for spoiling the plaintiff's clothe with the defendant's sheep, a witness swears that he saw such a number of the defendant's sheep in the clothe; and being asked how he knew them to be the defendant's, swears that he knew them by such a mark, he has no mark of him which in truth the defendant never used any such mark.

1 Haw. P. C. 175.

8. What is a false oath, that is not material.

It does not seem material, whether the false oath were credited or not, or whether the party, in whole prejudice it was taken, were in the event any ways damaged by it; for the prosecution is not grounded on the damage to the party, but on the abuse of public justice.

1 Haw. P. C. 177.
PER

in such wife as they might have done and used to do to all purposes, so that they fer not on the offender left pun-
ishment than is contained in the said act.

The argument of this statute the following opinions
have been holden:

That every indictment or action on this statute must
exactly pursue the word of it; and therefore if it al-
lege, that the defendant deposed such a matter falsly &
deceptively, or falsly & corruptly, or falsly & voluntairly,
without saying, voluent, &c, it is not good, though it
concluded, that se voluntairium & corruptiam commit
perjurium contraiam flam flanum, &c. Also it is
said to be necessary expressly to shew, that the defendant
was sworn; and that it is not sufficient to say, that tales
per se fuerat evangeliis deputati. Cro. Eliz. 147. Hebr.
2, 14. 2 Leon. 211. 1 Show. 198. Cro. Eliz. 103.

But there is no need to shew, whether the party took
the falle oath through the subornation of another, or of
his own act, tho' the words of the statute are, "If perjury
by subornation, &c. or their own act, &c. shall commit
wilful perjury;" for there being no medium between the
betrayer and the perjuror, that one set nothing in the
other's behalf, and to express no more than the law would
have implied, and therefore operate nothing. 3 Bulst.
147.

It hath been adjudged, that a man cannot be guilty of
perjury within this statute, in any case wherein he may
not have been suborned by the party who is within it for
it is reasonable to give the whole statute the fame
construction; neither can it be well intended, that the
makers of the statute meant to extend its purview farther
as to perjury, which they seem to eftem the eller crime,
than to subornation of perjury, which they seem to eftem
the greater; and therefore since the clause concerning
subornation of perjury mentions only matters depending
by writ, bill, plaint or information, concerning heredi-
taments, goods, debts or damages, &c. extends not to
perjury on an indictment or criminal information; the
clause concerning perjury, tho' penned in more general
words, hath been adjudged to come under the like re-
triction: Also since the clause concerning subornation of
perjury relates only to perjury by witnesses, that con-
cerning perjury shall extend only to the like perjury; and
therefore not to perjury in an answer in Chancery; or in
fearing the peace against a man; or in any presentment
by a homager in a court baron; or in a wager of law,
or in fearing before commissioners of inquiry of the
the King's title to lands; and by the opinions of some, a
false affidavit against a man in a court of justice is not
within the statute; but if such affidavit be by a third
person, and relate to a cause depending in suit before the
court, and either of the parties in variance be grieved,
hindered or defrauded, in respect of such cause, by reason
of the perjury, it may strongly be argued that it is within
the purview of the statute; also it seems the better opio-
ion, that a false oath before the sheriff on a writ of
inquiry of damages is within the statute. 5 Co. 99. Cro.
T. 120. 3 Inst. 164. 2 Leon. 204. Titob. 120. Cro.
Eliz. 145. 2 Kelt. Abr. 77.

But it is the reasonable inference from the clause which gives an
action to the party grieved, that no false oath is within the
statute, which doth not give some perfon a just cause of
complaint; and therefore, that if the thing sworn be true, tho' it be not known by him that fwear it to be so, the oath is not within the statute, because it gives no
just cause of complaint to the other party, who would
take advantage of another's want of evidence to prove the
truth; also from the same ground no false oath can be
within the statute, unless the party against whom it was
sworn suffered some disadvantage by it; and therefore in
every prosecution on the statute, you must set forth the
record which the party to whom you oppose the perjury to have been com-
mittad, and must prove it to be true, either by the authentic record, either by actually producing it, or an attested copy;
also in the pleadings you must not only set forth the
point wherein the false oath was taken, but must also
shew how it conducd to the proof or difproof of the
matter in question; and if an action on the statute be
brought by more than one, you must shew how the per-
jury was prejudicial to each of the plaintiffs; but it feems
that perjury, which tends only to aggravate or extenuate the
damages, is not much within the statute as a perjury
that goes directly to the point in issue; and a perjury
in a cause wherein an erroneous judgment is given, is
a good ground of prosecution upon the statute till the judge-
ment be reverfed. 1 Hawk. P. c. 187.

If perjury be committed, that is within this statute,
but concludes not contin formam statuti, yet it is a good
indictment at Common law, but not to bring him with
the corporal punishment of the statute. 2 Hal. 514.
P. C. 191-2.

By the statute 2 Gen. 2. c. 25. § 2. The more effec-
tuall to deter persons from committing wilful and corrupt per-
jury, a subornation of perjury, it is enacted that
besides the punishment already to be inflicted by law
to great crimes, it shall and may be lawful for the court
or judge before whom any person shall be convicted of
wilful and corrupt perjury, or subornation of perjury
according to the laws now in being, to order such person
to be sent to some house of correction within the same
county, for a time not to exceed the whole of
which shall be kept to hard labour during all the fall time, or
otherwise to be transported to some of his Majesty's plantations
beyond the seas, for a term not exceeding seven years, as
the court shall think proper; and therefore judgment shall be
given, that the person convicted shall be committed
unto the service of the crown, or other punishment as the
decree shall be adjudged to be inflicted on such person
agreeable to the laws now in being; and if transportation
be directed, the same shall be executed in such manner
as is or shall be provided by law for the transportation
of felons; and if any perfon comitted or transported
shall volunteer to escape or break prifon, or return from
transportation before the expiration of the time for
which he shall be ordered to be transported as aforesaid,
such person being lawfully convicted shall suffer death as a
felon without benefit of clergy, and shall be tried for such se-
lony in the county where he so escaped, or where he
shall be apprehended.

Stat. 23 Gen. 2. cap. 11. sect. 1. In every information
or indictment for wilful and corrupt perjury, it shall be
sufficient to set forth the substance of the offence charged
and by what court, or before whom the oath was taken
averting such court or prifon to have authority to ad-
minister the fame) together with the proue avertment of
the same, and the time, and place where the perjury was
committed. For an information of perjury shall not
putting forth the bill, answer, information, indictment,
declaration, or any part of any record or proceeding;
and committing the person or authority of the court
or prifon before whom the perjury was committed.

Stat. 2. In every information or indictment for sub-
ornation of perjury, or for corrupt bargaining with others
to commit wilful and corrupt perjury, it shall be
sufficient to set forth the substance of the offence charged
without putting forth the bill, answer, information, in-
dictment, declaration, or any part of any record or pro-
ceeding, and without putting forth the commission or au-
thority of any such person before whom the perjury was
committed, or agreed to be committed.

Sell. 3. It shall be lawful for any judge of assize, or
near assize, or general gaol-delivery, or of any of the great
sessions of Wales, or of the counties palatine (fiting the
court or within 24 hours after) to direct any person exa-
imined as a witness before them, to be prosecuted for
perjury, in case there appear a reasonable cause; and to
assign the party injured, or other person undertaking such
prosecution, counsel who shall do their duty without fee.
And every prosecution so directed shall be carried on
without payment of any tax, and without payment of
any fees in court, or to any officer of the court. And
such fee as is due shall be paid to the person so assigned
or other officer of the court attending when such prosecution
is directed, shall without fee give the party injured, or
other person undertaking such prosecution, a certificate of
the fame being directed, with the names of the counes
assigned him; which certificate shall be deemed sufficient

of such prosecution having been directed as aforesaid, proved that no such direction or certificate shall be given in evidence upon a trial against any person upon prosecution to directed.

Perjury and information excepted out of the general rule, 2 K. 2. c. 52. 1. 2. Ells. 13, 21. There is no warrant either to the one or the other, but either may do in such cases as to the law and such as aforesaid. When the Act of 1743, c. 16, is understood.

Perjury, from perjury, is a punishment or licence to take on themselves and call others, on their oath to say the custom duties for the same. It is mentioned in the Act of 1743, c. 16, sect. 5.

Perjury, being a taking or receiving testimony, as of a person, or that may be taken in kind, is a perjury. 20 Edw. 3. c. 127. 1777.

Perjury (from perjury) is a perjury, and he that takes or receives the perjury, is of error. 1 Edw. 7. 7. 1. 2. Perjury of persons, and all persons, is all off. 5 Edw. 1. c. 123. Chadley's Chanc. 369. 21 Rich. 2. c. 15. and 3 Edw. 3. c. 122.

Perhaps, a part or share of the inheritance. See 6 Edw. 3. c. 55. 6. 1. 19. viz. To make a part, or that part, in perpetuity in perpetam. 60 Edw. 3 tut. vide.

Perpetuity, as it is a legal word or term of art, is the continuance of either of inheritances for years, as to render it unalienable longer than for a life or lives; being at the same time, and some short or reasonable term of time after. 2 6--a's Rep. 620. By the Master of the Rolls, 6 Edw. 3. 1527. in case of the decease, St. Ligy.

There are two forms of perpetuity; an absolute and a qualified one. And better, and from the time of a people dead, till common recoveries were found, they be understood as perpetuities. 12 Malt. 282. 12 Lea. 11 W. 3. 3. B. in case of Sontesford v. Edge. 6 Edw. 3. 1226. Vide 1. 2. 6. Holgrave v. Davies. 6 Edw. 3. 1226.

A perpetuity is a thing odious in law, and destructive to the commonwealth; it would put a stop to the commerce, and prevent the circulation of the property of the people upon Lord North. 16. Rep. 164. Orgis. 1653. Patf. of Nature v. Howard. 6 Edw. 3. 1226.

Every executory devise is a perpetuity as far as it goes, e. c. an estate unalienable, tho' all mankind join in the conveyance. 1 6--a 259. 9 6--a 9. 3. C. Bontemps v. Edge. 6 Edw. 3. 1226. In fee gives his land after his death without male to B, in tail male, until he or they effectually do to any act to alter or discontinue this estate, and then to G, and the heirs male of his body, with several remains over the deviser dies without issue; 3. enters, C, dies leaving issue D. B. levies a fine; 9. 1. 2. Q. C. the question was, if the entry was good for this purpose, and it is not effectual till the 9. 2. Q.制成器, and then it is done the remainder is discontinued, and he cannot enter. 1. 2. 6. Holgrave v. Davies. 6 Edw. 3. 1226.

It is absolutely against the constant course of Chancery to decree a perpetuity, or give any relief in such cases, for Lord Chancellor. 1. Chanc. Rep. 324. 15 Car. 1. 1. Bisho. Bisho. Bisho.

Trustees of a term limited over in tail, remainder in tail, were decreed in Chancery to convey the estate over; for otherwise there would be a perpetuity; per Bridge. 17. Ch. 4. Sed. 3. Poch. 15 Car. 2. 1. B. in case of Grg. v. Hopton. 1717. 2. To B. and the heirs of his body, and if he goes to alien, his estate shall cease, and the land goes over to a charity; it is a void limitation as tending to create a perpetuity. 1. Poch. 15 Car. 2. 1. B. in case of Grg. v. Hopton.

As a device to B. and the heirs of his body, and if he goes to alien, his estate shall cease, and the land goes over to a charity; it is a void limitation as tending to create a perpetuity. 1. Poch. 15 Car. 2. 1. B. in case of Grg. v. Hopton.

There is an attempt to make a perpetual succession of estates for life is vain and not practicable; per car. 2. Poch. 738. 1717. Humberfn v. Hampden.

Per quaerit. A writ judicial sitting from the note of a fine for the fine is enrolled in the fine law, a court of record, or other services to compel him that is tenant of the land at the time of the note of the fine levied, to answer unto him. 1. Poch. 15 Car. 2. 1. B. in case of Grg. v. Hopton. 1717.

Perquisition (Perquisitive) is any thing gotten by a man's own industry, or purchased with his own money, different from that which depends from him to his father or ancestor; and so Braden uses it, when he says, Perquisition faculties, lib. 2. cap. 32. nam. 3. & lib. 4. cap. 23.

Perquisition, (Perquisitive) is any thing gotten by a man's own industry, or purchased with his own money, different from that which depends from him to his father or ancestor; and so Braden uses it, when he says, Perquisition faculties, lib. 2. cap. 32. nam. 3. & lib. 4. cap. 23.

Perquisitions of courts. Are those profits that grow to a lord of a manor, by virtue of his court-baron, over and above the certain yearly profits of his land; as fines of epyroles, heriots, amerciaments, waifs. 3. Perkin. 15 Car. 1. 21.

Perjong goods. See Silk.

Perfonal. (Perfonalis) Signifies as much as enabled to maintain plea in court: As for example, the defendant was judged perfonsal to maintain this action, Old Nat. Brev. fol. 142. and in Kitchin, fol. 214. The tenant pleaded, that the wife was an alien, born in Portugal, without the ligeance of the King, and judgment 3. was demanded of the defendant. It should be answered: The plaintiff faith, he was made personal by parliament, that is, as the Civillians would speak it, Habite perfonam favel in juidic. Perfonal is also as much as to be of capacity to take any thing granted or given. Plowd. fol. 27. Chiliur's case.

Perfonal. (Perfonalis) Being joined with the substanatives, things, goods or chattels, as things personal, goods personal, chattels personal; signifies any movable thing belonging to a man, be it quick or dead: So it is used in 1. Poch. 15 Car. 2. 1. B. in these words: Theft is an unlawful felonious taking away another man's movable personal goods, to abide 61. And in Kitchin, fol. 153. that faith, A man's personal things shall be given to a coroporation, as a horse, a cow, sheep, or other goods, 6. and Stannif. 1. Per. Cor. 2. fol. 25. Civilius esse adiunca, it is to be understood of things personal; for in things real it is not felony, as the cutting of a tree is not felony. See Chattels.

Perfonal action. See Action.

Perfonal tithes, are tithes paid of such profits as come by the labour of a man's person, as by buying and selling, gains of merchandise and handicrafts, &c. See Efinns.

Perfonality, (Perfonalis) Is an abstract of personal. 2. & lib. 4. cap. 23.

The action is in the person; Old Nat. Brev. fol. 92. That is to say it is brought against the right person, or the person against whom in law it lies: Or it is to distinguish actions and things personal, from those that are real.

Perfonate,
Perfonhoo, To reprenent by a fictitious or affirmed character, fo as to be perfuaded by the perfon represented. John, dotnec is a bond by J. F. the defendant said, that he made and delivered the bond to another J. F. and not to the plaintiffs; and a good plea; and the plaintiffs was compelled to answer to it; quod nota: And so it seems that there were two J. F.'s, and the wrong J. F. got the bond, and brought the action. Br. Obligation, pl. 82, 353, 363. 4 H. 3. 7.

A. had a warrant to arrhe J. S. and A. demanded of a perfon what his name was, who said his name was J. S. whereupon A. arrested him. The perfon brought false impeachment; and adjured it lay; for the bailiff ought at his peril to take notice of the party. Ms. 457. Trin. 38 Eliz. Cost v. Litchworth.

Lord Keeper said, he had always noted this difference. If one of my name levies a fine of my land in my name, I may well confess and avoid this fine, by flewing the special matter. But if a perfon, who is not of my name, levies a fine of my land in my name, I shall not be received to aver that I did not levie the fine, but another in my name; for that is merely contrary to the record; and so it is of a recognizace, and other matters of record. But he conceived, that when the fraud appears to the court, as in the principal case, they may well enter a vacat on the roll, and so make it no fine, albeit the party cannot stand by averment, during the time that it stands as a record. Crs. Ellis. 531. Mich. 38 & 39 Eliz. Huber's cafe.

B. was taken in execution upon a recognizance of bail, and he made it appear to the court, that he never acknowledged the recognizace, but was peremptoried by another; and thereupon it was moved, that the bail might be discharged, and he discharged, as was done in Cotton's cafe. 2 Crs. 256. But the court said in 21 Jac. cap. 26. by which this offence was made felony without clergy, it is not convenient to vacate it until the offender is convicted; and so it was done 22 Car. 2. in Spicier's cafe; wherefore it was ordered, that B. should bring the money into court, and be let at large to prosecute the offender. Twijleden said it must be tried in Middlesex, though the bail was taken at a judge's chambers in London, because filed here, and the entry is venit coram Domino Regis. &c. so it differs from a recognizace acknowledged before my Lord Huber, upon 23 H. 8. at his chambers, and recorded in Middlesex, where the fine was deducted in London or Middlesex. H. Rep. 155, 196. Ven. 301. Beley's cafe. Mod. 46. S. P. Rawlin's cafe. Cockell who peremptored Beley was hang'd at Tyburn, but the rope was immediately cut; and afterwards Beley on motion had restitution of his goods in the hands of the sheriff. Hill. 28 Car. 2. B. R. 2. 64. Ser. 43. Beley's cafe.

A commiilion of rebellion was awarded against A. whereupon B. came before the commissioners, and affimated himself to be the perfon. The commissioners appre-hended him by virtue of their commiision; but per Hale Ch. B. the commissioners have no warrant to take him by their commiision; his affimating himself to be the perfon will not excume them in false impeachment, as has been held on the executing a copyus. Hard. 323. Pofch. 15 Car. 2. Turban's cafe.

Perriata terrae, Is the fourth part of an acre, which in the whole superficies contains forty perriata. See Perch.

Perfor or Perforc, (Perforis, Perforis.) Is derived from the French & parois. Forteuse de laudibus legum Anglie, cap. 51. pag. 124. hath these words, sed tunc placenties (i. poil morisium) je deruent au perfovan & albi confentiens cum fervituis ada legum & aliis confi-aliis juis. Of which Couther thus, prolog. 9.

A ferjeant at law, that was wife and wife, That often had been at the perfovan.

Nam igni legis perfun consnmere ut chelentibus occurrenter, non ad tyranno, juris, quos mores vacant, exercendis, fays Spel- man. Edin. in his notes on Fortesca, pag. 58. says, it signifies an afternoon's exercise or court, for the instruct

tion of young students, bearing the same name originally with the perfovan in Oxford. Mr. Somer says perfovan signifies palatii atrium vel area illa a frate aque Welfin, bode, the palace yard. See his Gloss. in 10 scripturis, verbo Trierumian. And see Wood's Hist. of Oxford. 2 Par. fol. 6.

Perfo, Pofa, Pifio, A tovy or weigh, or certain weight and measure of cheese and wool, &c. containing two hundred and fifty-six pounds. Cowell, edit. 1727.

Perigae, (Pergaum) Custum paid for weighing wares or merchandise, id. ib.

Peritas, A weigher. Id. ib.

Perifla, Mafi; or the money taken, or festival, used by the chirographar, &c. See Argum. tam. 2, pag. 213.

Peritculable wares, Scarce tobe such wares or merchan- disse as pofts, and take up much room in a ship. 32 H. 8. cap. 14.

Peritseum, Is mentioned in one of the ancient re-gisters of our bishops, particularly in that of St. Leon-ard de Ebor, which contains a grant thereof by King Athelstan. Cowell, edit. 1727.

Peritoeprer, (Dennarii Sancti Petri,) Otherwise cal- led in the Saxon tongue Ramseel, the fee of Rome, or due to Rome; and also Ramsefish and Ramse-penny was a tribute given by Inas, King of the West-Saxons, being in pilgrimage at Rome, in the year of our Lord 724. It was paid to the Bishop of Winchester, and was the last of Saxon Words, verbo Nummus. And the like given by Offa, King of the Mercians, through his dominions, in anno 794, not as a tribute to the pope, but in satisfac-tion of the English school or college there; and it was called Peter-pence, because collected on the day of St Peter, and was a penny for every hundred. Spelen, de Concil, tom. 1. fol. 5. 2. And in St. Edward's Laws, num. 10, where we may read these words, Omnis qui habet 30, denarii usque venecia in dana de su proprio, Anglaram debo disnariam Sancti Petri, & leg Danarnam dimidiam marcam; sine vero debo eunniamini; sicut animum apostolorum Petri & Pauli, et collegii ad vitam tetam, quas dicimus ad Vincia, in su aut alio, aut deinde definitur, &c. See also King Edgar's Laws, fol. 77 cap. 4, which contain a sharp constitution touching the matter. Statu, in his Annales, p. 67, faith, that he who had twenty pennyworth of goods of one fort in his house, was to give a penny at Lannass yearly. See Regno.

Perfer et Miinitha, mentioned in 4 Ed. 4. 1 et 1 Ed. 4. 5. See Celte of Augis.

Petition, (Petrino) Hath a general signification to all kinds of supplications made by an inferior to a super- rior, and especially to one having jurisdiction. 3. P. C. It is held for that reason for that which the sub- ject hath to help a wrong done by the King, who is in a pragraetive not to be fixed by writ: In which sense is either general, that the King do him right and reason, whereupon follows a general indemnification upon the same. Let right be done the party: or it is special, when an indemnification and indemnification are special, for this or the other to be done, &c. Staunf. Prag. c. 32.

By statute 13 Car. 2. c. 5. The soliciting, labouring or procuring the putting the hands or content of about twenty persons to any petition, to the King, or either house of parliament, for alterations in church or statute unless by consent of three or more justices of peace of the county, or a majority of the grand jury, at the assizes or fellops, &c. and repairing to the King or parliament to deliver such petition, with above the number of ten persons, is subject to a fine of 100l. and three months imprisonment, being proved by two witnesses, within fix months, in the court of B. R. or at the assizes, &c. And the act of any person or persons by this statute notified, must be taken that petitions to the King contain nothing which may be interpreted to reflect on the administra-tion; for if they do, it may come under the denomina-tion of a libel: And 'tis remarkable, that the petition to the city of London, for the fitting of a parliament we deemed libellous; because it suggested the King's own will. A late parliament was an obstruction of justice. Reid, stat. vol. 4. 353. Also the petition of the fever.
PET

bishops, sent to the Tower by King James II. was called a libel, 3 Mod. Rep. 212. To subscribe a petition to the King, to frighten him into a change of his measures, intimating that if he be denied, many thousands of his subjects will be disconcerted, is included among the attempts against the King's person and government. It is therefore punishable by fine and imprisonment. 1 Hark. P. C. 60.

Petition in Chancery, is a person's request in writing, directed to the Lord Chancellor or Master of the Rolls, shewing some matter or cause wherupon he prays somewhat to be granted, or done for him. P. R. C. 263.

Most things which may be moved for of course, may be petitioned for; as a commissary to an answer, or plead, and demur; for the Lord Chancellor's letter to a nobleman to appear and answer a bill, &c. that the cause may be heard ; for a rehearing; for an appeal, &c. or to have a mistake amended in a caption. 3 P. R. C. 265.

Sometimes it is upon a collateral matter only, as it has relation to some precedent suit, or to an officer of the court; as to have a clerk or solicitor's bill taxed, or to oblige him to deliver up papers. P. R. C. 270.

The Master of the Rolls is not to be petitioned for, unless the Chancellor or the also the Chancellor of the rolls may be petitioned to plead, demur or exceptions, or touching decrees or special orders made before the Chancellor. In most cases of petition, the Master of the Rolls may be applied to. P. R. C. 270. See 16 Fin. Abr. 327, 338.

Petition of right. In the reign of King Charles the first, there was a famous petition of right: That none should be compelled to make or yield any gift, loan, bequeath, tax, and such like charge, without consent of parliament; nor upon refusal to do so, be called to make answer, take any oath not warranted by law, give attendance, or be confined in the king's priso. &c. And that the subject should not be burdened by the quartering of soldiers or mariiners; and all commissions for proceeding by martial law, be annulled, and none of like nature issued thereafter, to the subject (by colour thereof) be destroyed or put to death; contrary to the laws of the land. 3 Sa. 1. car. 1. sec. 12. 12 Tit. 3 and 4.

Petition of the cap. See Cap.

Petit intercen. See Larenc. Pet. juranty, Pet. juran. In French petit jurant, is to hold by petit jurant, to hold land or tenements of the King, yielding him a crown, a buckler, an arrow, a bow with strings, to the service, at the will of the right to the crown, and there belongs not ward, marriage or relief. And here observe that none can hold by grand or petit jurant, but of the King. But fee the statute 12 Car. 1. cap. 24.

Petit treason, (Parva profita.) In French petit treason, i. profita minor, treason of a lesser or a lower kind; for whereas treason in the highest kind, is an offence done against the security of the Commonwealth, Will. Symb. part. 2. tit. Indictment, sect. 63. So is petit treason, tho' not so express; Petit treason is, if a tenant kill his master, a wife her husband, a secular or religious man his prelate. 25 Ed. 3. cap. 2. whereas more in Stanulf. Pl. Car. lib. 1. cap. 1. Cramp's Justices of Peace, fol. 2. See Treason.

Petra, is a sort of weight, we call it a stone, being in many places of England, in some places confiding of 16, in others of 14, 12 or 8 pounds. Covell, ed. 1727.

Petra, is sometimes taken for a quarry of stones, and in other places for a great gun called petrward: 'Tis often mentioned in old records and historians in both senses. Covell, ed. 1727.

Petty Chapman. See Tailors and Dimmins.

Petty, Petit de petit is, from the Fr. petit, small, and Six, six, A woman, factor or solicitor, a chilly advocate, a petty attorney or lawyer; or rather a pretender to the law, having neither law nor conscience. Covell, ed. 1727.


Petty werters, Duties on tin imported, 2 W. & M. fol. 2. c. 4. foll. 1. And pewter and tin exported, 8 W. & M. fol. 3. c. 34. foll. 1. See Granting of the charters granted to the tanners of Devon and Cornwall, 5 W. & M. c. 6. foll. 4.

Petty werters, For those who have been heard for petty werters, or petty profita, or petty def, without lawful warrant and authority. 2 Inf. fol. 204.

Pit factors and partriges, See Game.

Pitpianl and. See Physicians.

Physicians. By statute 3 Hen. 8. cap. 11. foll. 1. No person within London, nor within seven miles of the same, shall exercise as a physician or surgeon, except he be examined and approved by the bishop of London yearly by the dean of St. Paul's, calling to them four doctors of physick, and for surgery other expert persons in that faculty, of them that have been approved; upon the pain of forfeiture for every month, 51. one half to the King, and the other to the person that shall make the information. See Stat. 2. No person out of the said city and precinct of seven miles, except he have been (as aforesaid) approved, shall exercise as a physician or surgeon in any diocese, but if he be examined and approved by the bishop or his vicar general, calling to them such expert persons as their discretion shall think convenient, and giving their letters testimonial upon like pain. See Stat. 3. This shall not be prejudicial to the university.

Stat. 14. & 15 Hen. 8. cap. 5. foll. 2. The corporation of the commonalty and fellowship of the faculty of physick erected by King Henry VIII. and every thing contained in the letters patent of incorporation, are confirmed in parliament; and the six persons in the letters patent named, coming to them two or more of the commonalty, shall be called eleets, and the elects shall freely chuse one of them President; and as oft as any of the places of the elects shall be void by death or otherwise, the superintendents of the elects (within forty days) shall chuse more of the faculty in London, to supply the number of eight; so that they be first by the said superintendents freely and according to such as shall be deviled by the elects, and by superintenders approved. See Stat. 3. No person shall be suffered to practice in physick through England, until he be examined at London by the President and three of the elects, and have from them letters of testimonial, except he be a graduate of Oxford or Cambridge, &c.

Stat. 32 Hen. 8. cap. 40. foll. 1. The president of the commonalty and fellowship of physicians, and the common and fellows of the same, shall be discharged to keep watch or ward in London, and shall not be chosen constable, or any other officer in the city. See Stat. 2. The said president, common and fellows, may yearly elect four of the said commoners and fellows; and the said four persons after oath ministrated by the president or his deputy, shall have power to enter the house of every apothecary within the city, to search such apothecary wares as they have in their houses; and all such drugs as the same four persons shall find defective, the same four persons calling to them the warden of the pharmacy of apothecaries, or one of them, shall cause to be burnt, or otherwise destroy the same; and if the apothecaries do obstinately or willingly refuse the said persons to enter their houses for the purpose before rehearsed, they shall forfeit 100 l. the one half to the King, and the other half to him that will sue for the same; and if the four persons referred to be worn, or do obstinately refuse to make the search once in the year, having no lawful impediment, for such default, every of the said four persons shall forfeit 10 l. 6 M
PH Y

Stat. 3. Any of the fellowship of physicians, being admitted by the said president and fellowship, may prac-
tice the science of physick including surgery.

Stat. 34 & 35 Hen. 8. cap. 8. sect. 3. It shall be law-
ful to every person being the King’s subject, having
knowledge of the nature of herbs, roots and waters, to
minister to any outward wound, sore, apoplexy, swelling
or disease, any herbs, ointments, medicines, baths, pou-
tlets and plasters, according to their experience, or drinks
for the stony, stranguary or ague.

Stat. 1 Mar. flot. 2. cap. 9. sect. 2. The statute 14
Hen. 8. cap. 5. shall continue in force.

Sect. 4. Whenever the president of the college of
physicians in London, or any other college of the said
privileges as the said president and college shall yearly authorize to correct offenders in the said facul-
ty, shall commit any offenders to any gaol within the same
city and precinct (the Tower of London excepted) the go-
aler shall receive such persons, until such offenders be di-
charged by the said president, and such persons as from the
said college; upon pain that every such gaoler doing the
contrary shall forfeit the double of such fines and amerce-
ments as such officer shall be afflicted to pay, so that the
same be not at one time above 20s. the moiety thereof
for the Queen, the other moiety to the president and
college.

Stat. 5. It shall be lawful for thewardens of the pro-
cures to go with the physicians in their search, and every
such person as shall refit such search shall forfeit 10l.

Sect. 6. All justices, mayors, sheriffs, confablers and
other officers, upon request shall affit the president of
the said college, and all persons authorized, for the due
execution of the said fratres; upon pain to run in con-
temp of the Queen’s Majesty.

In an action for practising physick within seven miles of
London without licence, the case upon a special verdict
was, that the defendant being an apothecary by trade,
was sent to by J. S. then sick of a certain distemper; and
he having seen, and being informed of the said dis-
temper, did without prescription or advice of a doctor,
and having seen the advice, continued to send the said
J. S. several parcels of physick, as proper for his said
distemper, only taking the price of his drugs; and if
this were a practising of physick, such as is prohibited by
the statute was the question: And after several argu-
ments the court at last unanimously agreed, that prac-
ticing physick was a matter of the statute confina, 11th.
In judging of the distemper and its nature, constitution of
the patient, and many other circumstances. 2dly, In judging
of the fittest and properest remedy for the disease. And
3dly, In directing and ordering the application of the re-
medy to the diseased. And that the proper business of an
apothecary is to give medicines and complaint of their
preparations of the doctor pursuant to his directions.

It was also agreed that the defendant’s taking upon himself
to send physick to a patient as proper for his distemper
without taking ought for his pains, is plainly a taking
upon himself to judge of the disease, and fitness of re-
medy, as also the executive or directing part. Et per-
tem. The defendant had judgment. Note: This judgment
was reversed in domo priorum, 6 Med. 44. 4th. 2dun.
B. R. College of Physicians v. Reye.

One that has taken his degree of doctor of physick in
either of the universities may not practice in London, and
within seven miles of the same, without a licence from the
college of physicians; per cap. 6. sect. 1. and it is
thereby made to appear that by reason of the charter of incorporation, confirmed by 14
& 15 Hen. 8. cap. 5. penn’d in very strong and negative
words. As to the testimonials granted by the universities
upon a person taking the doctor’s degree, the court was of
opinion, that these might have the nature of a recom-
mendation of the proficiency of the candidate, but con-
ferred no right; and consequently all those certificates which
have confirmed the privileges of the univeris furies would re-
vice or confirm nothing but the reputation that this tem-
minion might give such graduates. And as to the long
clause of this statute, that none shall practice in the coun-
try without a licence from the president and three electors,
unless he be a graduate of one of the universities; it was
said, that all the inference from that would be, that po-

Pie}

fibly two licences may be necessary where a person is not
a graduate. In the case of Doctor Lest, Lord Ch. J.
Holt did not think this question worth being found spe-
cially. The college of physicians, without doubt, are
more competent judges of the qualifications of a physician
than the universities; and there may be many good rea-
sons for taking a particular care of those that practice phy-
sick in London. Adjournatur. 10 Mod. 353. 25 Eliz.

Debt upon the statute 14 Hen. 8. cap. 5. by the plain-
tiff as professor of the college of physicians in London,
and of the corporation of physicians there, for that the
defendant used the art of physick in London without li-
cence from the college thereof, against the statute and the
charter; for which he demanded 5l. for every month,
being the penalty given by the statute; the defendant
pleaded the statute 34 Hen. 8. which enables every one
to practice physick or surgery, being skilful therein, not
withstanding any act to the contrary. The plaintiff re-
plies and swears the statute 14 Hen. cap. 5. which con-
firm their charter, and every article thereof to stand in force;
and any act, statute, law, or custom to the contrary notwith-
standing. Hereupon the defendant demurred; but,
caused this general clause in this law doth not restrain the
statute of 34 Hen. 8. 2dly, That this pleading is a de-
parting from what has been already argued for the plain-
tiff, 11th, that the act of 34. H. 8. is repealed by the 1 Mar.
quoad the college of physicians in London, as fully as if it had been by express words recited and
repealed. For when it confirms the charter of 14
H. 8. and appoints that it, and every part thereof shall
stand and be available, the statute of 34. H. 8. cannot
stand, for the statutes in quia leges posteriores leges praeerent
abrogant, 4 Ed. 4. Porter’s case, 1 fis. 25. b. 2dly,
that it is not a departure; because there is not any new
matter pleaded in reviving of the former or fortification
thereof, and a record was flown. Mich. 10 & 11 Eliz. bi-
twixt Bemound v. — where the record was in the same
manner; and there it was argued for the defendant, and there
more: wherefor, &c., and there being none of the de-
fendant’s part to argue; the court upon hearing the re-
cord, gave rule that judgment should be entered for the
plaintiff, unles, &c. Cro. J. 121. Trin. 4 Jos. B. R
Laughton v. Gardner.

For more learning on this subject, see 16 Vin. Abr. tit. Physic.

Philosopher’s stone. See Multiplication.

Phetars, A fort of hosts of 15 tons or upwards, ufed
on the river Severn, mentioned 34 & 35 H. 8. cap. 2.
Also a fisher-boat, 15 Eliz. 11.

Ditragc, (Piscatorium,) from the French picher, effe-
der; Money paid in fairs, to the lord of the foil, for breaking of the ground, to let up boats or fhips. Greenw.
ded. edit. 1727.

Dithcarcs, (Picherus,) A pot, a pitcher. Id. ib.

Pickards. No perfon shall ufe any iron cards or
pickards, in rowing any woollen cloth, upon pain to for-
feit the same, and 20s. for every offence. Stat. 3 &
E. 6. cap. 2.

Pictures. A duty on the importation of them, 6
Will. 3. c. 7. §ett. 2. 3 & 4 Ann. c. 4. §ett. 5. Map
and figures. The duty regulated by the statute 1 Geo.
c. 1. c. 20. §ett. 49. 11 Geo. 1. c. 7. §ett. 12.

Piepowder court, (Curia pedis pulvinarum,) from the French pied, i. pes, and pouderes, i. pulverulentus.
Is a court held in fairs, to administer justice to buyers and
fellers, and for redress of all differences committed in them
and so called, because they most usuall are in fummer
months, when the waters of the country are covered with
low water, when ships can but go by low water; or from the expedition intended, in the hearing of
causes proper thereto, before the duft goes off the
plaintiff’s or defendant’s feet; it is held de hora in hora
Skene de verbor. signis, verbo Pede-pulverosus fays, the
word signifies a vagabond, especially a pedlar, which
hath no place of dwelling, and therefore must be like the
other before admitted to him, viz. within three ebbing
and three flowings of the fea. Brattorn, libr. 5. tabl. 1
cap. 6. num. 6. calleth it jurjficiem pedundarum. Of thc
court
Pip, (Pipes,) Is a roll in the Exchequer, otherwise called The Great Roll, anno 37 E. c. 4. See Clerk of the pipe. It is also a measure of wine or oil, containing half a tun, that is, fix score and six gallons. 1 R. 7. 3.

Piper, (Pirata,) Is now taken for one who maintains himself by pilage and robbing at sea. But in former times the word was used in a better sense, being attributed to such persons to whole care the mole or pier of a haven was intruded; and sometimes for a sea-folder, or sea-ganger. Cowell, ed. 1727.

Piracies and depredations at sea are capital offences by the Civil law; also piracy is said to have been punishable at common law, before the 25 Ed. 3. as petit treason, if committed by a subject, and as felony if committed by a foreigner; but it seems agreed, that after that statute, by which all treason is confined to the particulars therein let down, it was cognizable only by the common law. Strange, P. C. 10. 3 Inf. 112. 2 Hale's Hist. P. C. 369, 370. 1 Hawk. P. C. 98.

But this proving very inconvenient, because by that law no offender shall have judgment of death without his own consent, and to avoid this direct proof by eye witnesses, it was enacted by 28 Hen. 8. c. 15. "Every one that commits a robbery, &c. upon the sea, or in any haven, river, creek or place where the admiral or admirals have or pretend to have power, authority or jurisdiction, shall be inquired, tried, heard, determined and judged in such ships and places in the realm as shall be limited by the King's commission or commission to be directed for the same, in such form and condition as if any such offence or offences had been committed or done in or upon the land; and such commissions shall be under the King's great seal, directed to the admiral or admirals, or to his or their lieutenant, deputy and deputies, and to three or four other bailiffants, or shall be named or appointed by the Lord Chancellor of England for the time being, from time to time, and as oft as need shall require, to hear and determine such offences after the common course of the laws of this land used for felonies, and robberies, &c. done and committed upon the land within this realm.

And it is farther enacted by the said statute, " That if any perfon or persons happen to be indicted for any such offence done or hereafter to be done upon the sea, or in any other place above limited, that then such order, process, judgment and execution shall be used, had, done and made to and against every such perfon and persons, to be done or made after the form and condition as if any such person or persons had been committed or appointed to be directed to the admiral or admirals, or to their or his or their lieutenant, deputy and deputies, and to three or four other bailiffants, or shall be named or appointed by the Lord Chancellor of England for the time being, from time to time, and as oft as need shall require, to hear and determine such offences after the common course of the laws of this land used for felonies, and robberies, &c. done and committed upon the land within this realm.

In the construction of this act the following opinions are held:

That it does not alter the nature of the offence, so as to make that which was before felony or a capital offence by the common law, now become a felony by the Common; for the offence must still be alleged as done upon the sea, and is no way cognizable by the Common law, but only by virtue of this statute; which, by ordaining that in some respects it shall have the like trial and punishments as are used for felony at Common law, shall not be carried so far as to make it also agree with it in other particular matters which are not mentioned; and from hence it follows that this offence remains, as before, of a special nature, and that it shall not be included in a general pardon of all felonies. 3 Inf. 112. 2 Hale's Hist. P. C. 370. Mar. 756. 3 Inf. 113. 2 Hale's Hist. P. C. 370.

From the same ground also it follows, that no person in respect of this statute be confined to be, or punished as accessaries to piracy before or after, as they might have been, if it had been made felony by the statute, whereby all those who would incidentally have been accessaries in the like
PIR

like cafes in which they would have been acceding to a felony at Common law; and from hence it follows, that accedences to piracy, being neither expressly named in the statute, nor by construction included in it, remain as they were before, and were triable by the Civil law, if their offences were committed on the sea; but on the land, by no law, until 11 & 12 W. 3. cap. 92. for a 46 Ed. 6. cap. 12. which provides again accedences in one county for a felony in another, extends not to accedences to an offence committed in no county, but on the sea; but by the said statute of 11 & 12 W. 3. they are triable in like manner as the principals are by the statute of 28 H. 8. 3 Inf. 112. 1 H.auk. P. C. 99. 

It has yet been resolved, that an offender standing mute on an arraignment, by force of this statute, shall have judgment of pains fort & dures; for the words of the statute are, that a commission shall be directed, &c. to hear and determine such offences after the common course of the laws of the land. 3 Inf. 114. Dyr. 241. pl. 49. 308. pl. 73. 

It has been held, that the indictment for this offence must allege the fact to be done at sea, and must have both the word felonite and pirate. and that no offence is punishable by virtue of this act as piracy, which would not have been felony if done on the land, and consequently that the taking of an enemy's ship by an enemy is not piracy. 3 Inf. 112. 1 Roll. Rop. 175. 1 Hauk. P. C. 100. 

It is agreed, that this statute extends not to offences done in creeks or ports within the body of a county, because they are and always were cognizable by the Common law. Mar. 756. 1 Roll. Rep. 175. 1 Hauk. P. C. 100. 

By the 11 & 12 W. 3. cap. 7. it is enacted, "That all piracies, felonies and robberies, committed in or upon the sea, or in any place where the admiral has jurisdiction, may be tried and determined at sea or upon the land, and in lany of his Majesty's islands or plantations, &c. to be appointed by the King's commission under the great seal, with all the admirals, &c. and such persons and officers by name or for the time being, as his Majesty shall think fit; who shall have power jointly or severally, by warrant under hand and seal of any of them, to commit any person against whom information of any such offences shall be given upon oath, and to call in a court of admiralty, which shall consist of seven persons at the least, and shall proceed in the trial of the said offender according to such directions as are set forth at large in the said statute of; continued by 1 Geo. 1. for five years, and by 6 Geo. 1. made perpetual.

And it is farther enacted by the said statute, sect. 8. "That none of his Majesty's natural born subjects or denizens of this kingdom, shall commit any piracy or robbery, or any act of hostility, against other his Majesty's subjects upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever; such offender and offenders, and every of them, shall be deemed, adjudged and adjudged by the admirals, felons and robbers, and they and every of them, being duly convicted thereof according to this act, or the aforesaid act of 28 Hen. 8. shall have and suffer such pains of death, lots of lands, goods and chattels, as pirates, felons and robbers upon the seas ought to have and suffer." It is farther enacted by the said statute, "That if any commander or master of any ship, or any seaman or mariner, shall in any place, where the admirals hath jurisdiction, bestray his trust, and turn pirate, enemy or rebel, and piratically and feloniously run away with his ship or ships, or any barge, boat, ordnance, ammunition, goods or merchandise, or yield them up voluntarily to any pirate, or bring any seducing message from any pirate, enemy or rebel, or confude, combine or confederate with or attempt, or endeavoure to corrupt any commander, master, officer or marine, to yield up any ship, goods or merchandise, or turn pirate, or go over with pirates, or if any person shall lay by violent hands on his commander, whereby to hinder him from pursuing his cargo, or from undertaking any thing to his trust, or that shall confine his master, or make, or endeavour to make, a revolt in his ship, shall be adjudged to be a pirate, felon and robber, and being convicted thereof according to the directions of this act, shall have and suffer pains of death, lots of lands, goods and chattels, as pirates, felons and robbers upon the sea ought to have and suffer." And it is farther enacted by the said statute "That all and every perfon and persons whatsoever, who shall either on the land or upon the seas willingly or knowingly set forth any pirate, or aid and affist, or maintain, procure, command, counsel or advice any person or persons whatsoever, to do or commit any piracies or robberies upon the sea, and such perfon or perrons shall thereupon do or commit any such piracy or robbery, then all and every such person or persons whatsoever so as aforesaid setting forth any pirate, or aiding or affilling, maintaining, procuring, commanding, counselling or advising the same, either in the making thereon or the setting forth the same, shall be adjudged to be accessory to such piracy and robbery done and committed. And farther, that after any piracy or robbery is or shall be committed by any pirate or robber whatsoever, every perfon or persons, who, knowing that such pirate or robber has done or committed such piracy and robbery, shall upon the land or upon the water receive, entertain, harbour, or receive, take into his custody any ship, vessel, goods or chattel, which have been by any such pirate or robber piratical and feloniously taken, shall be by this statute likewise adjudged to be accessory to such piracy and robbery; and that all such accedences to such piracies and robberies shall be inquired of, heard and determined, and adjudged according to the common course of the law, according to the said statute of 28 Hen. 8. as the principals of such piracies and robberies may be, and no otherwise, and being thereupon attainted shall suffer such pains of death, lots of lands, goods and chattels, and in like manner as the principals of such piracies and robberies may be, and no otherwise, shall be by this act declared to be accessory to the said piracies and robberies, as the said statute of 28 Hen. 8. doth declare to be in full force; any thing in the act to the contrary notwithstanding."

And by 4 Geo. 1. cap. 11. "All persons who shall commit any offence for which they ought to be adjudged pirates, felons or robbers by 11 & 12 W. 3. may be tried, and determined as by the said statute of 28 Hen. 8. and shall be excluded from their clergy. By the 8 Geo. 1. cap. 24. for the more effectual suppressing of piracy, it is declared and enacted, "That if any commander or master of any ship or vessel, or any other perfon or persons, shall any wife trade with any pirate, by trade, barter, exchange or in any other manner, or shall furnish any pirate, felon or robber upon the seas with any ammunition, provision or stores of any kind, or shall fit out any ship or vessel knowingly, or with a design to trade with or supply, or corresponde with any pirate, felon or robber upon the seas; or if any person or persons shall any ways conspire, combine or confederate with any pirate, felon or robber upon the seas, knowing him to be guilty of any such piracy, felony or robbery; such offender and offenders, and every of them, shall in each and every of the said cafes be deemed, adjudged and taken to be guilty of piracy, felony and robbery, and he and they shall amaze the goods and Chattels, bear avengeance, make all or any of the matters aforesaid, according to the first made 28 Hen. 8. for pirates, and the statute made 11 & 12 W. 3. and he and they being convicted of all or any of the matters aforesaid, shall suffer such pains of death, lots of lands, goods and chattels, as pirates, felons and robbers upon the seas ought to suffer; and in case any perfon or persons belonging to any ship or vessel whatsoever, upon meeting any merchant ship or vessel
For prevention of seamen or mariners defecting merchant ships or vessels abroad in the plantations, or in any other parts of the world where the chief occasion of their turning pirates, and of great detriment to trade and navigation, and is chiefly occasioned by the owner or owners of ships or vessels paying wages to the seamen or mariners when abroad, it is enacted, 'That no master or owner of any merchant ship or vessel shall pay or advances, or cause to be paid or advanced to any seaman or mariner, during the time he shall be in parts beyond the seas, any money or effects upon account of wages, exceeding one moiety of the wages which shall be due at the time of such payment, until such ship or vessel shall return to Great Britain or Ireland, or the plantations, or to some other of his Majesty's dominions whereeto they belong, and from whence they were first fitted out; and if any such master or owner of such merchant ship or vessel shall pay or advance, or cause to be paid or advanced, any wages to any seaman or mariner above the said moiety, such master or owner shall forfeit and pay double the money which he shall pay or advance, to be recovered in the high court of admiralty by any person who shall first discover and inform for the fame.

Perfons committing hoolifttes, or aiding enemies, at sea, may be tried as pirates, 18 Geo. 2. c. 30. Piracies and robberies on the sea, excepted out of the general pardon, 20 Geo. 2. c. 52. sect. 13. See 16 Vin. Abr. tit. Pirates.

Pirates goods. In the patent to the admiral he has granted him bona piratae': The proper goods of pirates only pass by this grant; and not piratical goods. So it is of a grant de bona fide, the grantee shall not have goods stolen, but the true and rightful owner. But the King shall have piratical goods, if the owner be not known. 10 Rep. 109. Dyer 269. Jent. Cent. 325.

Piracies, (Pitfarria, from the French pitaverie, i. e. pirate) is a liberty of fishing in another man's waters: In law French pirate. See Ryl's Plac. Pat. 440. Piscenarius, is used in our records for a fishmonger. 

Pitceat, in 3. 17. P. t. of. 3. m. 13. 

Pittance, or Pitctance, (Pitancia) A small repast of fish or fhep. Cawcll, edit. 1727.

Pitanciator, was an officer in the monasteries, whose business it was to provide and distribute the pitances of herbs and meats amongst the monks. To be mentioned in the Monast. 1 tom. pag. 148.

Pitch and tar. Not to be imported but in English shipping, 12 Car. 2. c. 18. f. 8.

Not from the Netherlands or Germany, 13 & 14 Car. 2. c. 11. f. 23. To which acts liable, 4 W. & M. c. 5. f. 2. Penalty on burning and destroying pitch or tar trees in the plantations, 3 & 4 Ann. c. 10. f. 6. 7. 

Importation of it from the plantations, and Scotland into England, encouraged, 3 & 4 Ann. c. 10. 12 Ann. 1. c. 4. 5. Geo. 1. c. 11. f. 16. 17. 18. Geo. 1. c. 13. f. 3. 25 Geo. 2. c. 35. f. 3.

Plantation pitch and tar to be clean, 5 Geo. 1. c. 11. f. 16. 24 Geo. 2. c. 52. f. 2. 25 Geo. 2. c. 35. f. 3.

Pitching pens, (commonly a penny) Is that money which is paid for pitching, or setting down every lack of corn, or pack ofy or her merchandize in fair or markets. 

Placard, (mentioned in flat. 2 of P. & M. cap. 7.) Is a licence whereby a man is permitted to shoot in a gun, or use unlawful games. In French it signifies a table, where orders are written and hung up; and placaert in Dutch is an edict or proclamation. See 33 H. 8. c. 6.

Place, (Locus) Where a faft was committed, is to be alleged in appeals of death, indentures, &c. and place is considerable in pleading, in some cases: where the law doth require a thing to be set down in a place certain, the party must in his pleadings say, it was done there. Con. &c. 282. When one thing doth cease in 6 N.
the place of another, it shall be paid to be of the same nature, as in the case of an exchange, &c. Shop, Epit. 702. See Local, and 16 Fin. Atr. tit. Place.

Platina, Dean, or pleadings, or debarces and trials at law. Placito is a word often mentioned in our his-
ories and law books: At first it signified the public af-
femblies of all degrees of men, where the King prefided
and where the public were often told about the great affairs of
the kingdom, and these were called generalia placito, be-
cause generalitas universorum hominum tam clericorum quam
laicorum itinerum comitabantur. This was the custom in our
neighbouring nation of France, as well as here, as we are
told by Hume, De Ordine Palatii, cap. 20, and by
Blackstone, in his Annuals of Prince in the year 1767.

Some of our historians, as Simeon of Durham, and
others, who wrote 300 years afterwards, tells us, that
these assemblies were held in the open fields: Nullam eum
spasit Regem in litinis officinarum curia, ubi Rex ju-
dicat in aperto, ibi est curia fas. Some are of opinion,
that these Placita generalis, and Curiae Regis, were what
we now call a parliament: "This true, the lords courts
were so called, viz. Placita generalis, but officer Curiae
generalis, because all their tenants and vassals were bound
to appear there.

We also meet with Placitum miniatum, i.e. the day
appointed for a criminal to appear, and to make his de-
fense. Leg. 111. 1. cap. 70, 46, 50. Placito fratrum,
i.e. when the day is past. Leg. 111. 1. cap. 59.
My Lord Coke tells us, that the word is derived from pla-
centa, quae bene placentis forae satura placet: This seems
to be a very fanciful derivation of the word: It seems
rather to be derived from the German platz, or from the
Latin platurus, i.e. fields or fereers where these assemblies
or courts were first held. But this word placet did some-
times signify penalties, fines, mulcts, or emendations,
according to Gerofes of Tilbury, or the Black Book in
the Exchequer, lib. 2. tit. 13. Placita autem dicimus paenae
temporariam in quibus incidunt delinquentes. So in the laws
of Hen. 1. cap. 17, 15. Hence the old rule of custom
Omne habit tenuit denarium placitum, is to be thus
understood; the Exil of the county shall have the third
part of the money due upon mulcts, fines, and amercia-
ments imposed in the affiles and county courts. Cowell,
edid. 1727.

Plattatar (i.e. Litigat & causas agere,) To plead.

Plattate, A pleader. Ralph Flambard is recorded to
be Tanis regii placitator, in William the Second's
time.

Plague. For the ordering and relief of persons infla-
bred with the plague, 1 Jac. 1. c. 31.

Permons inflaet are often depicted, in 1 Jac. 1. c. 31.
Regulation for ships to perform quarantine, 4
Ann. c. 2. 7 Geo. 1. c. 3. 8 Geo. 1. c. 8. and c. 10.
1 Geo. 2. c. 13. 6 Geo. 2. c. 34.

Penalty on maller breaking quarantine, 8 Geo. 1. c. 18.
f. 14. 17 Geo. 2. c. 18. f. 4.

Directions for performing quarantine and ereciting la-
zez. 16 Geo. 2. c. 6. 29 Geo. 2. c. 8.

Permons disobeying directions guilty of felony, 26 Geo. 2.
c. 6. f. 1. 3. 8. 17, 18.

Orders for quarantine to be read in churches, 26 Geo. 2.
c. 6. f. 20.

Goods liable to retain infection, coming from the Le-
man without a clean bill of health, not to be landed unless
aired in a foreign lazez, 26 Geo. 2. c. 18. f. 12.

Plaint, (Scot.) Is used for the propagating or ex-
hibiting of any action personal or real in writing, and
so it is used, Bro. tit. Plaint in affiats; and the party
making this plant, is called The party plaintiff. Kitchin,
vol. 2.

Plautus, A plank of wood. Cowell, edit. 1727.

Plattet, To not exercise the art of a painter in
London, 1 Jac. 1. c. 25.

Plattatius. Sugar, tobacco, cotton-wool, indigo,
ginger, and dyeing wood of the growth of the plantations,
shall be exported thence to England only, 12 Geo. 3.
c. 18. f. 18. Rice and melafon, 3 & 4 Ann. c. 5. f. 12.
No European goods shall be imported into any planta-
tion but in English-built shipping, whereas the master and
three-fourths of the mariners are English, 15 Car. 2. c. 7.
Salt for the fisheries excepted, ibid. sect. 7.

Goods imported by land or sea, to be notified to the
 governor, 15 Car. 2. c. 7. f. 8.

Penalty on officers of the customs suffering plantation
goods to be taken, palse, not being first unladen, 15 Car. 2. c. 7.
9.

The duty on sea coals sent to the plantations, 15 Car. 2.
c. 7. f. 10.

Plantation goods not to be carried thence to Ireland,
22 & 23 Car. 2. c. 2.

Penalty on unloading plantation goods elsewhere than
c. 22. f. 8 & 14.

Duties on whale oil, blubber, &c. taken by ships of the
plantations, 25 Car. 2. c. 7. 1 Geo. 1. c. 12. f. 4.

Duties payable in the plantations for goods shipped there,
25 Car. 2. c. 7. f. 2. Explained by 4 Geo. 3. c. 15.

Plantation goods not to be carried in foreign ships,
7 & 8 W. 3. c. 22.

Governors of the plantations, &c. to take an oath,
&c. to observe the regulations of trade, 7 & 8 W. 3. c.
22. f. 8 & 9 W. 3. c. 20. f. 69.

Office of becoming there to have the same power as
officers of customs in England, 7 & 8 W. 3. c. 22. f. 6.

By-laws or customs contrary to law, void, 7 & 8 W. 3.
c. 22. f. 9.

Places of trust there, in the law or treasury, to be in
the hands of natural-born subjects, 7 & 8 W. 3. c. 22.
Feb. 12.

Unauthorized to approve the governors, 7 & 8 W.
3. c. 22. f. 16.

Lands there not to be sold to aliens without his Ma-
jectory's consent, 7 & 8 W. 3. c. 22. f. 16.

Ships to be reguttered, &c. 7 & 8 W. 3. c. 22. f. 17.

Governors of plantations may be tried in England,
&c. to offences committed in their government, 11 & 12
W. 3. c. 12.

Irish linen may be exported to the plantations, 3 &
Ann. c. 8.

Bounties on imported stores from the plantations, 3 &
Ann. c. 10. 2 Geo. 2. c. 35. f. 3.

Penalty on destroying pine-trees, 3 & 4 Ann. c. 10.

Ship money, 9 Ann. c. 17. 8 Geo. 1. c. 12. f. 5. 2 Geo.
c. 35.

Value of foreign coins there settled, 6 Ann. c. 30.

All subjects to have free trade to America, 6 Ann. c.
17. 15 & 22.

Plantation bonds to be delivered up if not put in faith
in England, 8 Ann. c. 17. f. 23.

Duties on prize goods in America, 9 Ann. c. 27.

Infants confessing may be bound to serve, 4 Geo. 1.
c. 11. f. 5.

Purs of plantations to be brought to Great Britain,
8 Geo. 1. c. 15. f. 24.

Salt may be carried from any part of Europe to Pen-
nsylvania, 13 Geo. 1. c. 5. To New-York, 3 Geo. 2.
c. 12.

Lignum vitae may be imported from the plantations free,
1 Geo. 2. c. 17. f. 5.

Undivided shares of Carolina surrendered to his Mejesty,
2 Geo. 2. c. 34.

Regulations for the preservation of woods in America,
2 Geo. 2. c. 35.

Liberty to carry rice from Carolina to the South of
Cape Finiffers, 3 Geo. 2. c. 28.

Before shipped, exporter to make an entry with the
collector of the customs, &c. 3 Geo. 2. c. 28. f. 4.

Masters of vessels to be paid, 2 Geo. 2. c. 29. f. 5.

Extended to Georgia, 8 Geo. 2. c. 19. 27 Geo. 2.
c. 18. f. 3.

Goods not enumerated may be imported into Irvine
from the plantations, 4 Geo. 2. c. 15.

Debts owing in the plantations may be proved before
magistrate in England, 5 Geo. 2. c. 3.

Lands in the plantations may lie liable to debts, 5 Geo.
c. 7. fett. 4.
Hats not to be exported from one plantation to another, 5 Geo. 2. c. 22.

Hatters in America not to have more than two apprentices, 5 Geo. 2. c. 22. sec. 7.

A duty on coffee of the plantations reduced, 5 Geo. 2. c. 22. sec. 9.

A duty on foreign rum and molasses imported to the plantations, 6 Geo. 2. c. 13. 29 Geo. 2. c. 26.

No sugar to be imported into Ireland, unless of the growth of the plantations, or shipped in Great Britain, 2 Geo. 15. Continued to 29th of September 1764, and from 29th of September 1764 made perpetual, subject to alterations in 4 Geo. 3. c. 15.

Drawback on sugar re-exported, 6 Geo. 2. c. 13. f. 9. 10 W. 3. c. 23. f. 8.

Allowance on exportation of sugar refined in Great Britain, 6 Geo. 2. c. 13.

Liberty given to carry sugar from the plantations to foreign markets, 12 Geo. 2. c. 30. Continued, 4 Geo. 3. c. 12. Extended to all British ships, 15 Geo. 2. c. 35.

Oath by which the ship belongs to British subjects, 12 Geo. 2. c. 30. Jo. 5. f. 7.

Officers of customs to examine suspecteil ships, 12 Geo. 2. c. 30. f. 6.

Ships taking in any other goods subject to entries, 12 Geo. 2. c. 30. f. 10.

Charters to be granted in time of war to adventurers in the African plantations, 2 Geo. 15. c. 13.

Foreigners residing seven years in the plantations, and taking the oaths, to be deemed natural subjects, 13 Geo. 2. c. 7.

Unlawful flocks and undertakings in the plantations prohibited, 14 Geo. 2. c. 37.

Matter of ships, to make oath of the truth of their return, 15 Geo. 2. c. 21.

Relief provided where the regifter is lost, 15 Geo. 2. c. 31. f. 2.

The conditions of plantation-bonds shall specify a certificate of landing the goods within 18 months, 15 Geo. 2. c. 31. f. 4.

Seamen in the plantations not to be impressed, 19 Geo. 2. c. 30.

A premium on plantation indios, 21 Geo. 2. c. 30. 8 Geo. 2. c. 25. Continued and amended, 3 Geo. 3. c. 25.

Fifk may be imported from the plantations free, 3 Geo. 3. c. 26.

Bar iron may be imported from the plantations to London, and pig iron to any port free, 23 Geo. 2. c. 29.

For the several complaints of the inhabitants, 25 Geo. 2. c. 29. f. 9.

The powers of the plantation may be imported free, 4 Geo. 2. c. 51.

Restrainment of paper credit in the plantations, 24 Geo. 2. c. 23.

The act concerning attaining of wills extended to the British colonies, 25 Geo. 2. c. 5. f. 10.

Foreign protestants enabled to serve officers and soldiers in America, 29 Geo. 2. c. 5. f. 1.

For recruiting the army in America, 29 Geo. 2. c. 35. indentured servants may be inflicted, 29 Geo. 2. c. 35. art. 1.

Treason raised in America, when joined with British forces, subject to the rules and articles of war, 30 Geo. 2. c. 6. f. 77.

No virtuals to be exported from the plantations during the war with France, except to Great Britain or Ireland, or to some of the plantations, 30 Geo. 2. c. 9.

Rice may be exported to the Southward of Cape Finisterre, 30 Geo. 2. c. 11.

Certain rates and duties on foreign goods imported into any of the plantations in America, 4 Geo. 3. c. 15.

Paper bills of credit in the plantations declared void, 4 Geo. 3. c. 34.

For granting stamp duties in the plantations, 5 Geo. 3. c. 12. Repealed by 6 Geo. 3. c. 11.

PLATE, A boy, or water-veffel so called, 13 Edw. cap. 15. A tax laid on perfon Names poffeffed of silver plate, 29 Geo. 2. c. 14.

Playhous. See Furniture.

Plays and dramatick Pieces. See [Mis]ellaneous, Gaming.

Pleas, (Placitum, from the Saxon plac, or pleb, i.e. juris actus,) Signifies that which either party alleged for himself in court, which was wanted to be done in French from the conquest until Edward the Third, who ordained them to be done in English, in the 35th year of his reign, cap. 15. This term divided into Placitum of the Crown and Common Pleas. Pleas of the Crown of Scotland are four, viz. robbery, rape, murder, and wilful fire. Sacra de verb. signif. verbo Placitum. With us they are all suits in the King's name, against officers committed against his Crown and dignity. Staunf. Pl. Cap. cap. 1. Or against his Crown and dignity. Staunf. Pl. Cap. cap. 9. And those seem to be treasons, felonies, mifprisions of either, and malinois. Geo. 4. cap. 14. Edward the First enfeoff'd Walter de Burg, in the land of Oiler in Ireland, excepting the pleas of the Crown, to wit, rape, horrid, wilful firing, and treason-trove. Camb. 11. Ireland, c. 2. Sect. 3. Pleas of the Crown, without, and those without and pleasurable to them, a suite, cap. 11. Pleas are of that specification, that pleas be with us, and pleasurable to them, with equity, Edin. in verbo Final, verbo Placitare.

Plea and demurrer in equity. See 16 Vin. Ab. 375.
enacted by the 36 Ed. 3. cap. 15. which statute was made to abolish a law introduced by William the Conqueror, which ordained, that the pleadings in all courts of justice should be in French. 4 Bac. Abr. 1. 10 Co. 132.

But now by a 4 Geo. 2. cap. 26. it is enacted, That all writs, process, pleadings, rules, indentures, records, and all proceedings in any courts of justice within England, and all pleadings in any courts in Scotland, shall be in that English tongue, and be written in such common hand as acts of parliament are usually ingrossed in, the lines and words to be written at least as close as the said acts usually are, and not abbreviated; and all persons offending against this act, shall forfeit 50l. to any person who will sue for the same. By 6 Geo. 2. cap. 14. it is provided, That the above penalty shall not be extended to the expressing the names of writs, or technical words in the same language, as hath been used, nor to abbreviations used in the English language.

In pleading there are several general rules laid down in our books; by that good master must be pleaded in right form, apt time and due order, but that, that which is but inducement or conveyance to the subsidence, need not be so certain and accurate, as that which is the gist of the plea. Co. Lit. 303. Plow. 56. 81. 1 St. Jaw. 362.

That which is apparent to the courts, and appears from the nature of the action in the record, need not be averred. Co. Lit. 303. 7 Co. 40.

That every man's plea shall be taken most strongly against himself, as every body is presumed to make the most of his own case. Dyr 16. Co. Lit. 303. Hdb. 234. Laish 186.

That what the parties have agreed in pleading shall be admitted, tho' the jury find otherwise. 2 Mod. 5.

That when a man will recover a thing from another, it is not enough for him to destroy such person's title, but he must prove his own a better, according to the rule, mater est conditionis, &c. Faugb. 58. 60. Co. Lord Faughan.

That every man shall plead such pleas as are pertinent and proper for him, according to the quality of his case, estate or interest. Co. Lit. 285. 303.

That the law requires in every plea two things, the one, that it be in matter sufficient, the other, that it be deduced and expounded according to the forms of law; and the other party may, by the wants of the plea, be caused of dammner. Hdb. 164. Co. Lord Hakart.

That every plea in bar, being a confession and avoidance of the plaintiff's action, must be substantive and certain, with an avoidance of the plaintiff's demands, which he may traverse, and thereon go to issue, because the plaintiff's plea is null confusion, as far as it is not avoided by the defendant. Dyr 66. Gedh. 253. 1 Lem. 78.

That if a count, senvory (which is in nature of a count) replication, &c. want form, or omit circumstance of time, place, &c. they may be made good by the replication, and the replication by the rejoinder. Ut. 7 Co. 25. a. 8 Co. 120. Co. Lit. 372.

That all pleas must be alleged directly, and not by way of reprehens; nor is it sufficient, that what ought to be expressly pleaded, may be deducted by argument from what is pleaded. Co. Lit. 303.

That in matters triable by our law, all things insufiuble ought to be specially alleged in order to have a convenient trial; but in matters spiritual the law is otherwise, because there is no peril in the trial, and therefore if certain enough to ground a certificate, it is sufficient. 3 Lem. 300.

That where one is authorized to do a thing by Common law, statute, custom, grant or commission, be ought to shew, that he hath purposed the subsidence of it accordingly. Co. Lit. 303.

That general estates in fee-simple may be generally alleged; as that if. S. was feigned in fee; but the commencement of particular estates must be shewn, because they could not originally commence, without a conveyance, which must be shewn, unless they be alleged by way of inducement only. Co. Lit. 212. a. 303.

The plea in bar of the object, see 4 Bac. Abr. 16 and Vin. Abr. 11. Pleas and Pleadings.

Plea of the fraud. Placita ad gladium. Ranulf the third Earl of Chester, in the second year of Henry the Third, granted to his barons of Cheshire a simple charter of liberties, Exceptis placitis ad gladium maxims. See Pat. in archives Regis infra concessam Grefina. 3 E. 4. The reason why William the Conqueror gave the Earldom of Chester to his kinman Hugh, commonly called Luptus, ancestor to the Earl Ranulf, Tenia iniblib forbidden to be libidinum, fictit infra Rex Williamus tenet Anglicam pro cernam. And constant hereunto in all inducments for felony, murder, &c. in this case only the form was anciently, Conspec pacem Domini comitis, gladium & dignitas sua, or Cons. dignitas gladium caufer. These were the pledges of the ducity of the Earl of Chester. Sir Peter Leisier's Hist. Antig. fol. 164. Cowell, edit. 1727.

Plebantia, Plebnahis sceltoa, A mother church, which has one or more subordinate chapels. Cowell, ed. 1727.

Plebanatus, A rural dean, because the deaneries were commonly affixed to the plebanie or chief mother churches within such a district, at first commonly of ten parishes. But it is inferred from several authorities, that plebanus was not the usual title for every rural dean, but for such a dean in a country parish, exempt from the jurisdiction of the ordinary, who had not before the authority of a rural dean committed to him by the archbishop, to whom the church was immediately subject. Cowell, edit. 1727.

Pledge, (Plegius, may be derived from the Fr. pleger fidigue, as pledger æuumum, i. falsi jure pro aliquo, to be surety for a person; in the same figurigation is pledge, used by Glanvill, lib. 10. co. 5. and plegiatus for the act of suretyship in the interpreter of the Grand Coufian of Normandy, cap. 60. Plegi dictur peronum, quam obligant ad box, ad quod quis eis mittit, etc. &c. and the same book, cap. 69. 90. plegiatus is used in the same sense with Glanville; to obi plagi are used for pledge, Plegius. Pleg. Oculi. part. cap. 22. Charta de Forella. Th word plegius is used also for Frank-pledge sometimes, in the end of William the Conqueror's law, set out by Lambard, in his Archivum. fol. 125. in these words Omnium homo qui voluntueri faci, etc. in fit plegnas in regno, to obi plegias, fit quod offenderit, &c. and these are called capital pledges. Kitchin, fol. 11. See Co. 4. Inf. fol. 180.

When writs were delivered to the sheriff to be by his return into C. B. he was obliged before the return thereof to take pledges of prosecution, which when the distance was considerable, were real an responsible persons, and answerable for these amends. But they being now so inconsiderable, there as only formal pledges entered, viz. John Doe and Richar Rex. But there is a difference in debt and in trespass for in trespass the attachment of the goods is in the hands, and because the defendant is thereby hurt, there fore the writ commits the sheriff to take pledges before he executes the process. But in debt they begin with a summons, and so the defendant is not hurt in the first instance, and therefore there is no command in the writ to the sheriff to take pledges, but unless he does, that is not a sufficient authority from the return to warrant further process, unless pledges are put in above, as in R. they always do on the bill. The reason why pledge were not taken in Chancery, but committed to the sheriff, was, that he living in the county was suppos'd to know who were sufficient security, and being to levy amercement afterward, they were to take ample security for it. See G. Hylton, C. 6. 4.

Pledges in flatrate merchant shall be answerable if it principal be insufficient, Stat. de Mercator. 11 Ed. 1. Poor plaintiffs not to find pledges, St. Wall. 12 Ed. But to give caution per fidem, ibid.

Pledges may be bound as principal debtors, Stat. de Mercator. 13 Ed. 1. fol. 3.
PLE

Fines to be taken in preference of pledges, 38 Ed. 3, 1731, 6. 3. 1. To see 16 Vin. Atr. tit. Pledge.

Pledge or Pledgor, (French pléger, Latin fidem). For the security of the money lent, and for the pledge to be taken and delivered to his agents, if the debtor fails to appear, the pledge shall require the confable and marshal to deliver his pledge, and to discharge them of their legory; and the confable and marshal shall have leave of the King to acquire his pledge, after that the applicant has come in his lift, C. Ca. ed. 1727.

Pledging. In cases of chancery and chancels are delivered security for money lent, and by such pledging the pawnbroker hath more than the naked poiffession in the nature of a bailment; for he hath the property and interest in the thing itself; and by the better opinions, shall have a reasonable use of it, so that it be without damage to the pledgee. D. and S. 173. 1 Ed. 358, 673. Owen 124, 2 Salt. 522.

If a man pledge goods to B. and they are stolen, B. shall not answer for them, because he hath a property in them; and his custody is but a consequent of that property; and therefore he doth undertake to keep them in his own; for a man that undertakes to secure what is his master's is bound to keep them at all adventures, since he right owner might possibly defend them with his life; and where a man is only obliged to keep them as his own, an unavoidable accident is to be imputed to him. Co. a. 89. a. 3 Jul. 108. 4 Co. 83. Palm. 531. Owen 124, 2 Salt. 522. C. Jur. 244. 1 Bull. 29, 20. 3 Rep. 181.

But if a man pledges goods, and tenders the money to the pawnbroker, and he refuses, this determines the unpledged property, and therefore if after such tender the goods are stolen, the bailor shall have satisfaction made to him in an action of trespass; for a tender and a reful of the goods amount to a payment; because the other man could not again come to his own, since the money is over the value lent. C. Jur. 243. Yelv. 79. 1 Bull. 29. Br. Bailment 7. 1 Rep. 129. 2 Salt. 89.

And though the borrower tenders the money, and ren- dens the goods in an action of trespass, yet the pawn- broker may have an action of debt for his money; because though the security ceases, yet the debt remains, as much as the money lent is not paid back to the party whom it came. C. Jur. 243. Telv. 179. 1 Bull. 29. 31.

And if a man lends perifhable goods as a pledge, and say decay, yet the person to whom they are pledged, shall have an action of debt for his money, because the duty continues. Telv. 179. Co. Lit. 209.

These goods thus taken to pledge, cannot be forfeited by the pawnbroker for his offence, nor can they be taken in execution, nor attached, as they are real estate; and therefore they are not alienable, nor by confent forfeitable; because they cannot be forfeited without los and danger to the absolute owner; and all qualified poiffessors do take the property under the refraction to prefer the property of the right owner. Br. Attachment in 120. 10.

A man pledge goods, and after is attained of fe- nor, the King shall not have the goods without paying the funeral for which they were pledged; for the alteration of the general property doth not alter the special property in the pawnbroker. 2 H. 7, 1 Bull. 29.

If a man pledge goods, and then is outlawed, he cannot redeem them as soon as the absolute property of him in the King's; but if the outlawry is reversed, then the outlawed person is reinstated in his property as if there had been no outlawry, and therefore may redeem them, 1 Bull. 29.

If the money be not paid at the day, the property is absolute at law, but till the right owner has his redemption in equity, as in case of a mortgage. C. Lit. 105. 166.

One pawned jewels to A. who signed a writing that they were to be redeemed in twelve months; otherwise the 120. last lent they were to be as bought and sold; and within a short time after delivers over the jewels, together with some plate of his own to B. as a pledge for 200l.

afterwards A. borrowed 38l. and 50 l. of B. on promis- toy notes, to be repaid on demand; B. by his anwser in Chancery, infifted it was agreed that the pledge should be restored. In the meantime the notes, as for the money first lent, but could make no remonstrance by such promise or agreement; and though a redemption was decreed, yet it was on payment of all that was due to B. as well upon the notes as on the pawns; but the goods of A. which were pawned were to be first applied as far as the value of the notes would extend. 2 Vern. 177, 698, 699. Atr. Co. in Eq. 754.

In the old books they took the nature of a pledge to be, that it ought to be delivered at the same time that the money was lent; and if the goods were not delivered at the same time, in security of the money, they did not plead it as a pledge, but in the nature of a li- ence to execute it for the same. 5 Hen. 7, 31.

But byatter authorities it appears, that the pawn- broker hath a special property, though it be not delivered at the time of the money lent. 2 Leom. 30. Telv. 164.

As if A. be indebted to B. and delivers goods to C. in satisfaction for the debt of B., the property is thereby altered, and the right to the goods is vested in B. so it is where the goods are delivered to C. in satisfaction of the money of B. there B. hath a special property in them, and in these cases A. cannot countermand such delivery to C. or take the goods back again, because the property of these goods is vested in B. for here is a confederation to alter the property, and that is the debt due to B. but that does not. The party may possibly revoke before the poiffession be vested in C. himself, for ex. nudo pacto non uritur aitio: for there is no confederation to found an action on a naked donation, but here there is a confederation to alter the property; so that upon the immediate delivery of the goods, the property is vested in B. 2 Leom. 31. 31. Telv. 164.

Plegitis acquisitandis, is a writ that lies for a fore- try against him for whom he is foretry, if he pay not the money at the day. F. N. B. 2d. 137. Regift. of Writts, fol. 158. To see 16 Vin. Atr. 400.

Planta fejusfacitura, A forfeiture of all that one hath. See Forfeiture.

Pleantor, is an abstract of the adjective plenus, and is used in the Common law in matter of the benefit, and where a church is full of an incumbent, or where a sort and vacation are direct contraries. Staunf. Prag. cap. 8. fol. 32. Wofm. 2, cap. 5. Inflation is a good plenarity against a common pernon, but not against the King without induction. Co. on Lit. fol. 344. See Abusus Tom. Defunctionem.

Pleure administrativus, Is a plea pleaded by an executor or administrator, where they have administered the deceased's estate faithfully and justly before the action brought against them. On pleure administrativus pleaded by an executor, if it be proved that he hath goods in his hands which were the testator's, he may give in evidence that he hath paid to the value of his money, and need not plead it to the full to prove that the executor before the action had paid the money in equal degree with that demanded by the plaintiff, he may plead fully administered generally, and give the special matter in evidence. 2 Lill. Art. 330. And where a testator or in- testate was indebted to the executor or administrator, upon bond, they may plead pleure administrativus, and give their own bonds in evidence against any other bond; so likewise upon an indebitatus, having the privi- lige of paying themselves first. Ibid. Pleure admini- strativus is no plea where an executor, &c. is sued in the debt and denies, because he is charged for his own oc- cupation, in equity. And if pleure administrativus was pleaded, omitting the words, 'and that he hath not any other goods or chattels of the testator, nor had on the day of exhibiting the bill aforesaid, or at any time after, &c.' it is naught on a demurrer, and not helped by verdict. C. Jur. ed. 172. 3 Leg. 28. Where the executor, &c. is to them specially, how he hath administered the goods. Ayl. 48. See Cerrutti. 6 O. Pluton.
Richard C devise was attainted of high treason, for putting poison into a pot of potion boiling in the bishop of Rich- 

Gluttony, is an old English word, signifying sometimes
the estate with the habit and quality of the land, and
extends to rent-chargex, and to a possibility of dower. 1
Instit. fol. 221. b.

Plowke, (mentioned in R. 3. cap. 8.) A kind of
court of common pleas in the reign of Edward I.

Pluralism, (Eclesiastica eratitate) Was anciently
a penny paid to the church for every plowland. Mon. 
Asgr. i. par. f. 296.

Plow-note, A right of tenants to take wood to
repair plough, carts and hawrds; and for making rakes, for
f-font and hedges.

Plow-land, Is the fame with a hide of land; and
a hide or plough-land, is it said, doth not contain any cer-
tain quantity of acres; but a plough-land, in respect of
repairing the highway is setted at 50d. a year by the
flat. 7. & 11. 3. c. 29.

Plow-filter, In former times was money paid by
some tenants, in lieu of service to plow the lord's lands.

Plurality, (Pluralitas, mentioned in flat. 21 Hen. 8.
cap. 13.) The having more than one, chiefly applied to
some churchesmen, who have two, three or more
benefices. Selden, in his Titles of Honour, fol. 587; men-
tions this subject. See Institute. edit. 1727, C. 11.

Plurality of livings, Is where the same person obtains
two or more spiritual preferments, with cure of souls; in
which case the first is void ipso facto, and the patron
can prefer to it, if the clerk be not qualified by dis-
penation, &c. for the law enjoins reliance, and it is
impossible that the same person can reside in two places as
clerk, at the same time. Pam. Common. 94. By the
Canon law no ecclesiastical person can hold two benefices
with a cure simul et simul, but that upon taking the second
benefice, the first is void; but the pope by dispensation did
dispense with that law; and at first every bishop had
power to grant dispensations for pluralities, till it was
abolished by the council, held ann. 1215, and this
confutation was received till the statute 21 H. 8. c. 12.
Mort 119. 2 Nofj. Abr. 1271. The flat. 21 H. 8.
ordains, That if any person having one benefice with cure,
of the yearly value of 8l. or above, in the King's books,
accepts of another benefice with cure, and is instituted
and inducted, then the first shall be void: So that there
must be a residue of a benefice within the statute; and a plurality by
the Canon law. 2 Latro. 1506. The power of granting
dispensations to hold two benefices with cure, &c. is
vested in the King by the aforesaid statute: and it has been
judged, that a dispensation is not necessarly for a plurality,
where the King presents his chaplain to a second benefice
without a dispensation, a preventum temporis, which
the King hath power to grant as supreme ordinary.
But if such a chaplain be presented to a second benefice
by a subjule, he must have a dispensation before he is
instituted to it. 1 Salic. 161. The archbishop's dispensa-
tion and King's confirmation, regularly are necessarly to
hold pluralities; and the statute 21 H. 8. ought to be
confidered strictly, because it introduces non-refulence and
plurality of benefices against the Common law. 2 Nof. 
Cent. 272. See Presentation, Residence.

Plurites, Is a writ that goeth out in the third place,
after two former writs have had no effect; for first the
original captio sibiue, and if that feed not, then goeth out
the second, and if that also fail, then the plurites.
See Nof. Bruf. fol. 33. in the writ de excom. capitis.
See in what diversity of causes it is used in the table of
the Original Register.

Plymouth, Power given to bring the river-water to
the town, 27 Eliz. c. 20.

Pong of soul, Is half a sack. 3 Inst. fol. 96. 
Point, or the term of a Foreign point or cut-work not
to be held in England, or exported or imported, 13 & 14
Car. 2. c. 13. English point or cut-work may be ex-
ported duty-free. 11 & 12 Will. 3. c. 3. fell. 15.

Poisoning, Is wilful murder by flat. 1 Ed. 6. c. 12.
fell. 13. Persons poisoned in one county dying in another,
the indictment found where the death happeneth shall be
good, 2 & 3 Ed. 6. c. 24.
POO

POO

Peltarior. See Peltmonwy.

Pemor, (Polemum,) is where a man marries two or more widows, or more husbands at the same time; when the body of the first wife or husband may be said to be injured by the second marriage while either are living. 3 Inst. 88. Wood's Inst. 363. See Bigamy.

Pendar, was a custom formerly to weary sick children with a greater labour, and to balance the scales with wheat-bread, or with any victual which they were willing to offer either to God or his saints, but always with some money, and by this the cure was performed. Act scelburium sancti nummi se pendarat.owell, edit. 1777.

Ponds. See Fish, Game, Parks and ponds, Waterfalls.

Pondus, Punage, Which duty with that of tannage, was anciently paid to the King according to the weight and measure of merchants goods. Cowell, edit. 1777.

Pondus Regis, The standard-weight appointed by our ancient Kings. Id. ib.

Pot. If a pleasen be fired by writ out of Chancery, then if the plaintiff or defendant will remove that place out of the county into the Common Pleas or King's Bench, he ought to sue a writ out of the Chancery, which is called a pagan. New Nat. Brevo. 160.

Pounf in alias, Is a writ founded upon the factum of two or more justices of the peace in the name of Articulus personarum, cap. 9, which factums doth shew what persons or bodies ought to be impannel upon alias and juries, and what not; as also what number, which fee in Reg. Orig. fol. 17. F. N. B. fol. 105.

Pounnun in bailiuit, Is a writ, commanding a prisoner to be bailed in certain bailable. Reg. Orig. fol. 132.

Poundum scilium ad exceptionem, Is a writ, whereby the King willthe justices, according to the statute of Writs. 2, cap. 27, to put their seals to exceptions laid in by the defendant against the plaintiff's declarations, or against the evidence, verdict, or other proceedings before the justices. See Ch. at p. 26.

Pone per habitum, Is a writ commanding the sheriff to take surety of one for his appearance at a day assigned. Of this fee five fore in the table of the Register Judicial, verbo Pone per vadium.

Ponarge. (Ponagium,) is a contribution towards the building of bridges. Writs. 2, cap. 27. It may also signify tall taken to this purpose of thole that stack over bridges.

Stat. 1 Hen. 8. cap. 9. 22 Hen. 8, cap. 5. and 39 Eliz. cap. 24. Per pontagium clamant et propter operis pontium. Plur. in loc. eopta Crispian, 14 Hen. 7. This was accounted one of the three public charges from which no portion of what degree fore was exempted, viz. from the charge of an expedition to the wars, from building of castles, and from building and repairing bridges: And this was called Trinoda necessest, from which Iugulatus tells us, Nulli sullum lazari. And Mr. Selten in His Notes upon Eulogium, writes, That quod est ecqesion, absolute of manum immunes erat. And Matt. Paris, anno 1244. tells us, that in all the grants of privileges to monasteries, these three things were always excepted, proper publicum regni utilitarum, that the people might the better refit the enemy. Cowell, ed. 1727.

Pondurius republica, Is a writ directed to the sherif, or willing him to charge one or more, to repair a bridge, or to whom it belongeth. Reg. Orig. fol. 173.

POOLS, Cutting their dews, what to forfeit, 37 Hen. 8. c. 6.

POY. It is not true, what some people imagined, that the Common law of England made no provision for the poor: The Mirror tells the contrary; but how it really does not appear. Per Fyther justice. Bar. Rep. 420.

None shall give alms to a beggar able to work, 23 Ed. 3. c. 7. Poor persons that are impotent, shall abide in the same town, or in the next within the hundred that is able to maintain them, 12 Rist. 2. c. 7. Impropriators shall be obliged to distribute a yearly sum to the poor paupers, 15 Rist. 2. c. 6. 4 Hen. 4. c. 12. Provision to be made for the impotent poor, 19 Ed. 7. c. 12. 22 H. 8. c. 12. 27 H. 8. c. 25. 1 Ed. 6. c. 3. 3 Ed. 6. w. 16. 5 Ed. 6. Ed. 6. c. 2. 2 & 3 P. & M. c. 5. 5 Ed. 3. c. 4. 10 El. 4. c. 3. 35 El. 4. c. 25. 39 El. 4. c. 3.

1. Statutes concerning the poor.
2. Of appointing overseers; their duty; and of compelling them to account.
3. Of the poor rate, who, and what shall be liable thereunto; and of taxing others in aid of it.
4. Of the remedies for recovering rates; and of setting aside rates.
5. Of relieving, and ordering mantuaments for the poor.
6. Of parents and children being obliged to maintain each other.

1. Statutes concerning the poor.

Stat. 43 Eliz. cap. 2. sect. 1. It be enabled by the authority of the present parliament, That the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parishes and parishes, to be nominated yearly in Easter week, or within one month after Easter, and under the hand and seal of two or more justices of the peace in the name of the says shall be of the commonwealth, dwelling in the same parish or division where the same parishes doth lie, shall be called overseers of the poor of the same parish: And they, or the greater part of them, shall take order from time to time, by and with the consent of two or more of such justices of peace, as is aforesaid, for fitting to work the children of such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children: and also for fitting to work all such persons, married or unmarried, having no means to maintain them, to use no ordinary and daily trade of life to get their living by: And aforesaid, for putting out such children, and not able to work, and also for the putting out such children to be apprentices to be, whosoever, to the ability of the same parish; and to do and execute all other things, as well for the discharging of the said fock, or otherwise concerning the premises, as to them shall seem convenient.

Sect. 2. Which said churchwardens and overseers so to be nominated, or such of them as shall not be by sickness, or other ill justify to be allowed by two such justices of peace or more, as is aforesaid, shall meet together at the least once every month, in the church of the said parish, upon the Sunday in the afternoon, after Divine service, there to consider of some good course to be taken, and for some meet order to be fett down in the premises, and shall within four days after the end of their year, and after other things respecting their said office, and the sum or sums of money as shall be in their hands, and shall pay and deliver over to the said churchwardens and overseers newly nominated and appointed, as aforesaid; upon pain that every one of them abettling them without lawful cause, as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, made
made by and with the assent of the said justices of peace, or any two of them before-mentioned, to forfeit for every such default of absence or negligence 20 l.

Sect. 3. And it is hereby enacted, that if such justices of peace do perceive, that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid, then the said two justices shall and may tax, rate, and asfess, as aforesaid, any other of other parishes, or out of any parish within the hundred, or within the county, or shall, at their discretion, or the greater number of them, shall rate and asfess, as aforesaid, any other of other parishes, or out of any parish within the county for the purposes aforesaid, as in their discretion shall seem fit.

Sect. 4. And that it shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any such two justices of the peace, as is aforesaid, to levy as well the said sums of money, and all arrearages, of every one that shall refuse to contribute according as they shall be asfessed, by diftreffes and fale of the offender's goods, as the sums of money shall be due and owing upon any account to be made, as aforesaid, rendering in such manner as the said justices shall direct, in the overplus: And in default of such diftreffes, it shall be lawful for any two justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize, until payment of the said sums, arrearages and flocks. And the said justices of peace, or any of them, to send to the house of correception, or common gaol, such as shall not employ themselves to work, being appointed thereto as aforesaid; and also any such two justices of peace to commit to the said prison every one of the said churchwardens and overseers which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much, as upon the said account shall be remaining in his hands.

Sect. 5. Enact., That churchwardens and overseers may bind poor children apprentices, and that they may by leave of the lord of the manor build houfes on the waste for the poor to inhabit, but not to be afterwards used by the inmates, nor any of any others, on the pains contained in the 31 Eliz.

Sect. 6. Provided always, That if any perfon or persons shall find themselves griev'd with any feds or tax, or other aét done by the said churchwardens or other persons, or by the said justices of peace; that then it shall be lawful for the justices of peace at their general quarter-feftions, or the greater number of them, to take such order therein, as to them shall be thought conuenient; and the fame to conclude and bind all the said parties.

Sect. 7. Enact., That the father and grandfather, and the mother and grandmother, and the children of every poor person, or any of them, no other being present, it being a poor person not able to work, being of a sufficient abihty, fhall at their charges relieve and maintain every such poor person in that manner, and according to that rate, as by the justifes of peace of that county where such deficient persons dwell, or the greater number of them; or any other of their charges, shall be asfessed upon pain that every one of them shall forfeit 20 l. for every month which they shall fail therein.

Sect. 8. Mayors, &c. of corporations being justifes of peace, shall have the fame authority within their limits, as justifes of peace of the county. And every alderman of London shall have the power for much, as is appointed and allowed by this aët to be done by or two justifes of peace of any county within this realm.

Sect. 9. And be it also enacted, That if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city, town or place corporate, and part without, that then as well the justices of peace of every county, as also the head officers of such city, town or place corporate, shall deal and administer the law in the same, as far as may concern the said parish as lies within their liberties, and not any farther.

And every of them respectively within their several limits, wards and jurisdictions, to execute the ordinances before-mentioned concerning the nomination of overseers, the content of binding apprentices, the giving warrant to bring their goods to market, the supporting of churchwardens and overseers, and the committing to prison, as if it shall happen them to be within the county of the town or place corporate, and one other, before the said justices of peace, or any such two of them, as is aforesaid.

Sect. 10. For not appointing overseers yearly, every justice, &c. of the division shall forfeit 5 l.

Sect. 11. The penalties and forfitures in this aët shall be employed to the use of the poor of the fame parish, by diftreffes and fale, or in default thereof, the offender shall be committed to prison, there to remain without bail or mainprize, till the said forfitures shall be satisfied and paid.

Sect. 12. And be it further enacted by the authority aforesaid, That the justices of peace of every county or place corporate, or the more part of them, in their general feffions to be holden next: after the feast of Eliz. next, and so yearly as often as they shall think meet, shall rate every parish to a weekly sum of money as they shall think convenient, fo as no parish be rated above the sum of 6 d. nor under the sum of one halfpenny, weekly to be paid, and as the total sum of such taxation of the parishes in every county amount not above the rate of 2 d. for every parish within the said county.

Which sums for taxed shall be yearly asfessed by the agreement of the parishioners within themselves, or in default thereof, by the churchwardens and petty confables of the same parish, or the more part of them, or in default of their agreement, by order of such justice or justices of peace as shall dwell in the same parish, or (if none be there dwelling) in the parishes next adjoining. And if any person or persons shall be so negligent, or neglect to pay any such portion of money so taxed, it shall be lawful for the said churchwardens and confables, or any of them, or in default thereof, for any justice of the said liberty, to levy the same by diftreffes and fale of the goods of the party so refusing or neglecting, rendering to the party the overplus. And in default of further steps, it shall be lawful to any justice of that limit to commit such person to the said prison, there to abide without bail or mainprize till he have paid the fame.

Sect. 13. Provided always, That whereas the ifland of Paulinf in the county of Eliz. being environed with the sea, and having a chapel or eafe for the inhabitants thereof, and being always in a state of danger, or out of the reach of the church wardens of the same, and the fame are situated within divers parishes far distant from the said ifland; Be it therefore enacted by the authority aforesaid, that the said justices of peace shall nominate and appoint inhabitants within the said ifland, to be overseers for the poor people dwelling within the said ifland, and that both the said justices and the said overseers shall have the same power and authority to all intents, confederations and purposes, for the execution of the parts, and articles of this aët, and shall be subject to the fame pains and forfeitures; and likewise, that the inhabitants and occupiers of lands there shall be liable to be chargeable to the same payments and exercises and orders, in such manner and form as if the said ifland were a parish. In consideration whereof, neither the said inhabitants, or occupiers of land within the said ifland, shall not be compelled to contribute towards the relief of the poor of those parishes wherein their house
over, and the reasons of their taking relief examined, and a new list made and entred of such persons as they shall think fit and allow to receive collection; and no other person shall be allowed to receive collection at the charge of the parich, but by authority under the hand of one justice residing within such parich, or (if none be there dwelling) of such persons or body of persons as shall be chosen by the order of the justices in feisions, except in cases of pestilential diseases, plague or small pox, for such families as shall be therewith infected.

Stat. 8 & 9 W. 3. c. 30. feet. 2. Every person who shall be upon the collection, and receive relief of any person charged with' the charge of the poor, or who shall be the party of any parich, or other place of publick meeting, or of any persons cohabiting in the same house, such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent, shall upon the shoulder of the fleece of the uppermost garment, in an open and visible manner, wear a large Roman P, together with the first letter of the name of the parich or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear such badge, or mark, or shall be found, having his allowance to be abridged, suspended or withdrawn, or otherwise by committing him to the house of correction, to be whipped, and kept to hard labour, or exceeding 21 days, and if any churchwarden or overseer shall relieve such poor person, not wearing such badge, and be thereof convicted of the same, one or before one justice, he shall forfeit 20s. by distress, half to the informer, and half to the poor.

Stat. 9 Geo. 1. c. 8. feet. 1. Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children, upon the charge of the parich, although not to receive any benefit to themselves, or any other estate which should ease the parich of their charge, in whole or part; it shall be lawful for the churchwardens or overseers, where any such wife, child or children shall be so left, on application to, and by warrant or order of two justices, to take and receive what is part of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two justices shall order and direct, towards the discharge of the parich or place where such wife, child or children are left, for the bringing up and providing for such wife, child or children; which warrant or order being confirmed at any general feisions, it shall be lawful for the justices there, to make an order for the churchwardens or overseers, to dispence of such goods or chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said feisions, of his or her lands and tenements for the purposes aforesaid.

Sec. 2. And the said churchwardens and overseers shall be accountable to the justices at the quarter-seisions for all such money as they shall receive.

9 Geo. 1. c. 7. feet. 1. enacts, That no justice of peace shall order relief to any poor person dwelling in any parich till oath made of some reasonable cause for it, and that he had applied to the parishioners at vestry, or some publick meeting, or to two overseers of the poor, and was refused, and still summoned of two overseers of the poor to shew cause.

Sec. 2. And any person ordered to be relieved shall be entered in the parish books, to be relieved so long as the cause for relief continues, and no longer. And if any parish officer (except upon sudden and emergent occasions) doth give any relief to any person not ordered to be so given to any person not registered, he shall forfeit 5l. to be levied by distress and sale, by warrant of two justices, to be applied to the use of the poor of the said parich by direction of such justices.

Sec. 4. It shall be lawful for the churchwardens and overseers, in any parish, township, or place, with the consent
content of the major part of the parishioners or inhabitants in the several parishes, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 37. sect. 1. Whereas great inconveniencies do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as frequently does arise, and shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.

Stat. 17 Geo. 2. cap. 3, sect. 1. Whereas great inconveniences do often arise in cities, towns, corporal bodies, or societies, with the consent of the major part of the parishioners or inhabitants of the said parish, townships or places, as shall be put out of the collection book, and not to be intituled to have relief.
ace and by virtue thereof, shall extend to, or be deemed continued to extend to, or in any wife affect or determine the bounds of any parishes or parochial places, or to any intent or purposes, other than for the purpose of rating and assessing such lands, tenements and hereditaments to the relief of the poor, and to all other parochial rates within such parochial place or to which they shall be allotted as aforesaid.

Stat. 17. sec. 9. and 10. Whereas by reason of some defect in an act of parliament made in the forty-third year of the reign of the late Queen Elizabeth, intitled, An act for the relief of the poor, the money raised or that purpose is liable to be misapplied, and there is seen great difficulty and delay in raling of the funds necessary for the support of the poor, whereas it is manifest that from and after the first day of July, 1744, the churchwardens and overseers of the poor shall yearly and every year, within fourteen days after their overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers, a full, true and perfect account in writing, fairly entered in a book, ten, to be kept for that purpose, and signed by the aforesaid churchwardens and overseers, hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated and assessed and not received, and also of all goods, chattels, stock and materials that shall be in their hands, or under their control, to be written, and of all monies paid by such churchwardens and overseers to accounting, and of all other things concerning their said office, and shall also pay and deliver over all sums of money, goods, chattels and other things as shall be in their hands, unto such succeeding overseers of the poor; which funds shall be verified by oath, or by the affixing of persons called Quakers, before one or more of his Majesty's officers of the peace, which said oath or affirmation such officers or justices is and are hereby authorized and required to administer, and to sign and attest the said oath, or the act of the said officers or justices, and the copy of the said oath or affirmation of persons, or the book or books or books of such as shall be carefully preserved by the churchwardens and overseers, or one of them, in some publick or other place in every parish, township or place; and they shall and are hereby required to permit any person then affecting or liable to be affixed to insert the same at all reasonable times, paying such expense for such inspection, and shall upon demand forthwith give such copies of the same, or any part thereof, to such person, paying at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number.

Stat. 2. And it is hereby further enacted, That in case any churchwardens and overseers of the poor, or any of them, shall refuse or neglect to make and yield up such account verified as aforesaid, within the time herein before limited or appointed, or shall refuse or neglect to pay and deliver over such sums or sums of money, goods, chattels and other things in their hands, as by this act is directed, shall remove as aforesaid, be fined before such removal deliver over to some churchwarden or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money and other things concerning his office, under the like penalties as are inflicted by this act on any other person after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall within forty days after his decease deliver over all things concerning his office to some churchwarden or other overseer of the same place, and shall pay out of the affiox left by such overseer all sums of money remaining due which he received by virtue of his said office, before any of his other debts are paid and satisfied.

Stat. 4. And in case any person or persons find him, her or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put under the charge of such rate or assessment, they shall, before they shall bring his Majesty's justices of the peace; it shall and may be lawful for such person or persons in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, townhip or place, to appeal to the next general or quarter-feelions of the peace for the county, riding, division, corporation or franchise, where such parish, township or place lies; and the justices of the peace there assembled are hereby authorized and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter-feelions, and then and there finally hear and determine the same; and the said justices may award and order to the party for whom such appeal shall be determined reasonable costs, in the same manner that they are empowered to do in case of appeals concerning the settlement of the poor, by an act of parliament in the twenty and ninth years of King William the Third, intituled, An act for applying some defects in the laws for relieving the poor of this kingdom.

Stat. 5. Provided always, That in all corporations or franchises, where have not four justices of the peace, it shall and may be lawful for any person or persons in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter-feelions of the peace for the county, riding or division wherein such corporation or franchise is situate.

Stat. 6. And whereas it hath been held, that upon appeals from rates and assessments, the justices of the peace may not only quash the old rates, but make new rates and assessments from which no appeal can be had; and it is enacted by the authority aforesaid, That upon all appeals from rates and assessments the justices of the peace (where they shall for the first time give relief) shall be hereby required to amend the same in such manner only, as shall be necessary for giving such relief, without altering such rates or assessments, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate it shall be found necessary to quash or set aside the same; then and every such rate, the said justice shall and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly.

Stat. 7. And for the more effectual levying money aforesaid for the relief of the poor, it be enacted by the authority aforesaid, That the goods of any person alledged and refusing to pay, may be levied by warrant of distress not only in the place for which such assessment was made, but in any other place within the said county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct, (which oath shall be verified under the hand of such justice on the said warrant) such goods may be levied in such other county or precinct by virtue of such other warrant and certificate; and if any person shall find him or herself aggrieved by such distresses as aforesaid, shall and may be lawful for such person to appeal to the next general or quarter-feelions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same.
Sect. 8. And to prevent all vexatious actions against overfeers of the poor, be it enacted by the authority aforesaid, That where any distresses shall be made for any sum or sums of money justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the distress being thus made to be true, a treasurers, or overtreasurers, on account of any defect, or want of form in the warrant for the appointment of such overtreasurers, or in the rate or assessment, or in the warrant of distresses thereupon; nor shall the party or parties distraining be deemed a treasurers or overtreasurers * initia, on account of any irregularity which shall be afterwards done by the party or parties distraining; but the party or parties aggrieved by such irregularity, shall or may recover full satisfaction for the special damage, be, the or they shall have sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiff.

Sect. 9. Provided always, That where the plaintiff or plaintiffs shall recover in such action, be, the or they, shall be paid his, her or their full costs of suit, and have all the like remedies for the same as in other cafes of costs.

Sect. 10. Provided nevertheless, That no plaintiff or plaintiffs shall recover, by any action for any such irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, before such action brought.

Sect. 11. And in case any person or persons shall refuse to pay to such overtreasurers as aforesaid, any sum or sums of money due to them or they shall be legally rated or as aforesaid, shall and may be lawful to and for the succeeding overtreasurers, and they are hereby required to levy such arrears, and out of the money so levied to reimburse their predecessors all sums of money which they have expended for the use of the poor, and which are allowed to be due to them in their accounts as aforesaid.

Sect. 12. And whereas persons frequently remove out of parishes and places, without paying the rates aforesaid, and other persons do enter and occupy their houses or tenements part of the year, by reason whereof great sums are annually lost to such parishes and places; be it therefore enacted by the authority aforesaid, That where any person or persons shall come into or occupy any house, land, tenement or hereditament or other premises, out of or from which any other person aforesaid shall be removed, or which at the time of making such rate was empty or unoccupied, that then every person removing from, and every person so coming into or occupying such a house, shall be liable to pay to such rate the proportion to the time that such person occupied the same respectably, in the same manner, and under the like penalty of distresses, as if such person so removing had not removed, or such person so coming in or occupying had been originally rated and aforesaid, and which proportion in case of dispute shall be ascertained by any two or more of his Majely's judges of the peace.

Sect. 13. And be it further enacted by the authority aforesaid, That true and just copies of all rates and aforesaid, hereafter to be made for the relief of the poor, be fairly wrote and entered in a book or books to be provided for that purpose by the churchwardens, and overseers of the poor of every parish, township or place, who shall take care that such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all and every such book or books shall be carefully preserved by the churchwardens, and overseers of the poor for the time being, or one of them, in some public or other place in every such parish, township or place, whereunto all persons aforesaid, or liable to be aforesaid, may freely resort, and shall be delivered over from time to time to the new and succeeding churchwardens of the said parish, or place, or to such other persons as by the authority aforesaid, shall be appointed for the purpose of discharging the said duties and directions of this act, or any of them, when no penalty is before provided by this act, or shall aforesaid contrary thereto; every such churchwarden, overseer of the poor, or other officer so offending in the premises, shall for every such offence, on such thereof made within two years when committed, and before any two or more of his Majely's judges of the peace, be punished for the use of the poor of such parish, township or place, a sum not exceeding five pounds, or, if they be twenty twenty shillings, to be levied by distress and sale of the offender's goods, by warrant from such churchwardens, which sum shall be paid to (name) the churchwarden or overseer of the poor of such parish, township or place, for the purpose aforesaid.

Sect. 15. And be it further enacted by the authority aforesaid, That overtreasurers of the poor within every township or place, where there are no churchwardens, shall perform and shall be bound to perform all the duties and powers and authorities concerning the relief of the poor, and other matters and things relating to the poor, as churchwardens and overseers of the poor may do, perform and execute by this act, or any former statute concerning the poor, and shall lose, forfeit and suffer all such fines and penalties for non-performance thereof, as churchwardens and overseers of the poor are liable to, by virtue of this or any former statute concerning the poor.

2. Of appointing overtreasurers; their duty; and of compelling them to account.

Churchwardens of every parish [See theflat. 43 Eliz. c. 2. sect. 1, in the preceding division of this title.—The] judicatures of peace, by the general words of this statute, have power to name overtreasurers in all parishes; and the court was of opinion, that it must extend as well to extraprochial places as to all parishes generally, and that no subsequent words shall controul the general words in the enacting part; and certainly all the poor aforesaid shall be confined to extend to such places as well as to other parishes, where they are within the same parish, and shall be subject to the control of the judicatures of peace.

Most of the forests in England are extraprochial, and so is Christ-church in Oxford, but they ought to maintain their own poor; therefore a peremptory mandamus was granted to the judicatures of peace to chuse overtreasurers in the town of Rufford, being an extraprochial place. 3 Mod. 39. Poph. 7 Geo. The King v. the inhabitants of Rufford. The town of this place might be a township or village. See Strat. Rep. 1003. 1071. 1143.

Four, three or two] Upon a motion to quash an indictment against B. for that he, with four others, was being appointed overtreasurers of the poor of such a parish, refused to take upon him that office, &c. It was objected, that the statute directs the nomination in but of four, and not of the aforesaid as much with the churchwardens. And per Parker Cb. J. That is very true, though in many places more are appointed than four; for the aforesaid four, three or two shall be nominated of the inhabitants, at the discretion of the justices (feil.) they may nominate four, three or two; in most parishes about London there are more than four, wherefore he said we need not determine upon this point; but the indictment was quashed for another fault. MS. Cofris. Trin. 11 Ann. B. R. Anon. 16 Vin. Abr. 415.

But in Hill, term 3 Geo. 2. it was determined by the court of King's Bench, that no greater number than four can be appointed. See Barrow's Rep. 445—453.

Substantial holdoulers that] The appointment of overtreasurers must fill them substantial holdoulers. Strat. 1761.

It was moved for a mandamus to J. H. and J. T. justices of peace in the county of Dorset, ut. to nominate two substantial holdoulers to be overtreasurers of the poor of the parish of Charsfield in the county of Dorset upon
upon this statute; and there was an affidavit, that at a meeting of the parish after Easter last, one John B. and Mary F. were elected overseers, and at a meeting of the justices they approved of Mr. B. and refused the woman, while the justices had voted to hold her, and the other overseers refusing to nominate any other, the justices approved the said B. only. Per Powell. A woman is not to be an overseer of the poor; and there can be no custom in a parish to put her in because of her being a housekeeper; because this is an officer created by act of parliament. Per Parker Ch. J. The position is to be by the justices, and it seems the overseers are to continue but one year. The parish here was obstinate in not having another instead of the woman, and the justices should have nominated one of the old ones, since they were so few; but (because the justices had done well in approving of the woman) he directed that they should apply to the justices to have another nominated, and if they refused, then to apply to the court for a mandamus the next term. MS. Cafes, Pash. 10 Ann. B. R. 16 Vin. Abr. 415.

A citizen of London that lived in the country in the summer, was chose overseer of the poor of the parish; the court seemed to misconstrue such a choice of one that was resident there only for some part of the summer, and was actually an inhabitant of another parish in London. Cuth. 161. Mich. 2 W. 8. M. B. R. The King v. Moor. [This in Easter term, or within six month after Easter.] The court seemed to think an appointment of overseers on a Sunday, to be a good appointment; for it may be in Easter week, and this is the first day of the week. Fadly 4.

An appointment of overseers is good, tho' not made within one month after Easter. Stran. 1123.

And many other in England and Wales] See Bell. 42 S. 14 Car. 2. c. 12. sect. 21. in the preceding division of this title. In trespas a special verdict found this statute, and that the parishes of Kenilworth, in the county of Warwick (not being any of the counties named in this statute) is a large parish, having two townships, but it is not found that it is so large that parochial distribution cannot be made; and the question was, if the county of Warwick, not being named in the statute, shall be taken within the general words, (and divers other counties,) and Hopkins sergeant cited a case to be adjudged in C. B. two or three years ago, that the statute did not extend to other counties than those which are expressly named in this title. The court would see the said precedent before they gave judgment; by which adjournatur. 2 Lev. 142. Trin. 27 Car. 2. B. R. Stillingf. v. Norton. But afterwards in Mich. term it was adjudged, that this statute did not extend to any other counties, but only to those that are named expressly in the statute. Ibid. Prem. Rep. 401. p. 227. Trin. 1675. S. C. by name of Stillingf. v. Norton, where Hale Ch. J. said, by the words it seems to be intended for all counties in England, because the words are (or other counties) but Sergeant Hopkins cited the judgment in C. B. in case of Willes and Benner, between Chipping Campden and Broad Campden, Gloucestershire, where it was decided this statute extended to no counties but those named. Ibid. 442. Mich. 1675. S. C. The court gave judgment for the defendant, because though it was found to be a large parish, yet it was not found to be so big that by reason of the largeness thereof they could not reap the benefit of the act of 43 Eliz. according to the statute, and for that reason the court gave judgment, and for did not positively rule, that no other counties were within the act but those named; but Hale did now strongly incline that no other counties were within the act, and said the inconvenience would be very great; for by that means the poor boroughs would be charged with poor, and the will of the good inhabitants, and perhaps no poor, would be at no charge at all. But 2 Salk. 486. pl. 44. in marg. there is a note, That in the case of the inhabitants of Stokeland and Dolting, Hill 1 Ann. B. B. it was adjudged by Parker Ch. J. and the whole court, That by virtue of this act the justices may exercise the powers given by 43 Eliz. and this act in all extrarapochial places containing more houses than one, as to come under the denomination of a vil or township. And in the case of Hinam and Churcham parishes in Gloucestershire, Hill 1738. Lee Ch. J. cited the said case of Stokeland and Dolting, in which he said, it was held, that this statute extended by equity to all the parishes in England, and that it was so held upon great deliberation. 16 Vin. Abr. 421.

Every poor, needy, impotent and lame person] This statute relates only to the maintenance of poor and impotent persons, and not to bards, who are provided for by other statutes. Per Seit. 73. Hill. 5 Ann. B. R. in case of The parish of Budworth v. The township of Duns-ley. [Two or three overseers of the poor] The court held, that this clause plainly extends to towns and villages in extrarapochial places as well as within parishes; for the law makers had in view the inconvenience, that some towns and villages would have the benefit of 43 Eliz. This statute is of (towns, &c. in counties) and not (in parishes); and towns and villages in extrarapochial places are plainly within the words, though not directly within the view of the act; and though there be not officers appointed to this extrarapochial places, yet the justices ought to do it upon complaint. MS. Cafes, Hill 11 Ann. 16 Vin. Abr. 421.

Where the parish is not large and consisting of several townships, fo as the 43 Eliz. may be of benefit to them, the justices ought not to appoint particular overseers according to this statute. MS. Cafes, Trin. 11 Ann. B. R. The Queen v. The inhabitants of Doltig. 16 Vin. Abr. 421.

As to the duty of the overseers of the poor, see flat. 43 Eliz. c. 2. sect. 2. 6, 11. and flat. 17 Geo. 2. c. 38. sect. 11. 13. 14. in the preceding division of this title. Make and yield up to such justices of peace a true and perfect account. See flat. 43 Eliz. c. 2. sect. 2. in the preceding division of this title. — This statute, by stating this account, cannot be delegated to any other. MS. Cafes, Pash. 9 Ann. B. R. in case of The Queen v. Turner & al. 16 Vin. Abr. 415.

Shall pay and deliver over] Mandamus to the justices, to grant a warrant for levying 30 l. 17s. 11d. being the balance of the last overseers of the poor's account in their hands. They return, that true it is there was such a balance, but that the vetty had ordered them to return it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one Tunst was so employed, and the balance en-trusted in fees, and that the overseers had engaged to pay Tunst 1s. 6d. out of the fees they had received to grant the warrant: And per curiam, There must go a peremptory mandamus, for the statute 43 Eliz. c. 2. says, the balance shall be paid over to the new overseers, under a penalty: And it is not in the power of the vetty to dispense with the statute. Stran. 952.

Neglect in the office. If an overseer does not provide for the poor, he is indiable; and if he relieves the poor when there is no necessity, it is a misdemeanor. MS. Cafes. Pash. 3 Ann. B. R. Tunst's case.

For every such default of absence or negligence 20 shillings] This penalty for not meeting in the church shall never be inflicted on the overseers of the poor of extrarapochial places, because they have no church to meet in. Per cur. & Maj. 40. Pash. 7 Geo. in case of The King v. The inhabitants of Rufford. If any of those officers be convicted of any of the penalties in this act; the other must levy it. MS. Cafes, Trin. 11 Ann. B. R. Anon. 16 Vin. Abr. 415.

To commit every one of the said churchwardens and overseers] See flat. 43 Eliz. c. 2. sect. 4. in the preceding division of this title. — If any of them are adjudged, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to disfrain them, and upon return thereof there may be a commitment. MS. Cafes, Pash. 9 Ann. B. R. The Queen v. Turner & al. 16 Vin. Abr. 415.

6 Q. The
The justices cannot commit an offender of the poor for bringing in an account to which they object, but they ought to hear it, and to strike out what is amis in it, and balance the account. [Es. Cafer, at Down offic- ees, Lent 1779. Cuming Ch. J. Haldane's cafe. 16 Pr. 297.]

The defendant being an overseer, was committed by two justices of peace by a warrant, which recited, that he had appeared before them, and being demanded to give a just and true account of all such monies as he had received and paid, he had only produced an account in gross of all his payments, and refused to give a particular account, or produce his books, &c., and they believing this to be no account according to this statute, and the defendant refusing to give any other account, therefore they commit him to be detained till he shall make a true account. And upon a habeas corpus he was here discharged. Parfons and overseers had no authority to commit in this manner by this statute, for that an account was confirited to have been rendered, &c. Show. 39 Legb. 4 W. & M. B. R. The King v. Carrock.

An order made at the Sessions relating to accounts of overseers of the poor was moved to be quashed, because it did not appear the accounts had been before two justices guaron um, and they cannot come per saltum to the sessions; and Salt. 533. was cited. On the other side it was said, that it appeared there was an allowance, for the appeal is said to be against the defulements and allowance thereof, which the court will prefixe was very small, and being in general, is not like the cafe in Salt. Which was said to be by two Justices without guaron um. Sed per curiam. It does not follow, that this was an allowance by two Justices, for the parish might do it; and therefore for want of jurisdiction this order must be quashed. Stran. 593.

3. Of the poor rate, who, and what shall be liable there- to; and of taxing alien parishes in aid of it.

By taxation of every inhabitant] See stat. 42 Eref. c. 2. fett. 1. 3. & 17 Geo. 2. c. 38. fett. 12. in the first division of this title.—Affiliations for the poor ought to be made according to the visible eflate of the inhabitants there, both real and personal, and no inhabitant there is to be taxed to contribute to the relief of the poor in regard of any estate he hath elsewhere in any other town or place, but only in regard of the visible estate he hath in the town where he dwells, and not for any other land he hath in any other place or town; paid by Herton and Crowe J. if here been resolved by all the judges of England upon a reference made to them, and upon a conference by them had together. 2 Buff. 354. 9 Car. in Sir Anthony Earlby's cafe.

Rent is no flanding rule for making a poor rate; for circumstances may differ, and there ought to be a regard ed Saltum & facultate. Com. 475. Tzvch. 10 W. 3. B. R. The King v. Justices of peace of the precinct of Cath- erine church, Norwich.

The Sessions upon setting aside a rate may make a new one themselves, or order the churchwardens and overseers to make a new one, they having it in their discretion to make a new rate at fission, or remnant to the churchwardens, and overseers, if it be gzed on one. 2 Salt. 553. Mich. 10 W. 3. B. R. The parfih of St. Leonard Somercliffes cafe.

The churchwardens and overseers may make a rate of themselves; per cur. 2 Salt. 531. Hill. 2 Ann. B. R. in Teuney's cafe.

H. took part of a house in the parish of D., on the third of December; he was rated as an inhabitant, and was disrated for a quarter's rate the Christmas following; but the ditrefs was taken before Christmas on a general warrant made for the whole year; and in replevin it was ruled upon evidence by Holt Ch. J. 311. That if two several houses are inhabited by several families, who make and have but one common avenue or entrance for both; yet in respect of their original, both houses are rateable severally; for they were at first several houses; and if one family goes, one house is vacant; but if one
ceninent be divided by a partition and inhabited by dif- ferent families, the owner in one, and a stranger in another, there are several currences severally rateable while they are thus severally inhabited, but if the stranger and his family, and the owner in his family comes one in the same family, That H. could not be rated for the whole quarter, for poor rates are to be assified monthly by the statute, and by this means a man cannot move in the middle of a quarter but he must be twice charged. 2 Salt. 532. Trin. 3 Ann. Tray v. Talbot.

When goods are rated, it ought be done according to the value of lands, and goods of the value of 100l. thence rated 5l. per annum, as lands are, and the person must be charged only in the place where the goods are at the time of the affillation; for if he has no goods where assified, if disfrained he may have an action of treafus, &c. Dolh. Jfot. 253. cap. 73.

The meaning of the statute 43 Eliz. and the occupiers of the land are to be assified, and not the leflor who receives the rents; the occupier of the land being by law only to pay the affiliation, unless it be special- ly provided for as to this payment between him and his leflor; per Hutton and Crowe J. who declared, that it had been fo resolved by all the judges of England. 2 Buff. 354. 9 Car. in Sir Anthony Earlby's cafe.

Parfons ought to contribute to the poor; per Holt Ch. J. who said it had been so agreed by all the judges of England as Servientes hon in the Parfon of Panegur's cause. 3 Keb. 252. Trin. 25 Cur. 2. B. R. The King v. Vorun.

A mandamus was prayed to the mayor of Chichester, to sign a tax made on the palace, &c. of the bishop of Chichester, being within the parfifs of Subhannav, and per cur. it was granted; because against this there was no objection in the statute, and all the precedendencies that live in the same close, which is a fourth part of the town, pay it. 3 Keb. 573. Hill. 37 Car. 2. B. R. The parfih of Subhannav v. The mayor of Chichester.

A parfon who lets his tithes to the parishioners may be taxed upon the poor rate; for the letting is but a- greement with the parishioners to retain it to their tithes, and the parfon here has a modulus for his tithes; though it was objected that the parishioners were occupiers, and for the parson not taxable. MS. cases, Tzvch. 7 Ann. The Queen v. Bartlet.

Thole ought only to be contributors who were living there the year before, and none else; per Penne J. Poor them was, who should be faid to be the case of Ths inhabits of Were v. Pettieu consisteu of Town.

A feft of lands demifed the fame to B., referring the yearly rent of 10l. A. convened with B. that he should quietly enjoy the land, and to indemnify him against all charges and taxes whatsoever to be imposed upon the said lands, except tithes. B. entered, and was pollicied, and the parson having a time to retain the tithes, and the parfon here has a modulus for his tithes; though it was objected that the parishioners were occupiers, and for the parson not taxable. MS. cases, Tzvch. 7 Ann. The Queen v. Bartlet.

The DoeChor agreed with several of the parishioners to take so much for his tithes, and made a lease to F. The DoeChor was rated for the tithes to the parish leivers, who appeal'd; and the matter being found special, the que- stion being in what manner of advantage is given to the inhabitants; for they enjoy the whole value for their tithes; otherwise it had been a contract for years. Part's Settlements 104. pl. 180. The Inhabitants of Lambeth v. Fairchurch, lews of Dr. Holfen.
The defendant being afflicted towards the poor rate for tithes as vicar, appeal to the felonies, where he is directly discharget. But by the court; as vicar he is chargeable by 43 Eliz. and the felonies hath only power to take, but not to discharge: And the order of felonies is quashed. Swam. 77.
Where the order agrees that the tenant shall retain the tithes, yet the rate for them must be upon the parson.

352.
All things which are real and bring in a yearly revenue may be rated and taxed to the poor. Shaw's Parishes Law 16.

On a motion to confirm a tax laid by the justices of the on a toll of the corporation of W., for a rate to the poor, Hild. Ch. 9. said, that on a reference to him by the parties, he was of opinion that the toll was not excisable of excitable, thou' part of it was to maintain the mayor; and per cur. A mandamus was granted to the mayor and officers to execute the order. Hild. 2 Salk. 540.

27 Court. 2. B. R. The corporation of Wicken v. mayor.

Note; it hath been lately resolved by the court, that sound rents are liable to the poor rates. Comb. 62. 66. 5 T. 3. B. R. Anst.

Hospital lands are chargeable to the poor as well as to the benefactors, for no man by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a greater burden upon his neighbours. Per Hild. Ch. Justice. 2 Salk. 537. 166. 1. B. R. Anst.

The question was, whether a house converted into a hospital, and afterwards dedicated to a public use, for no other purposes, was rateable the poor tax; the court, said they knew it, and did't them to waste cause; and afterward the order was quashed. Per's Settlements 124. pl. 109. Hild. 1727.

An officer is not to be taxed to the poor for his necessary succick according to the lands he holds; but if he has a per-abundant flock, i.e. more than the land requires, shall be tax'd for that. Jfyl. Cates Law 233. cites lock. 263. 264.

Yet it is a quere still if a farmer is to pay a rate or x for flock upon land. Ibid.

A fooleeper shall be charged to the poor rates for e goods, Er. in his hop. Jfyl. Cates Law 233. cites lock. 263. 264.

On a motion to quash a poor rate made at the quarters of Marlborough, because it was affixed for trade, or let the corporation would not affix the toll of their market, or any other farm thereof, it was determined by the court of King's Bench in Michaelmas term 3 Geo. 3. that a lessee of lead mines, where no rent is reserved ther in a certain proportion of the ore to be raised, is not rateable to the poor, under the flat. 43 Eliz. 1.

As to taxing other parishes in aid, see flat. 43 Eliz. 1. 1 T. 3. no 3. in the first division of 17 cases of A. I. have lands and tenements in the parson of B. and their tenants are no poor that they are not able to pay to the relief of the poor of B. the landlord's inhabiting in the parson of A. shall be no discharge to them, but they shall pay for their lands and extensions which they have in the parson of B. 2 Balf. 70. 8 Cas. Parishes of St. Peter's v. Parishioners of S. Hole's.

Sir James Mountaree attorney general moved to quash an order of two justices of the peace for the county of the city of Norwich made upon this statute; his exception was, that it does not appear that the parishes taxed are within the county of the city of Norwich, or that they are within the county of the city of Norwich; and two justices by the act have not power to tax the county but only the hundred, or the parishes within the hundred. To which it was answered, that if two justices cannot relieve in this case, there can be no relief given; for it is well known there are no hundreds within cities, and the city and the county of the city are the same, and the power given to the justices must arise upon a defect in the hundred, and where there is no hundred there can be no such power as the felonies is quashed by the order in this case. But per Penwel; This is not cofis amicius out of the statute; and tho' the two justices have no power, here being no hundred, yet the felonies have a jurisdiction, and may tax the county of the city in part or at large, to which the reft agreed, and (Holt absent) quashed the order made by the two justices in the order of court.


There are two ways by this statute to make one parish contributory to the poor of another parish, viz. either the justices may tax particular persons in aid to that parish which cannot relieve its own poor; or else it may affect the whole parish and thereby leave it to the churchwardens and overseers to levy the same on particular persons; per Holt, 2 Salk. 460. 9. W. 3. B. R. Dimchurch v. Letchchurch. Shaw's Parishes Law 219. cites S. C.

Mandamus to the justices to make a rate for the support of the poor of the parish of St. Mary's, &c. which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it; to which it was answer'd, that this motion was grounded on the clause of the statute, and thenceupon a mandamus was granted, directed to the justices; and as this is a matter of right, they might rule, and get the writ, if it was not given.

Jfyl. 47. cites Hild. 1 Geo. 3. The King v. The officers of St. Mary's in Marlborough. Shaw's Parishes Law 219. cites S. C.

An order of felonies was returned upon flat. 43 Eliz. for raising the parishes adjacent, &c. for relief of a poor parish. Excepted against, that by the statute this ought to have been done by the two next justices, whereas this order was made at felonies. And by the solicitor general, If it be made by all the justices, &c. then it is by two, and they shall be suppofed to be at the general felonies. And per Wythens, You have not purfued the flat, and do hereby prevent the appeal. Adjourn; and it was afterwards at another day quashed for that reason. Comb. 25. Trin. 2 Jac. 2. B. R. The King v. Grify. A parish in Colebylfer being furchaged with poor, the justices made an order that two other parishes in Colebylfer should pay to the relief of the poor within this parish, viz. the one 5s. 4d. a year, and the other parishes should collect it, and the order being remov'd by certiorari, Allibone moved to quash it, because not pursuant to the direction of 43 Eliz. which says, others of other parishes, so that it ought to be affixed by the justices upon particular persons, and not generally, (and so it may be do) and it has been admitted it might be done this term before; and also a case remembered in Pemberton's time, when it was so ruled). But the court seemed to be of opinion, that it was well enough, and according to the right course; and that the justices are only to affix the quantum, and then the rate to be made by the overseers of the poor of the parish, and such was the opinion of the court, Comb. 259. Med. 2 Jac. 2. B. R. St. Rumleth's parishes case.

It was moved to quash an order made by two justices, that the inhabitants of L. G. should pay a yearly sum to Woodstock, if, because it was not paid quadranam, but that exception was disallowed. Why. For that it was only said, that Woodstock was taken, the charge being made upon the poor, but not that they were unable. Note; Upon an appeal the justices made an order at the felonies, wherein it was said they were oppressed, which implies inability. Comb. 24. Hild. 5. W. 6. M. B. R. The King v. The inhabitants of Lislevin in the county of Lislevin.

Upon an order for contribution to the relief of a poor parish it was ruled, that the justices may either charge particular persons or the whole parish, and they to levy it; but here a sum in gross was laid for a whole year, when (it was objected) it was unreasonable; for their ability may change; nevertheless the order was confirmed. Comb. 379.
IV. But which I bid. As to such parishes, it may be tax'd in aid of a parish; but a parish shall not be tax'd in aid of that. 2 Salk. 486. Hild. 11 W. 5. B. R. in case the parish of Bridewell v. The parish of St. Andrew. In a city where one parish is not able to relieve their poor, the next parish, being able, is to aid them by a weekly allowance, but when the cause ceases, such allowance is to cease also. Jftfl. Cafe Law 234. cites Black. 262, 462.

In such a parish is not able to maintain its own poor, two justices may tax any other parish within the hundred towards their relief; and if the hundred be not of ability to relieve their parishes, the justices in their feelions may tax any other parish or parishes within the county. 2 Shaw's Pratu. inf. 43.

An order was made by the justices of the borough, for the parish of St. Peter's to pay to the officers of St. Mary's the sum of 20 a. weekly, until we the said justices shall fee fit to order to the contrary. It was objected, 18. That it does not appear that the parish of St. Mary's is over-burthened with poor, but over-ruled; for the order follows the words of the statute. 2dly, It is said, that they are within the town and borough, and it appears upon the order, that the parish of St. Mary's is within the borough, but not within the town and borough. But per cur. they are justices of both, 3dly. The order is, until we shall fee fit to order to the contrary, where the act never gave the justices such an authority, and it is in effect making a perpetual order; for if one of the justices or justices, or any other officers of the town, alter it then, the said justices shall fee fit to alter. And it was quashed per cur. for the last objection. Poor's Settlements 121. pl. 165. Pofib. 12 Geo. 1. The inhabitants of St. Peter's and St. Mary's in the borough of Marston.

The parish of H. and a vill called S. was time out of mind within the recency of H. Before there was a church in S. which from the time of H. 6, hath been used and reputed as a parish, and had all parochial rights, and churchwardens, and S. distant two miles from H. Richard C. J. held clearly, that this is a parish within 43 Eliz. and that the overseers, &c. might aels it to the relief of the poor; and the finding that from Henry the 8th's time till now it hath been used as a parish, does not exclude that it was not used so before. And this statute being made for the relief of the poor, to prevent their wandering, the intent of it was to confine the relief to parishes then in office, and so used. And per tot. Judgment for the plaintiff. Hild. 93. Hilton v. Parrish. Libt. 11 W. 3. cites S. C. Adj. 2. cited 173. Salk. 533. cites S. C. Dalt. 324. cap. 73. cites S. C. Slkett. Parish Law 108. cites S. C. Ibid. 207. cites S. C. Ibid. 208. S. C.

Cra. Car. 92. pl. 17. Mitch. 3 Car. S. C. adjudged, that this is such a parish as is chargeable for the relief of Stuke Goldingham, and not for the poor of Hinley; and though by the finding it should not be intended to be a parish before Henry the 8th's time, yet being found that it was a church then, and that there were churchwardens there, it is a parish within the statute, altho' it be but a repusive parish; for being in use so long before, and at the time of the statute, the statute appoints that the churchwardens and three or four overseers appointed with them shall, &c. Now no churchwardens of H. are churchwardens of S. and to have nothing to do there; and the churchwardens of S. only are to meddle with the church there, and consequently with the poor of the parish.—S. E. As to Tavetsch and Harfield, where for 60 years, at the time of the statute, making the statute, and ever since, T. was commonly required a parish of itself, and the inhabitants there chose confatables, churchwardens and overseers of the poor, and made and levied their own rates to the poor, and repaired their church, without contributing to that of H. and though it was also held that anciently, the vill of T. was parcel of the parish of H. and never severed by any legal act, and that the tithes of T. have been time out of mind paid to the parson of H. who always used to find a curate at T. and that there is no parson at T. yet T. shall be charged by itself, and for their own poor only. Cra. Car. 394, 395. Hill. 10 Car. B. R. Nicholls v. Walter and Parker. Shaw's Parish Law 208. cites S. C. Ibid. 317. cites S. C. Parishes in reputation only are within the statute. But other parishes are, if the usage of such parishes to churchwardens have been constantly observed without interruption; but otherwise the overseers and collectors of the mother church are only within the statute; per Hackett Ch. J. and Dodderidge J. But Houghton cons. as to reputable parishes being within the statute. 2 Rel. Rep. 140. Pofib. 18 Fac. B. R. Warden v. Walter. Salk. 475, 477. Mitch. 34 Car. 2 B. R. the parish of St. Botolph without Aldgate lies in two counties, and hath one churchwarden and several overseers, and the statute refers to them. And in regard that it was made appear that each part of the parish had different officers, and made different rates, and had used time out of mind to make distinct accounts to the justices of each county, the court agreed upon each division as a separate parish, and ordered accordingly. Raym. 475, 477. Mitch. 34 Car. 2 B. R. the parish of St. Botolph without Aldgate laid in two counties, as Poor's Settlements 125. pl. 117. cites S. C. Dalt. 725. cap. 73. cites S. C. Shaw's Parish Law 209.

Upon a dispute whether A. was a vill in the parish of B. or a parish of itself, to prove it a vill the evidences were, that there were but two churchwardens, two overseers of the poor, that marrying, baptizing, and all other parochial rites were done at B. and that the inhabitants of A. did contribute to the repair of the church at B. And to prove that A. was a parish of itself, the evidence was, that in the reign of Edward III. there was a publick chapel there, and divine service read in it at the time of making this statute, that A. had formerly distinct constables, and repaired their own highways in 1634, and then the difference between A. and B. was settled by a judge of assize, that a rate was made in A. in 1654. But this was held not sufficient to make A. a parish in reputation at the time of the statute, without all which was required, and therefore held to be a vill in the parish of B. 4 Mod. 158. Mitch. 4 W. & M. B. R. Rudd v. Eyster. Shaw's Parish Law 208. cites S. C. To make A. a reputed parish within the 43 Eliz. it must have a parochial chapel and chapel wardens, and sacraments, at the time the statute was made; and because A. had but one chapelry, whole office was to collect the rates taxed upon A. and pay them to B. they were held part of the parish of B. and not part of parishes within the 43 Eliz. and their having a distinct overseer, and maintaining their own poor, was not thought sufficient to make them a distinct parish. 2 Salk. 501. Mitch. 4 W. & M. B. R. Rudd v. Morton. This was the case of churchwardens and sacraments.

A chapel's having sacraments only, makes it not independent of the parish, but it must have other badges, as episcopals, &c. Per cur. 12 Mod. 504. Anon.

On shewing cause against qualifying two orders, &c. An original order of two justices, made for taxing, raised, and keeping the inhabitants of the tithing of Milland, in aid of the parish of St. Peter's, the 27th of April, in the county; and the order of justices confirming it; the question was, Whether it was sufficiently flated that both these places (viz. Milland and St. Peter's) lie within the same hundred: Which is a circumstance officially necessary to be acertained, in order to give the two justices any jurisdiction in the case. For, by 43 Eliz. c. 5, f. 3.
2. power is given to two-judges, in cafes where they receive a parish not able to maintain it's own poor, to say any other parish within the hundred where the parish (which is all the authority given to two-judges) is; then and then but and till the said hundred, and the parishes of St. Peter's, Cheshfield, both lie in the same liberty of the Soke, the said parish lies; it was then and then that all the parishes within the same hundred: For liberty and fake are words of vague, indeterminate meaning, not equivalent to be known legal term hundred, nor co-extensive with it; and perhaps the liberty may extend into several hundreds. However, it is plain that the two-judges have not flown that they have a qualification of the court in the act, and therefore have not any. In support of the objection were rivals the following cases, viz. Foley's Laws relating to the Poor 31. (or 42 in the 3d edition,) St. Benedict's parish v. St. Stephen's and St. Mary Magdalen's, in Norwich. Reports temp. Qu. Ann. 206. C. C. Flax, tit. Poar 416. C. with Foley 31. This court thought it held to tend to the fitness, in order to have the matter better explained, and more particularly stated. But they did not think themselves bound down by the particular word hundred, which is the term used in the act, so as to be confined to this single species of division of country. For if such division be called by any one word or phrase, the equivalent of that hundred, it must be equally within the intention of the act, and the court may adjudge according to such intention. And now, the case having been newly and particularly stated, Mr. Gould, who was for the orders, prayed the opinion of the court. And Mr. Norton, who was against them, candidly owning that the facts are now stated, he could not contend but that it does appear (substantially) to be a hundred, though the division was called by another name; the court discharged the rule, and affirmed the orders. Bar. Rep. 576. 577. Ensoli 31 Ge. 2. Rex. t. Inhabitants of the parish of Milland.

A. Of the remedies for recovering rates; and of setting aside rates.

See flat. 43 Eliz. c. 2 feet. 4 13. 19. in the first division of this title.

Holt Ch. J. said, that a man could not be disfrayed by virtue of a general warrant made before the rate, but there ought to be a special warrant on purpose; and he said that a disfray could not be taken for a quarter's rate before the quarter was ended; but the jury said, the cuftom was otherwise. This Act. 52. Tit. 3 Annu. Tracy v. Talbot. 6 Mod. 214. 5. C. and says, that the plaintiff might disfray for a quarter's rate before the end of the quarter; but the jury said the custom and usage was to do that, and to avoid the mischief that would ensue, if the party should remove out of the parish before the quarter. To which Holt Ch. J. answered, if he remove into another parish in the same county, they might disfray by warrant from the justices there, as well as in the same parish; but if he removed out of the county, he agreed the remedy failed. So he gave way to the usage in that point.

It was said, that a warrant to disfray for a poor rate ought not to be granted before demand made; for the first ought to be a confirmation of the affidavit for the poor, and afterwards upon unfalso, &c. A new warrant is to be made for disfray, &c. and Holt said, that finally it was so, but the practice having been in the case of taxes to grant such a conditional warrant to disfray, without trouble or caus, Court. 342. Tit. 7 W. 3. B. R. in case of East. If the poor rates are not received, and the overseers lay out a sum of their own, they are remediless if they do not raise it before they are put out of their office. Jaff. Cafe Law 235. cited Black. 237, 238.

The churchwardens and overseers of the poor, by warrant from any two judges of the peace (quor. 1.) may levy the tax by disfray and sale of goods where any person refuses payment of the sum he is affixed; and if there be no disfray whereby the fame may be levied, he shall be committed to the common goal. There to remain till payment.

A manaduas was mov'd for, and a rule obtain'd for an alderman to shew cause why he refused to grant his tax for the relief of the poor; who at another day shewed that the churchwardens had made a tax warrant for four years, when no tax was levied, but only a quarterly tax, and thereupon a rule was made that he should grant his warrant to quarter. Mich. 10. Mich. 7 Geo. 1721. Diapaclaim churchwarden v. Alderman Becher.

Working tools in a shop may be disfrayed for a poor rate. 2 Shaw v. Finer. Trin. 32 Geo. 4. R. Sporf. Before this act, the justices of peace nor confables had no power concerning poor. Sid. 282. Trin. 18 Car. 2. B. R. in case of The King v. The inhabitants of Ratelifi.

It was affirmed upon error in B. R. upon this statute, that th'o the statutes express by name only sale and disfray of goods, yet if the plaintiff voluntarily delivers any goods for what he is affixed to the poor, and after brings trefpas thereof against the overseers, this is within the statute; for these words sale and disfray, are put in the act only for examples; and the statute shall be construed largely, because it tends ad opus clarissimum; and the trefpas brought after such voluntary delivery of property, is in a vaxation which the statute extends to suppur. Yor. 176. Trin. 8. Fac. B. R. Okely v. Seiter, &c. B. brought trefpas against certain persons who pleaded Not guilty, and at the Nisi prius (as appeared by the certificate of the judge upon the back of the pietta) the defendants justified as overrears of the poor of the town of Alillam, and shewed this special matter in evidence by this statute; and after the jury was charg'd, and returned again, the plaintiff was non-suited. And now the court was moved to grant a writ of inquiry of damages, for the treble damages which they ought to recover against the plaintiff by the former cause, which was, that the damages shall be ass'd &c. Dod. said, This is to be intende that it shall be tried by writ of inquiry of damages in such cafes as it ought to be by the law, viz. upon discontinuance or demurrer for the words, as the cafe requires, imply as much; and by the law, when a jury ought to have found a thing, and do not find it, this shall not be supplied by a writ of inquiry of damages; and this was so ruled in habeas, quod fact commod. per cur, that such defect shall not be supplied by writ of inquiry of damages, because the party shall not be ouzed of his attain'd. But in the cafe at bar, the writ of inquiry of damages was granted per cur. inasmuch as this cause was non-suited, this court could not ass'd the damages; and damages were found accordingly. Rell. Rep. 272. Mich. 13 fac. B. R. Brampton v.---

As to setting aside rates, see flat. 43 Eliz. c. 2 feet. 6. in the first division of this title. Upon an appeal from a poor rate, the justices refused to hear the appeal, because it was not made at the next quarter-sessions. But per cur. The party grieved may appeal at any seffions; the justices may not have power to alter the rate at discretion, but they ought not to refuse to hear the appeal. MS. Caff. Mich. 8 Jun. B. R. The Queen v. The inhabitants of St. Giles.

T. P. and S. being overrears of the poor, got their account allowed by their justices. The parish appealed against it, and the seffions set aside this account, and then directed a re-examination of the matter to the fame two justices. This order being removed, it was object'd, that here was no appeal delegated to the justices, and therefore finally to determine the matter in question. Per Parker Ch. J. The overseers have four days time to pafs their accounts, and they may go before any two justices for the doing it; till the time is pase there is no compulsion used, but if this time is pase, the parish may go before any two justices, and when there have entered upon the examination, no other justice is afterwards to intermeddle; and when this matter comes to the seffions, they are to 6 R. take
take such order therein as to them shall seem convenient, but need not finally determine. MS. Cofis. Hill. 10 Ann. B. R. Townend, Purfons and Smith's cafe (overseers of the parish.)

There are four adjacent towns within the parish of Banbury, and there is an overseer over each town, and an overseer also over the borough, they all join in one account, and there is but one rate made for all the parish, but the overseers of each particular town collectively and pay the money, which is the usual custom. In one of the towns there is a tenant of lands in one of these towns, lives in the borough, and is affixed by the overseer of the borough for the lands within the town, and paid to the overseer of the borough; and the like is done in the other towns, so that the overseer of the borough had a surplusage for the poor within the town, and through his overseers, who are tenants of lands within the towns, lived in the borough, and is affixed by the overseer of the borough for the lands within the town, and paid to the overseer of the borough.

Although a poor's rate be really made at the feftions on an appeal, yet if it does not appear by the order itself, as by reciting cases, the same order shall be quashed, and the court refused to supply that defect in the order by affidavit. Camb. 133, 134. Trin. 1 W. & M. B. R. Ann.

The churchwardens and overseers, and some of the inhabitants of this parish made a poor's rate, which was confirmed by two juries, in which several were not taxed for their personal effects, (which was erroneous) but the whole lay on the real estate of the parish; on which several of the inhabitants appealed to the feftions, and they ordered that the said rate should be annulled, and a new one made; accordingly the churchwardens made a new rate both on the real and personal effects, which rate was confirmed by two juries. But in the new rate there was a great inequality, the real estate being rated in proportion ten times more than the personal; for which several of the inhabitants appealed again to the feftions, where another order was made to discharge the said rate. And now these two orders of feftions being removed by certiorari into B. R. it was moved to quash them; because the feftions did not regulate the rate made for his rate, and cannot set aside the whole rate. Sed per stat. ear. Sure the juries at feftions upon an appeal by particular persons grieved, may, if they see reason, set aside the whole rate. The juries have a large power, and in both theft cases, either on the first rate where the personal effects were not charged, or upon the second where they are unequally charged, it is impossible for them to give relief without setting aside the whole rate; which therefore they may legally do, being empowered by the act to take order herein according to their discretion; by virtue of which, as they may set aside the whole rate, so they may make a new rate themselves, or order the overseers, or, and if they desire to make a new one, as was done in this case; wherefore those two orders were confirmed. 12 Mod. 212. Mich. 10 W. 3. B. R. The King v. The inhabitants of St. Leonard Shoreditch.

If a poor's rate be made for a whole year, it cannot be confirmed in part, but must be for the whole year or no part. 8 Mod. 10. Mich. 7 Ges. Digby's churchwardens v. Birch.

If the rate be illegal, the juries may refuse to sign it, but as to the sums or parties affected they have nothing to do with it, the remedy is by appeal; and though the aldermen of Dorchester refused to sign a rate, because of inequality; yet the court granted a mandamus, and after a recent but no temporary mandamus, and then an attachment, in order that the parties grieved might appeal, cited per ear. MS. Cofis. Mich. 8 Ges. B. R. in case of The King v. Birch.

A rate that is of itself good, may be quashed, where it says it shall be a standing rate; per Earl. Poor's Settle.

ment 23. 3d. 33. in case of Shoffurtz v. Northwijk in Devon.

If you quash a poor's rate the parties aggrieved appealed to the seftions, the seftions made an order to levy the money at the account of the rate according to the land tax; it was moved to quash it, because persons that do not pay to the land tax, yet contribute to the poor's rate, as persons who have a considerale sum of money. Quashed, per cur. Poor's Settlements 73. pl. 96. the parish of Camberwell's cafe.

5. Of relieving, and ordering maintenance for the poor.

See Stat. 43 Eliz. c. 2. sect. 1, 13. 8 Will. 3, c. 11. 8 & 9 Wil. 3. c. 30. in the first division of this title.

Exception was taken to an order of the juries made against the parishes of Stretton, because the juries ordered them to keep a woman, being poor, the cottage wherein she lived, being uncertain whether in this vill or another; but the court refused to quash it, tho' it was averred that she was impotent, because in these courts the courts the exercise of their discretion. 2 Do. 57. 5 P. F. 10. Cor. 2. B. R. Wife's case.

An order of juries for the maintenance of a poor woman was confirmed, though it appeared that she was able of body to work; but the juries of the peace are judges of that. Rep. 59. 5 P. F. 22. Cor. 2. B. R. Wife's case.

A poor child was left in Chrift-Church hospital; upon complaint of the wardens of the hospital two juries made an order on the overseers of the poor of the parish to receive and maintain the child; but this order was quashed, because it was not said, that the parents were unknown, or likely to become chargeable to the parish; for tho' a child of three months old be helpless, yet the parents are bound to provide for it. As to the principal matter which was hinted, viz. that the hospital was bound to provide for poor children there exposed, the court thought there was nothing in that. 2 Salk. 48. Trin. 11 W. 3. B. R. Chrift-Church's hospital case.

An order of juries was made for relieving a woman and four poor children, until further order, but did not forth the ship was indigent; it was quashed for the last mate and bad for the other, which should have been due in poverty. 10 Mod. 220. Hill. 12 Ann. B. R. The Queen v. Manchefter inhabitants.

It was moved to quash an order of feftions which ordered that the overseers of Minks-Ribrough should pay to the poor £8, for the use of a sick poor man; it was objected it, That it is not said that they had any money in their hands; 2dly, That it is not said that R. D. is a parishioner there. Quashed vice. Poor's Settlements pl. 17. The Queen v. The inhabitants of Minks-Ribrough.

Two juries made an order for the overseers of the poor to pay 21, per week to Elizabeth Reddesh. It was objected That it is not said that she is poor and imponent; otherwise the statute gives them no such power. Per cur. The 43 Eliz. does not give them power, unlefe they are upon the poor rate; let them have cause. Poor's Settlements pl. 30. The Queen v. The inhabitants of Manchester.

In order to continue the weekly pay, it was ordered by R. C. and all the areares, till they find him a house; quashed, because the overseers have no power to find him a house; that must be done by the lord of the manor, or by the juries. Shaw's Parish Law 200.

An order of juries of peace, willing the churchwardens to pay a scrivener 5. due to him for drawing indentures for the sale of trades, was quashed, as being a thing out of their power; but the way had been to order a parish rate for levying fo much a week till a convenient sum were raised; and in that case as soon as money was raised, an action would lie for the scrivener against the churchwardens. 12 Mod. 417. Mich. 12 W. 3. B. R. Ann.

6. Of parents and children being obliged to maintain each other.

See Stat. 43 Eliz. c. 21. sex. 7. and 5 Geo. 1. c. 8. under the first division of this title.
An order of sequestration for the father to pay so much a week for maintenance of his daughter was quashed, because it was not set forth that she was unable to work, without which the justices have no jurisdiction. 10 Mod. 307. Per Croke. 1. B. R. The Queen v. Dun.

An order of the quarter-justices, upon complaint of the overseers, that Nicholas Tripp was left his wife, and that she was become poor and importunate, and become chargeable to the parish, and that Richard Tripp her father-in-law, was of sufficient ability, did (upon its being proved that Richard was of ability to relieve her) order him to pay the said poor woman for want of an adjudication that she was chargeable; and it was held, that an adjudication that the person is become chargeable, is as necessary in an order of the quarter-justices, as in an order of two justices. 35. Caies, Trin. 4 Gis. B. R. The King v. Tripp.

Upon complaint made to the quarter-justices, that his son Valentine Ruth, his wife and family were importunate and unable to maintain themselves, the court does order the said Emery Ruth to pay them 4s. per week. It was objected, that it does not appear that he was refiant, and lived in the county; that the charge is personal, and the justices had no cognizance over him, as he did not reside in the county. They were ordered to shew cause. Note. An affidavit was made that he lived in another county, but I think, not read. Poor's Settlements 99, pl. 134. cites The King v. Emery Ruth.

Order, reciting, that Mundan had a good fortune with his wife, and that she desired to be relieved therefore he is ordered to provide for her. And in maintenance of the order 1 Bult, and 2 Bult. 345. Style 283. were cited. Et per Pratt Ch. J. On consideration, we are all of opinion, that the son-in-law is not bound, either within the words or intent of the statute, which provides only for natural parents. By the law of nature a man was bound to take care of his own father and mother; but there being no temporal obligation to inform that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this case in 1 Bult, it is plain the word was left out only by mistake, for the sense of the clause leads you to read it not obliged, and besides the judges were divided. The case indeed in 2 Bult, is an authority in point as far as it will go, but that is no judicial authority, only a case at a judge's chamber. The same was also laid obiter in the case of The Queen v. Ensor, Pag. 321, 7. B. R. 220, 8. B. R. but it was not concluded before the whole court till now. And therefore as it is in toto, we are of opinion the order must be quashed. Stann. 190.

For more of poor in general, see Apprentice, Bastard, Removal, Settlements, Settlement of the Poor.

Poor. (Pope) was anciently applied to clergymen in the Greek church, but by usage is particularly appropriated in the Latin church to the bishop of Rome. Cowell, edit. 1727. See Papists, Reformed, Rome. Poorer. See Papists, Reformed, Rome.

Poorish reformed. See Reformed.

Popular action, is an action given in general to any person who will sue for a penalty on the breach of some penal law. See Action, Information.

Porraj, (Poraria, according to Flora) A swine-fly. Cowell, edit. 1727.

Porcelain. See China and Japan wares, India goods.

Porri, The importation of pork and bacon, how formerly prohibited, 18 Car. 2. c. 2. 20 Car. 2. c. 7. What price they must be at when exported, 12 Car. 2. c. 4. sott. 11. Any person may export them, 22 Car. 13. j. 4. Pork may be exported to alien friends, duty free, 3 W. M. c. 8. Duties upon bacon imported, 4 W. M. c. 5. sott. 2. 5 Will. & M. c. 2. j. 4. What allowance to be made for failed pork exported, 3 Geo. 2. c. 20. sott. 16. 5 Geo. 2. c. 6. sott. 4.

Poit. See Harbours, Cinque ports.
Poetor, in the circuit of justices, is an officer that carries a white rod before the justices in 17, so called a portando virgas. Stat. 13 Edw. 1. cap. 41. See Uterg. 

Poetor of the door in the parliament house, is an of-

ficer wearing a white cloth and a gown, and enjoys the privileges accordingly. Comp. Juris. s. 11.

Portegres, (Portegrove, in Saxo personalis form, that is, erbis vel portus praefectus) Signifies with us a magistrate in certain sea-coast towns; and as Camden, in his Brit. pag. 355, faith, The chief magistrate of London was to call-

ers, and so assigned by a charter of King William the Conquer-

nor to the same city in these words: William King, greet William Bishop and Godfrey Portegre, and all the burgers within London, French and English: And I grant,

in that I will that you be all your low-ward that ye were in Edwards days the King: And I will that each child be his father's eye, and I will jeffer, that any man

no mafter. 2 Ver. 18.

wo. William for they-

o. B. in R.

raifing

quaided

in

fame

rorld.

make

greet.

in

ttombs

beds.

Porticulus, A little porch or arch built over the


Portifolium, The ecclesiastical encom or banner pro-

vided of old in all cathedral, and most parochial charities, sealed therewith the front of any pro-

cession, &c. Cowl. edit. 1779.

Portion, Is that part or share of a person's estate, which was given or left to a child. 17. If a man makes a voluntary settlement for the portion of a daughter by his former wife, and then takes a second wife, and seizes the same land for her jointure, without notice of the previous settlement, he will devestate the daughter's wife, which the refuses; the daughter shall have the other lands till her portion is raised. 1 Ver. 219. Ep. Ach. 221.

If by marriage-lettiments lands are limited to the huh-

band and wife for their lives, and afterwards to the first and other sons in tail; and if the husband dies without issue male, to A. for 500l. for daughters portions; the

ther be issue male, which survives the father, and then dies without issue, a daughter shall have the portion. 1 Lev. 35.

A. If after the death of his wife makes a settlement for

raising issue of each of his younger children, and after-

wards dies by the children of the second wife shall have the same portions. 1 Ver. 335. 1

If land is charged with portions, the heir cannot give personal security for them in dischage of the land. 1

Ver. 338.

nor shall he be allowed to pay them, before the time limited by the settlement, viz. full age, or marriage. 1 Ver. 338.

If a man gives a portion to a daughter to be paid at the age of 21 years, and she marries, and dies before; it shall be paid to her husband, or her executor. 2 Ca. Ch. 94.

If A. by marriage-lettiments makes a provision for daughters of 1500l. a piece, to be paid at 18 or marriage, and if any of them die before, the survivor to take the whole; and afterwards fettes other lands for the payment thereof, at the age of 21 or marriage, and that there shall be no survivorship, this contruys the first deed. 2 Ch. R. 8.

A term is limited after the death of the father, upon

trust for raising portions for his daughters, at the age of

18 or marriage; the term may be fold for that purpose in the life-time of the father. Sat. 159. 2 Ver. 355. 2 Ver. 459, 466, 656.

So, if the term, after the life of the father, be upon

trust, that if the father die without issue male by his wife, having daughters, and the wife dies without a son; the term may be fold in the life-time of the father, for the portions of daughters, when they attain such an age, or

marry. 3 Ver. 203. Per Copper. 1 Sal. 159. 2 Ver. 657. Rep. Ge. 2. 2, 22.

If the term is to raise portions for daughters, and the inheritance descends to the kife; Chancery will prevent the merger of the term. 2 Ver. 91, 208.

So, if one has a power to raise portions for children, and is paid charged upon land, but by the evi-

dence of part, the residue is not sufficient; the land may be decreed to be sold. 2 Ver. 311.

The he adds, that for the raising them, the trustees shall take all the rents and profits; for that does not re-

tain the general charge. 2 Ver. 311.

A be a term for raising portions for daughters, without paying, at what age or time; they shall be raised, with reasonable maintenance from the death of the father. 2 Ver. 460.

If the portion is to be raised as the father shall appoint, it shall be raised, ther the father dies without appointment, 2 Ver. 655.

But if portions for daughters at such an age, if the father dies without issue male, are to be raised for his

daughters, if not otherwise provided for, and 30l. per

ann. in the interim; then the mother dies without a son, the term shall not be decreed to be sold for the daughters

portions; for the other contingencies, if they are not other-

wise provided for, it cannot happen during the life of the

father. 1 Sal. 160. 2 Ver. 650, 657.

So the 30l. per ann. shall not be decreed to the daugh-

ter, or her husband; for the father shall not pay mainte-

nance out of the profits of a term, not to commence till his death; and therefore it must be intended of mainte-

nance, or else portions, or other deeds, to be charged before the age of 21, or marriage of his daughter. 1 Sal. 160.

If A. gives portions to his younger children, secured by a mortgage from B, and if the heir of A. does not

pay them, that they shall be charged upon his land; B

pays the portions, which are put out upon another secur-

ity, approved of by a mafter in Chancery, with the consent of the guardian, and are afterwards left; the land of the heir shall not afterwards be charged. 1

Ver. 337.

If land is charged with 500l. for A. and the truftees raies the sum, and gives a judgment to A. for it, and then dies infolvent; the lands shall be dicharged. 2 Ver. 85.

If a term after the death of husband and wife, is for

the raising of portions out of the profits after the com-

mencement of the term, to be paid at the age of 21; neither the principal of the interest shall be raised, till the term commences in possession. 2 Ver. 761. 1 IV. 449.

If a term is to be paid by the perfonal estate, and if that is not sufficient, by the rents and profits of the real; it is necessary, the real estate should be fold to make it good. 2 Ver. 474.

So if a term commences after the death of the hub-

band, to raise portions, if no son, for daughters, provid-

ed, that the daughters survive their father; no portion shall be raised if the daughter dies in the life-time of her

father, ther the married before her death. 1 Ver. 276.

So if a portion is payable, and before payment one child dies; it shall be decreed to his executor or admi-

nistrator. 1 Ver. 767.

If a term is upon truf, that if the father dies without a son, to raise portions from the rents of the rents and profits, as soon as conveniently may be; they may raie it by sale. Per Parker, P. W. 417, 420.

Otherwise, if it was out of the annual rents and profits, or by leaves for lives or years. Per Morticefield, and another, P. W. 158, 144. 1 IV. 449, 450.

But if a younger child dies in the life-time of the fa-

ther, before marriage, the portion shall not be raised. 1 Ver. 335.

If the land is not sufficient to raise portions for all, there shall be an abatement in proportion. 1 Ver. 335.

A portion secured by settlement, or articles for a set-

tlement, shall not be raised as a debt out of the personal

afts. 2 P. W. 437. For more learning on this subjeft, for 16 Vin. Act. tit. Portions.
Possession. (Poffeflion) Is two-fold, actual and in law: Actual possession is, when a man actually enters into lands and tenements to him defined. Poffeflion in law is, when the lands or tenements or other things or property, are held in the living. And in law is that allowance or proportion which a vicar commonly has out of a reversion, or improperly, be it certain or uncertain. Stat. 27 Hen. 8. c. 28.

Possessors. The twelve burgesses of Ipswich are so called. So also are the inhabitants of the cinque ports, according to Camden. Stat. 27 Edw. 6. c. 24.

Possession, (from portus, and genus, canuentes,) Signifies a court kept in haven towns, as fonsimmetric to the fite. It is called the portman-court, 43 Eliz. cap. 15. Caria portormitorum of curia in civitate Coram curiae majori in aula marorum tenenda. Pl. in Itin. Sid. 1. Edw. 7. & 8. and 14. Henry. The portman, or portman-court held not only in a port or haven town, as the word portman is ignorantly rendered, but in any city, town, or community. Cowell, edid. 1727.

Possibilities. (Mentioned in Stat. 35 H. 8. cap. 7.) Is the fale of fhit, as soon as it is brought into the town.

Possessing, For supplying the town with water. 16 Geo. 2. c. 42.

Possibility, The foke or liberties of any port, i.e. city or town. King Henry 3. by charter dated 16 Mart. anno regni 11. grants to the citizens of London—Quod omni mundi iurisdictione situs, esse in portu, libera et non mortuo cognomine, Coxevitur, et se habere in portu, libertatis, &c. Sonnet's Gavelkind, pag. 135.

Possessions. (Mentioned in Stat. 35 H. 8. cap. 7.) The reckoned amongst books prohibited by that statute, if the book we now call a breviary. Cowell, edid. 1727.


Posses, Is an infinitive mood, but ufed substantively, to signify a possibility, as we fay, fuch a thing is in poffefion, hat is, fuch a thing may possibly be; but of a thing in being, we fay it is in poffefion.

Poffes remittatur. See Power of the county.

Poffeflion fratri, Signifies in the law, where a man hath a fon and a daughter by one woman or venter, and another man a daughter by another woman or another venturer. 12. Eliz. Exempts the female from being an heir to her brother, although the second son by the second venter is heir to his father: But if the eldest son dies without issue, the daughter shall have the land as heir to her brother, although the second son by the second venter is heir to his father: Because if the eldest son dies without issue, not having made an actual entry and sell, the younger brother by the second wife as heir to the father, shall enjoy the estate; and not the fitter. Inf. 11. 15. Lands are settled on a man, and the heirs of his body, and he hath issue a fon and a daughter by one woman, and a fon by another, and dieth; and then the eldest son dies before any entry made on the lands either by his own act, or by the poffeflion of another, the appellation of heir being claimed as heir of the body of the father, and not generally, as heir to his brother; yet if the elder brother enter, and by his own act hath gained possession; or if the lands were left for years, or in the hands of a guardian, there the poffeflion of the leftee or guardian doth veft the fife in the elder brother. But if the eldest son be dead, the fitter shall inherit as heir to her brother, for there is poffeflion fratri. 3. Rep. 42. There can be no poffeflion fratri of a dignity; in fuch cafe the younger brother is hares natus: The lord Grey being created a baron to him and his heirs, he had issue a fon and a daughter by one venter, and a fon by another; but in this case the eldest son being poffefled of the barony, and dying without issue, it was adjudged, that the younger brother, and not the fitter, should have it. Cro. Car. 437. See Defcent, Heir. Vol. II. No. 115.

Possession. Is two-fold, actual and in law: Actual possession is, when a man actually enters into lands and tenements to him defined. Possession in law is, when the lands or tenements or other things or property, are held in the living. And in law is that allowance or proportion which a vicar commonly has out of a reversion, or improperly, be it certain or uncertain. Stat. 27 Hen. 8. c. 28.

Possession by grant for years is in the grantee, but by grant of one, two or three avoages the patrouage is not severed, but is ftil in the grantor; per Jone J. Arg. T. 19. Hilly v. Jac. C. D. in the caufe of Standen v. University of Oxon. After a judgment of recovery, the law judges not tenant for years in possession of these lands still he has claimed them; per Archbc J. Arg. Cart. 59. Pofch. 18 Car. 2. in the caufe of Giary v. Bearpam.

If a man baggage and be in possession, strictly the baggage has actual poffefion. He may furrender, affinge, and receive; yet he cannot on this poffefion bring trepafs, and so he has no actual poffefion; per Bridgman Ch. J. Arg. Cart. 66. Pofch. 18 Car. 2.

Tenant at will, and he in reversion are in poffefion of a house, he is not poffeflor because he has not a poffeflion; but the poffeflion shall be adjudged to be in the tenant at will. Sid. 385. Mich. 20 Car. 2. B. R. Kinnoul v. Whitehead. If a highwayman come up to a carrier, and lead the horse out of one hundred into another, this is a robbery in the first hundred; for the carrier was robbed upon the first taking. But if the carrier had held the horse himself, then it should be adjudged to be in his own poffeflion, and no robbery till he came into the second hundred. And if a man has money, and the malefactor take him in one hundred, and carry him into another, and then rifle him, this is a robbery in the second hundred; but the money is always in poffeflion. Per 1st. cur. and adjudged accordingly. Goldib. 85. p. 11. Pofch. 30 Eliz. Anno.

A man's pocket was picked in the King's Bench, and the thief was taken in the manner, but a key falfened to the purfe, fluck in the pocket; and two judges against two, that the man was ftil in poffefion of his purfe, and fo no robbery. Goldib. 85. p. 11. Anno. See 16 Edw. Abr. 454—460.

Possibilities, It is taken for an act willfully done, and impossibilities for a thing done against our will. Si autem eum autem reddat Crerur eam, & possibiUa occipiat in eo foro, quando est capita, in possibili militat in leg. Alfed. cap. 38. So in the law of Canuttus, c. 56, Ei qui quis egas impossibilis, non est omnino fidei voluntarie faciat. Leg. Sax. Edw. fenerior, cap. 88.

Possibility, In our law is defined to be an uncertain thing, which may or may not happen. 2. Eliz. Abr. 336. And is either a remote or an actual possibility: if an estate is limited to one, after the death of another, this is a near possibility; but that one man shall be married to a woman, and then that the falf die, and he to be married to another; this is a remote or extraordinary possibility: And the law doth not regard a remote possibility that is never like to be. 15 Edw. 7. 10. Hard. 417. 2. Rep. 50.

A meer possibility cannot be affirmed, if a man de- mife for years, if A. so long live, he has but a possibility 6 S 40
to have the land during the years, which cannot be de-
mited to another. 1 Ca. 154. 6.
So, if a term be devised or granted to one for life, and
afterwards to the heir for the residue of the term; this
removes the term of the devisee, being but a
possibility. 4. 666. 6.
So, if land be granted to husband and wife for twenty
years, and afterwards to the survivor for 21 years, the
husband in the life of his wife cannot assign the term of
21 years, for it doth not till he surviveth, and there-
fore assigneth it not upon a possibility. 10. 51. a. 595. 5.
So, if an advowson be granted to a bishop, and his suc-
cessors post mortem of the incumbent, the bishop cannot
 demise to another post mortem of the incumbent; for he
has nothing till the incumbent dies, who may survive
him. Dy. 244. a.
If a man purchase the manor of B, the manor of C,
for, to the purchaser's security, limited to the vendor
and his heirs till eviction, and after eviction to the pur-
chaser, his heirs and assigns; if he before eviction sell
the manor of B to A, who makes a lease for years to D,
and then the manor of B is evicted, A shall not have the
use of the manor of C, for this contingent use was not
assignable; and though it be limited to the purchaser, his
heirs and assigns, the word, assignes, is a word of limi-
tation, and not of purchase. 2. Knt. 795. 1. 40.
If land be limited to A for life, remainder to the right
heirs of B, the son of B, cannot in the life of B, grant
that part of the land, though he, before the term of D, a
Pope. 555.
If there be a devise of a term to his son after the death
of B, the son cannot make a lease in the life of B. Jtn.
417.
If there be a devise to trustees till A attain his age of
25 years, and then in trust for A, a mortgage by A, before
the 25 years will be void. Eqm. Ca. 59.
So, if a patron grant to A to be master of an hospital;
he cannot grant it to another post mortem of A. for he has
nothing in him; for A, has an estate of inheritance during
So the patron of a prebend donative, Cc. cannot grant
So if a man make a lease for 21 years in presenty, or
in feite, he cannot afterwards grant a lease to another by
parol for the same time. Pl. Cm. 430. See 16 Fin. Abr.
t. 5. post. 24. Pott. See Post-officer.
Post quintuplum. Were words first inserted in the
title of the Edward the Fifth, but not constantly used
till Edward the Third's time. Clau. 1. Edw. 3. 2. de &c.
m. 33.
Post detriment. Is a fee by way of penalty upon a sheriff
for his neglect in returning a writ after the day assigned
for its return; for which the Statute Bovarium hath four
pence, whereas he hath nothing if it be returned at the
day: It is sometimes taken for the fee itself. Growth, edit. 1727.
Post duplicius. Post duplicius. Is a writ by the
grant of Wifian. 2. 2, and 26, and lies for him having re-
covered lands or tenements by pravice quod reditum, upon
default or redemption, is again differed by the former dif-
cution of the N. B. for the time. See the writ that lies for this
in the Register, fol. 238.
Poffen. Is the return of the proceedings by nisi prius
into the court of Common Pleas after a verdict, and there
after recorded. See Plowden, fol. 211. Saunder-
s. cafe. See also an example of it in Gild's Report,
t. 6, fol. 41.
Poffa. A pofta is a record of this court trused with the
attorney in the cause by the clerk of the affize, and the
attorney is bound, if he be so trused, to deliver it into the
office, that the judgment may be entered by the officer of
the court. Trin. 1551. B. S. And if he do not, the court
shall be at liberty. 2 L. P. R. 338. tit. Poffen.
It is not necessary to annex the affizings unto the
poffa, although it is usual so to do. Trin. 1551. B. S. for
they have no relation one to the other. 2 L. P. R. 338.
tit. Poffa.
There is no general rule of court for the clerk of affize
to bring in the pofta into this court by a precise time for
sometimes possibly he may be able to bring it in sooner
than at another time; but if he be negligent, and return
them not in convenient time, the parties grieved may
move the court or at the side bar, and thereupon the
court may make a rule that he bring them in speedily. Mich.
32. 33. 2. 2, to avoid fine and penalty to the part
ty concerned. 2 L. P. R. 337. tit. Poffa.
Formerly after a nonsuit at the assizes for want of con-
cluding of leave, entry and assizes, the plaintiff's attorney
immediately made out a writ of possessio : But the prac-
tice is much altered; so that now it cannot be done until
after the pofta comes in; at the day in bank, for it may be
that there was not due notice of trial given; or there
may be some other good reason sufficient to set aside the
nonsuit. 2 L. P. R. 388. tit. Poffa.
Note, That he who moves in arrest of judgment upon
a declaration must always have the roll in court. But
an act is found in the 4th of B.R. practice is to have four
days to move in arrest of judgment after the pofta comes in, the
it be more than a year after the verdict. But in the
other cases, within the days of the term next after the
verdict, they may sign judgment. This be as soon as the
pofta comes in. Sid. 36. 6, 6. Poth. 13. 2. in C. B. Ann.
The defendant has four days by the rules of the court
to speak in arrest of judgment after the pofta is brought
in. If the defendant or the party for whom the verdict
paffed, will not bring it in. Upon notice to him by a
party that he intends to move in arrest of judgment, the
court upon motion setting forth this matter, will order
judgment to be paid off within four days after it shall be
brought in, that the defendant may have time to confide
upon the record what to move out of it in arrest of judg-
ment. 2 L. P. R. 337. tit. Poffa. See 16 Fin. Abr. t. 5. Poffa.
Postiority, (Pofferioritas,) The coming after or be-
being behind, is a word of comparison, and relation in
nure, the correlative whereof is priority; for a man hold-
ning lands or tenements of two lords, holdeth of his an-
either lord by priority, and of his latter lord by pofferiori-
Stann and Prayse, fol. 10. 11. When one tenant holdeth
of two lords, of the one by priority, of the other by pofferiori-
Pott-fine, Is a duty belonging to the King, for a fin
formerly acknowledged before him in his court, which
pays the cognition, after the fine is fully paid, and all
things performed touching the fine, to the Sheriff of the
so much, and half so much as was paid to the King to
the fine, and is collected by the Sheriff of the county
where the land, &c. lies, whereof the fine was levied;
it be answered by him into the exchequer. 22 & 23 Car.
2 act for the better recovery of fines and forfeitures,
Payment of post-fines regulated 32 Gen. 2. 6. 14. Sher-
fiff.
Post-hopes. See Post-office.
Posthumous children, Children born after the de-
deal of their father. By stat. 10 & 11 Will. 3. cap.
16. ver. Where any eate is by any marriage or other
act of the person deceased, the heirs of the same, at least
first or other sons of the body of any person, with re-
mainder over to, or to the use of, any other person, or
remainder in, or to the use of, children, with re-
mainder to any other persons: Any son or daughter of
such person, born after the decease of the father, mix
take such estates, in the same manner as if born in the
life-time of the father, although no eate be limited:
trustees to prefer the contingent remainder.
Postilac and Postillare, marginal notes, or to mak
annotations on a book. Trivet in his Chronicle, spak
of Stephen Langton, archbishop of Canterbury, tells u
that Super bilbiam poftillae, &c. can per capitato pulc
nunc unturn moderni diurnam ; and others, Pottia, di-
lists of Choffe, Super pffilerium poftillae stirritis; and Ke
ten, another of our historians, writing of one Hugot,
Dominican and cardinal, tells us, that Temat bilbiam pofti
lavit. Growth, edit. 1737.
Pott.
P O S

Poulter. In the seventh year of King James, after many arguments and long debates, it was by all the judges resolved, that such as were born in Scotland after he descent of the crown of England to King James, were not citizens of England: But it appears, that in such cases born before that descent, were aliens in regard of the time of their birth.

Poultrous. A word often mentioned in Bradton, Wincheste, Fleta, and other law writers, and it signifies the second fow. So in Brome, lib. 2. cap. 35. 3. It connotes the quinquennium of such poultrous prelatical recognizances.

Poulterer. A general post-office erected, 12 Car. 2. c. 35. 9 Ann. c. 10. Made perpetual and part of the general fund, 3 Geo. 1. c. 7.

Packets—boats not to carry merchandise, without leave from the commissioners of the cullums, 13 & 14 Car. 2. c. 7.

The King's estate-tail and reverion in fee in the post-office revenue consolidated, 3 Geo. 1. c. 12.

Carriers prohibited to carry letters, 9 Ann. c. 10. f. 3. How horses to be provided, 9 Ann. c. 10. f. 5; 20, 27, 28.

Penalty of sending ships letters to general post-office, 9 Ann. c. 10. f. 15.

Penalty of carrying the mail in any ship which is not armed, 9 Ann. c. 10. f. 74.

Small debts for postage recoverable as small tithes, 6 & 7 Geo. 1. c. 10.

Saving of the privileges of the universities, 9 Ann. c. 10.

Officers not to influence elections, 9 Ann. c. 10. f. 44.

Bills of exchange, &c. to pay direct postage, 6 Geo. 1. c. 21. f. 51.

Penny allowed for the delivery of penny post letters in the country, 4 Geo. 2. c. 33.

Penny-claies may be furnished by any person, 22 Geo. 2. c. 25.

Writs to pay postage as letters, 25 Geo. 2. c. 13. f. 7. Pattern inclosed to pay as a double letter, 26 Geo. 2. c. 13. f. 8.

Offences against the acts concerning the post-office, to be excepted out of the general pardon, 20 Geo. 2. c. 52. f. 28.

By stat. 4 Geo. 2. c. 24. sect. 1. it is enacted, That from and after the 1st of May 1764, while the revenue of the office shall continue to be paid to the aggregate fund, no letters or packets shall be exempted from postage, or to be sent free, or on the contrary, without exceeding two ounces in weight, as shall be enacted during the session of parliament, or within forty days before or after fummors or prorogation, and be signed on the outside by a member of either house, and the whole if the superficition to be of such member's writing; the letters or packets, shall be directed to the member, and the letters or packets shall be sent free, and where he shall then be, or at the house, &c. of parliament: And in like manner, letters and packets sent from and to places in Ireland, during the session there, or within forty days before or after fummors or prorogation, signed and directed as afofoed: Also all letters and packets to the Lord High Treasurer, or Commissioners and Secretaries to the Treasury; Lord High Admiral, Commissioners and Secretaries to the Admiralty; Principal Secretaries of State, and their Under Secretaries; Commissioners for Trade and Plantations, or their Secretary; Secretary at War, or his deputy; Lieutenant General, or other Chief Governour or Governors of Ireland; or their Chief Secretary, or Secretary for the provinces of Ulster and Munster; their secretary residing in Great Britain, the under secretary and first clerk in the office in Ireland of the Chief Secretary, and the first clerk in the office of the secretary for Ulster and Munster; Secretary General, or other Governor or Governors of Ireland; or their Chief Secretary, or Secretary for the provinces of Ulster and Munster; farmer of the bye and cros road letters; surveyors of the Post-Office; and letters and packets sent from any of the said officers, signed by them on the outside, and the whole superficition of their writing; and letters and packets from the Treasury, Admiralty Office, Office of the Secretaries of State, Plantation Office, General Post-Office at London, Chief Offices at Edinburgh, Dublin and America, indorsed for the King's service, and sealed with the Seal of Office, or of the Principal Officer in the department.

Sect. 2. Commissioners of the Treasury and Admiralty, the Secretaries of State, Commissioners of Trade and Plantations, Secretary at War, Postmaster General and his deputies, empowered to authorize certain perons in their respective offices, of whom letters to be transmitted to the General Post-Office, London, to indorse the letters and packets upon the King's service, and seal the same, with the Seal of Office, &c. None to be so indorsed and sealed, but by direction of their superior officer, or which concerns the business of the office, on forfeiture of 5L. for the first offence, to be recovered and applied as by act of 9 Anne is directed; and for the second offence, the offender to be removed from his place.

Sect. 3. Persons appointed to make such indorements, not to exceed two in any office, Admiralty and War Office excepted; and in the Admiralty not to exceed eight in time of peace, and twelve in time of war.

Sect. 4. Where any privileged person, disabled from writing the whole superficition, shall authorize some person to sign his name upon and write the superficition, and give notice thereof under his hand and seal to the Postmaster General, letters and packets, so signed and subscripted, shall go free.

Sect. 5. Printed votes and proceedings in parliament, and News-papers, sent without covers, or in covers open at the sides, and signed on the outside by a member, or directed to a member, according to notice given by him to the Postmaster General or his deputy at Edinburgh or Dublin, are to go free.

Sect. 6. Clerks in the offices of the Secretaries of State and Post Office, being duly licensed, may continue to frank the votes, and proceedings in parliament, and News-papers, as heretofore; sending the same with covers, or in covers open at the sides.

Sect. 7. Postmaster General, and officers under him, may search any packet sent without a cover, or in a cover open at the sides, as if the same were sent free, or in the contrary manner, without any other or thing inclosed therein, or there shall be any writing, other than the superficition upon the printed paper, or cover, the whole of such packet is to be charged with the postage.

Sect. 8. And if any person shall, after the 18th of June 1762, continue to be writing or carrying a packet in the superficition of any letter or packet, to avoid the postage, he shall be adjudged guilty of felony, and to be transported for seven years.

Post-poned. (Post-pone) Set or put after another. 22 & 23 Car. 2. Subsidy act.

Postmasters, Secretaries, Inclorities.

Post-term. (Post-terminus) Is a return of a writ, not only after the day assigned for the return thereof, but after the term also, for which the Cylus Bravium takes the fee of twenty-pence:—Sometimes also it is taken for the fee itself. Cowell, edit. 1727.

Postulation. A postulation made upon the unanimous voting any person, being a dignity or office, of which he is not capable by the ordinary canons or statutes, without special dispensation. So a chapter postulated a bishop actually postulated of another fee. And the religious postulated a prelate to be taken from another convent, from which he could not pass by the ordinary laws of the society. By the old customs an election could be made by a majority of votes; but a postulation must have been sine nomine contradicente. Cowell, edit. 1727.

Pot. A head-peace for war, mentioned in flat. 13 Cor. 2. cap. 6.

Pots, what ships to be imported, 22 Cor. 2. c. 13. sect. 8. Not to be imported from the Netherlunds or Germany, 13 & 14 Cor. 2. c. 11. f. 23. See Plantations.

Pound, (Parce) Signifies a place of strength to keep cattle in that are driven, and put there for any trespass done, until they are releived or redeemed; and this is called a pound over, or open pound, and because it is built upon the lord's waste, the lord's pound. See Kitchin,
Pour le droit terres à la tenue que tient en douleur, &c.

Was a writ whereby the King seised upon the land which the wife of his tenant that held in capite deceased, had for her dowry, if the married without his leave; thence he seized it, and the whole thereof was bound to be given to his coming thither. A close pound is the contrary, whither the owner cannot come for the purposes aforesaid, without offence; as some house, castle, forrester or fish like place. Cowell, edit. 1727. See Diffrets. Pounnage. Is a subsidy to the value of twelve-pence in the pound, granted to the King, of all manner of merchandise of every merchant, as well denizens as alien, either exported or imported; and of such subsidies see the statutes 1 & 2 Edw. 6, cap. 13. and 1 Jac. c. 33. 12 Car. 2, cap. 4. and 14 Car. 2, cap. 24.
Pounbreache, If a diffrets be taken and impounded, though without just cause, the owner cannot break the pound, and take away the diffrets; if he doth, the party disheartening may have his action, and retake the diffrets wherever he finds it: And for pound-breaches, Est. ac- tion of the omission thereof may be re- covered. 1 Inst. 261, 2 W. & M. c. 5. Also pound-breaches may be inquired of in the sheriff's turn; as they are common grievances, in contempt of the authority of the law. 2 Hark. P. C. G. 67.
Pound in money, (from the Saxon pound, i.e. pond) Consists of 240 pounds of 12 toises each, now, but then was equal in weight to almost five pence now, and afterwards to three-pence; and 240 of those pence weighted a pound, but 720 scarce weigh so much now, and this appears by the silver penny coined in the reign of King Ethelred. Lambard 219.
Pour faire præludium que nulli injetis timus 0 3151 505 305 3151, præteristi, &c. &c. Is a writ directed to the mayor, sheriff or bailiff, of a city or town, commanding them to proclaim that none cast filth into the ditches or places near adjoining, and if any is cast already, to remove it. This is founded upon the statute 12 R. 2. 15. F. N. B. fol. 176. Purpurp, (Proprari, proprarii, proprarii.) Is con- trary to pro indivis: For to make purpurp to divide and sever the lands that fall to parcellers, which before partition they hold jointly and pro indivis. Old Nat. Rev. fol. 11.
Purpurbreaches, from the French pour- purry, espousing an incelde) Is thus defined by Glan- tile, Joh. lib. cap. 11. Purpurpbreaches off propriis quando aliquid dominum regem injuriae occupat or ut in Dominis Regis, vel in suis publicis officiis vel in suis proprietatis transforent a recto cursu, vel quando aliquis in civi- tate tate Regiam placent aliquod asdicendo occupaverit & generaliter quilibet aliquod act ad noctumatum Regii tenen- mentum vel Regiam recidisse in civitatis. Crompton, in his jurispr. fol. 152. defines it thus; Purpurp is properly when a man taketh unto himself, or incrocheth any thing that he ought not, whether it be in any jurisdiction, land or franchise; and generally when any thing is done to the nuisance of the King's tenants. See Kitchin, fol. 11. Tastley, J. lib. legum, cap. 10. "The power of the crown, whether, &c. &c. the king, and when the crown, for the long continuance of wars, inasmuch as those who have lands near the crown lands, take or inclose part of it, and lay it to their proper use. Purpurp against the lord is when the tenant neg- lects to perform what he is bound to do for the chief lord, or any wife deprives him of his right. Cowell, edit. 1727.
Purpurp against a neighbour is of the same nature: "Tis mentioned in the Monadh. 1 tsn. pag. 643. and in Thorn, pag. 269. Et de purpurp in quam Bercarius abbas purpurpidenti super praediction Hielan.
cute the poiffion to the use: And therefore he may an-

POW

POY

tax powers to eflates, which cannot be annexed to them by a conveyance at the Common law. Ca. L. 237. a. Ms. 610. And therefore to the limitation of an ufe for life, he may annex a power to make leaves for 21, 99 of more years, or for one, two or more lives, or to make a more contrived reversion or a lease for 21, 99. 3 L. 394. 1. as to make a juncture, and also a lease to come into his death for portions, &c. Har. 413. So he may annex a power of revocation of all ufe limited, and to make a limitation of new ufe, and this will not be renounce. Ca. L. 237. a. Ms. 610. 3. So a power may be annexed to an eflate by another deed, executed at the same time, though it be not in the same conveyance by which the eflate is conveyed. 1 Vent. 279. So a man may give a power or authority by will, which is a naked authority, not annexed to an estate, to make leaves to A. for life, and afterwards that it shall be at his diffoltion to any of his children then living; he hath but an eflate for life, with a naked power to disolve, in the manner directed by the will. 1 Sal. 24. 3 Sal. 276. So he may give a power to a flanger, which is a naked collateral power, and annexed to an estate. Per a. Ms. 741. 1. So a power in another, which takes effect after his eflate is determined. Har. 415. If a power be to A. or his affitants, to make leaves, &c. the power runs with the eflate to the affigee in deed, or in law. 1 Vent. 340. 2 Vent. 110. So in all cases a power coupled with interest may be limited to a former, and his affigns, to cut down trees. 2 Mod. 317. But a man cannot annex a power of revocation to a feuimento, or grant; for that will be void. Ca. L. 237. a. Ms. 610. So if a man feized in fee, covenant to fland feized to the use of himfelf for life, with power to make leaves, remainder to another in fee, the power is void. Ca. Ch. 161. If the confideration of the covenant does not extend to the power to make leaves. Ms. 155. 1 Ca. Ch. 175. Roy. 248. So upon fuch covenant he cannot referve a power to make leaves, jointures, or for preeminent of younger children, Ca. L. 284. 383. Words which fhew the intent of the party, are fufficient to create a power; as, if a power be to demife or lefe, theo' the intent is, that he declare the ufe of the firft fettle- ment for life or years: For the lefe does not take effect by demife, but by declaration of the ufe. Ms. 611. So, if a man expresseth the power only by implication, it is void: As it is held, that he shall not have power to alien, &c. otherwife than to make a jointure, and leaves for 21 years; it is a good power to make a jointure and leaves. 1 Lee. 148. So, if a devife be to A. for life, to feit, and make eflates out of it as I might, and afterwards to his daughter in tail; A. has a power to make the eftates of the country where the land lies, to let for lives or years. 2 Rol. 261. l. 35. But a power, being executory, may be refrained or enlarged by a fubsequent deed: As, if a power be general, to revoke; by a covenant afterwards, that he will not revoke without the confeft of B. the power is re-

POW

POY

to make leaves in poiffion only, and not in reversion. 2 Rol. 261. c. 5. 2. Ca. 318. 2. Rol. 248. M. 3 W. 3. in B. R. Inter Winter and Lovelace. (1. Lom. Raym. 267. 2. Sal. 537.) 1 Le. 168. 6 Co. 32. a. Ms. 199. 1 Le. 35. 3 Le. 131. Nor a lefe to come into future. Roy. 248. 1 Le. 35. Tel. 222. 2 Ca. 318. Ms. 494. So, if the power be to make leaves for life, or for 21, 99 years, he cannot be determi- 

POW

POY

deemed, or is void: For he is not within the confideration. 2 Rol. 260. l. 30. S. if a power, at its creation, be to make leaves to a perfon, to whom the confideration does not extend, it will be void, though the lefe be exec- 

POW

POY

to a perfon within the confideration. 2 Rol. 260. l. 35. 2. How a power shall be expounded. A power fhall be expounded literally; and therefore if a man has a power to make leaves generally, this extends Vol. II. Nn. 115. to make leaves in poiffion only, and not in reversion.
much that King Richard the Second likewise made Fe""
Seventhly, By 13 Eliz. cap. 7. "If any one shall bring into the realm, &c. any agnus dei, crotties, pictures, beads, or such like superstitious things, pretended to be hallowed by the bishop of Rome, &c. and shall deliver or offer the same to any subject to be used in any wife; or if any one shall receive the same to such intent, and not deliver it forthwith, &c., he shall be fined for or execute any sentence, dispensation or faculty from the see of Rome; and 28 Hen. 8. cap. 16. (by which all bulks, briefs, &c., therefore obtained from Rome are made void) That who- shall use, allege, or plead the same in any court, un- less they were condemned thereto by or in the see of Rome, shall lie in the like penalty. Vide Reg. 54. In 1541.

By the 13 Eliz. cap. 2. Those who purchase any bulks, &c. from Rome, are guilty of high treason; but those ancient statutes continue full in force, and it is in the elec- tion of the courts, to relieve either against them, or 13 Ed. I. by the said statute of 13 Eliz. the sides, complainers, &c. retainers of such offenders, after the offence, to the intent to uphold the said usurped power, incur a pramunire. Davis 94.

Secondly, The derogating from the King's Common w courts, is liable to a high offence at Common pleases, and is made a pramunire by many ancient flan- tes for 27 Ed. 3. cap. 1. of provisors. If any sub- ject does not appear in the realm, in which the cognizance pertains to the King's court, or of things where- by judgments be given in the King's courts, or fail in any other court to defeat or impede the judgments given in the King's courts, he shall be warned to appear, &c. in open perdon, at a day containing the space of two months, at which if he appear not, he and his procur- ees, shall be put out of the King's protection, his lands &c. chattels forfeited, his body imprisoned, and renom- nished at the King's will, &c. 2 Ed. 1. cap. 6. 25 Eliz. cap. 2. both those who shall par- e, or cause to be purposed in the court of Rome, or else- where, any procissils, or instrumemts or other things what- ever which touch the King, against him, his crown and gal- ory or his realm, and also those who shall bring, re- late, or execute them, and their authors, &c. Shall be put out of the King's protection.

In the confabulation of these statutes it has been holden, that at certain commissaries of fewers, for summoning some one thern who had got a judgment at law, and impris- oning him till he would release it, were guilty of a pramunire. 2 B. F. 219. 3 infra. 125. 4 Cor. Jac. 336.

And by the 27 Ed. 3. statute, if any person in any county or in any court, within the realm, for matters which upon the face of the law itself appear to belong only to the cognizance of the ecclesiastical courts, are said to be within 16 Rich. 2. by force of the words, or "elsewhere." 1 Hawk. P. C. 51.

And it hath been formerly holden, that even suits in a matter of divorce, if not straining beyond the con- nection of the suitants, and not being within the power of the courts, are not within the definition of these statutes, especially if they end to controvert the very point determined at law, or to relieve in a matter relievable at law. 4 Ex. Acr. 46.

Thirdly, Appeals to Rome are made pramunire by Hen. 8. cap. 12. and 25 Hen. 8. cap. 19. by which it is enacted, That such appeals as formerly were made to Rome, shall be made henceforth to Chancery.

Fourthly, The exercising the jurisdiction of a suffra- gan without the appointment of the bishop of the diocese, is made a pramunire by 26 Hen. 8. cap. 14. which sets forth at large how suffragans are to be nominated, &c.

Fifthly, By 25 Hen. 8. cap. 20. if a dean and chapter refuse to elect one named in the King's letter for a bi- shoprick, and to confirm such election to the King within twenty days after the licence shall come to his hands, or if any archbishop or bishop after such election (or not having made it for himself, or his vicars) refuse to confirm and consecrate within twenty days the person signified to him by the King's letters patent, they incur a pramunire.

Sixthly, Maintaining the pope's power is made a pramunire by 5 Eliz. cap. 1.
It has been resolved, that a statute, by appointing that an offender shall incur the penalty and danger mentioned in the 25th Reg. 2. 5. 5. does not confer the prejudice for the offence to the particular process thereby given. 1 Vent. 173.

It is held, that the statute of praemunire, which gives a general forfeiture of all the lands and tenements of the offender, extends not to lands in tail, Co. Lit. 130.

It has been held, that a person for the benefit of such an imprisonment, trepass, or any other offences and contempt, will pardon a praemunire. Cro. J. C. 336. 2 Bultf. 299.

The defendant in a praemunire suit regularly appears in person, whether he be a peer or commoner, unless he is dispensed with by writ or grant for that purpose; but in the case of Sir Anthony Ashley, he was allowed to appear by praemunire or attorney; but it has been thought that there was some clause to this effect in the pardon. 3 Inst. 125. 1 Rel. Rep. 190. 2 Bultf. 290. 2 Hawk. P. C. 273.

Upon an indictment of a praemunire, a peer of the realm shall not be tried by his peers. 12 C. 92. Lord Faul's case.

Upon an information on the statute 6 Geo. 1. c. 18, for setting up a bubble called the North Sea, it was determined, that the court was not obliged by that act to give the whole judgment, as in case of a praemunire, against the defendant, but only forth parts of it as in the other cases, for which he could accordingly under a fine of 5 l. be set on the party convicted, and judgment that he should remain in prison during the King's pleasure. 2 Lord Raym. 1361. The King v. Corwed.

Praepositus villae, is used sometimes for the confinement of a town, or petit-confine. Coop. Jurisf. 2. 25.

Howe is the same authors, fol. 194, seems to apply it otherwise; for those quiare homines praeposit, are those four men, that for every town must appear before the justices of the forest in their circuit. It is sometimes used for an head or chief officer of the King, in a town, manor or village, or a see. See Recur. Animula & res invente cursu ipsi (praeposito) & facerades du- cenda erant. L. 1. Edw. Confessor. cap. 23. This praepositus villae in our old records, does not answer to our present confine, or headborough of a town; but was no more than the revenue, or bailiff of the lord of the manor, sometimes called servius villa. By the laws of Henry the Fifth, the lord answered for the town where he lived, of his majesty; where he was not, his deputy, orfearchal, if he were a baron: But if neither of them could be present, then praepositus & quator de unaqueque villa, i.e. the revenue and four of the most substantial inhabitants were summoned in. See Dr. Brady's Glossary to Introduction to English History, pag. 97.

One of the common names of England signifies the master's feeding or placing an incumbent in the church, and is made only for representator, which in the council of Lateran, and elsewhere, occurs also for pretendent. Sedan of Tithes, pag. 390.

Praetum salubrum, A meadow or ground fit for mowing; Juratres ducit quid praetulit placea a tempesta quo. C. 41. justorum fiduciary use ad praetulam annuo quo W. praebulum illud aere. Trin. 18 Ed. 1. in Banco. Rot. 50.

Paper. See Servire and Sacramenta.

Pap in al. See Ab

Practicing. Prohibits without license of the dioce- san, 3 Hen. 4. c. 15. See Lector.

Preamble, (Preamum), takes name from the preposition pre, before, and ambule, to walk; as if we would, say to walk before.) The beginning of an act is called The preamble, which is a key to open the intent of the makers of the act, and the mischief which they would remedy by the same. The act is considered at Westminster, cap. 7, which gives an attain the: The preamble is thus; Forasmuch as certain people doubt very little to give false verities, or oaths, which they ought not to do, whereby many people are disheartened, and lose their right. It is provided, C. Cornwell, edit. 1727.

Pardons, (Pardenda) is the portion which every member, or can of a cathedral church receive in the common fund of all the revenues of the church, and is properly used for that share which every canons ordi- nary receiver yearly out of the common flock of the church; and prabenda is a severable benefice, rising from some temporal land, or church appropriated, towards the maintenance of a clerk, or member of a collegiate church, and is commonly termed in their act, to further the profit growth. And these prabenda are either fixed or with dignity, Simple prabenda are those that have no more but the revenue towards their maintenance: Pre- bendas with dignity are such as have jurisdiction annexed to them according to the divers orders in every several church, and are termed in their acts (De Prabendis & Dignitatibus). Prabenda, strictly taken, is the maintenance which daily præbatur to another; but now it signifies the rents and profits belonging to the church, divided into those portions called prabenda, and it differs from canonicus, which is a right obtained in the church, by being received into the cathedral or college; Et per officiumfem inchoat in charo & licentia in capite. But prabenda is a right of receiving the profits for the duty performed in the church, sufficient for the support of the person in that divine office where he resides; and it proceeds from canonica as a daughter from her mother. Con- pas prabenda is that which is received by a prabendar, in which he is for his own maintenance. Which are always to have his duty maintained. Prabenda and prabenda were also in old deeds used for provints, provand or provener. Præ- equo pro unam bofcl avunarnum pr pro prabenda capienda. Courcher Book in Dutchy-office, tom. 1. fol. 45. Cowell. 1777.

Pecuniaris, (Præconiarii) is he that hath such a præbend; so called, not a præbendax auxiliari & confusion episcopos, but from receiving the prebend. The Golden prebendary of Hereford, otherwise called præbendarii episcopos, is one of the twenty-eight minor prebendaries there who has ex officio the first canon's place that rails, was anciently confessorius of the cathedral church, and to the bishop, and had the altrages; whereby, in return of the gold, and other rich offerings formerly made there, he had the name of Golden præbenda.

Pecuniae, Are days-works, which the tenants of a some manors are bound, by reason of their tenure, to do for their lord in harvest; and in divers places are vulgarly called freemen-days, for freemen-days, which in the Saxon Dic præcussion vastus; For bold is to pray or interest. This cumberland is plainly fet forth in the great book of the Cullen's of the Masonery of Ballief, tit. Appledorham, fol. 60. Cowell. edit. 1777.

Pecuniae, Statute for regulating prebendary of land, and other great officers in parliament, 31 Est. 8. c. 10.

Pecuniae, Are examples or authorities to follow, in judgments and determinations in the courts of justice. For, If we shall adjudge contrary to received preced- ents, it will be of evil example to the young apprentices and students of the law, information that they will not know what to give credence to; whether old books or new judgments. 1 Stot. 124. Arg. cites 33 H. 6. 41. Per Pris. 2.

Two or three precedents will not make a law, and es- pecially where there are so to the contrary. Br. Retum de Briefs, pl. 93. cites 5 Ed. 4. 159.

In venire factos the sheriff returned the names of 12 only upon the back of the writ, and not in a schedule as is usual, and he returned venire faciet, and not executi- jilum brevem. And all the justices of both benches agreed, that they would not change the ancient course, for the mischief which might happen; for if 12 only should be returned, none can have a jury without a trial, if any is challenged; by which they caused the sheriff to amend the return in pain of amercement; and yet the writ in venire faciet 12 libertas & legatos bona, C. s. Br. Re- torn de Briefs, pl. 84. cites 2 H. 7. 8.

A counsellor ought not to be heard to speak against common precedents. 1 Stot. 124. cites 13 H. 7. 23.
Precept, (Præceptum) Is diversely taken, in law, as sometimes for a commandment, in writing, sent out by a justice of peace, or other like officer, for the bringing of a peron or records before him; of which there are divers examples in the table of the Regis, judicial. And in this sense it seems to be borrowed from the cœlum of Lamberti, and the several precedents and devices of mortality,Hotom, in verb. Libri, ii, l. 3. Commentar., in libris foedus. In prefentiat. Sometimes it is taken for the provocation, whereby one man incites another to commit a felony, as theft, murder, &c. Staw. Pl. Cor. fol. 105. Bracton, lib. iii, tract. 2, lib. i, c. 9. Or, in a strict sense, præceptum; præceptum being the intimation used, before-hand, for the subtance in the fact, as to help to bind the party murdered or robbed; confition, advice either before, or in the fact. The Civilians use mandatum in this case.

Pretious stones, May be imported or exported duty free, 6 Gen. 2, c. 7.

Precontract, (Pre-empnis,) Was a privilege allowed the King’s purveyor, to have the first buying of corn, and other provisions, before others, for the King’s house, which is taken off by a statute, made 12 Car. 2, c. 24.


The altering settled rules concerning property, is the oft dangerous way of removing land-marcks; see Par. Ch. J. Warne’s Rep. 399. Hil. 1717. in the case of Goodworth v. Wright. Where things are settled and rendered certain, it will not be material, how, as long as they are so, and that people know how to act; see Ld. Ch. Warne’s Rep. 452. Trin. 1718, in the case of Butler v. Duncombe. Lord C. Tollett said, He thought much better to flock the known general rules, than to follow any one particular, which might be found on reasons unknown to us. Such a proceeding would confound all property. And then citing the case of Lady Langbrough v. Wright, as of the strongest authority to the case in point, is Lordlipid said, that though it had not been in the case of Lords, he should have thought himself bound by the general and accepted rules of law, in Caes. in. Ed. Tal. tost. time 26, 27.

It is dangerous to alter old established forms. Per A. Tollett. Cafer in Caer. in. Ed. Tallett’s time 196. Pofh. 1736, in the case of Ne Exeat Rega to Scotland since the union. Hunter v. Macray, See 16 Fin. Ad. 113. 12 Ed. 1, cap. 27.

Prevarication, Is when a suit is continued by the/ayer, assent or agreement of both parties. Stat. 13 Ed. 1, n° 115.
gift is void, because the habendum can only limit the duration of the eftate, but no man can by virtue thereof hold the land given to him. In Co. Lit. 7. a. Cres. Eliz. 903. 2 Rol. Abr. 66, 67.

If lands be given to a husband, habendum to him and his wife, and to the heirs of their two bodies, the wife takes nothing, because she was not mentioned in the premises; and therefore shall take nothing of that which was before given to her husbund. 2 Rol. Abr. 67.

But there are these four exceptions from this rule: 1. That if lands be given in frank-marriage, the woman, who is the caufe of the gift may take by the habendum, though she be not named in the premises; as if lands be given to J. S. habendum marit Higgins uma cum the woman who is daughter of the dons; this is a good eftate-tail in the wife; for these customary grants, which are made in pursuance of a former surrender, are construed according to the custom of the ancient socieies, as well as it believes that, the custom of the manor is the rule for the expiation of such fort of grants, and in many manors such fort of form is usual. Poph. 125, 126. Brook's eftate. Cres. Jac. 434. 2 Rol. Abr. 67. Cres. Eliz. 323. Deavon and Hopkins.

3. That a man not named in the premises may take an eftate in remainder by limitation in the habendum. 2 Rol. Abr. 68. Hob. 313. Cres. Jac. 504.

4. In wills; for if a man devises lands to J. S. habendum to him and his wife, this is a good devise to the wife; because in confuption of wills, the intention of the devor is chiefly regarded; and wherever that discover itself it shall take place, though it be not expreft in those legal forms that are required in conveyances executed in a man's life-time. Plew. 158, 414. 2 Rol. Abr. 68.

Premium. (Premium.) A reward: Amongft merchants it is used for that sum of money which the enfu- ing gives the enforcer for enforcing the fale return of any goods. 19 Car. 2. 57.

Prendre, is the power or right of taking a thing before it is offered; from the French prendre, i. e. occi- pere: It lies in render, but not in prendre. Co. Rep. 1 par. Sir John Peter's eale.

Prendre de baton, Signifies literally to take a huf- band; but it is used as an exception to divide a wife from pursuing an appeal of murder on account of the husband of her former husband. Staunf. Cor. lib. 3. cap. 59.

Prepenfum, (Prepenfus) Fore-thought; as malice prepens, malitia praegratitio, when a man is flain upon a fudden quarrel; yet if there were malice prepens formerly between them, it makes it murder; or, as it is called, fupine murder. 1 Hen. 7. c. 7. prepens murder. See Murder. 3 Inft. fol. 51.

Pregrogative, (from pra, ante, and rogare, to ask or demand) is a word of large extent, including all the rights and privileges which by law the King hath, as head and chief of the Commonwealth, and as intruded with the execution of the laws. 2 Rol. Abr. 149. See Stamp, Prærog. cap. 1 Co. Lit. 90.

The nature of our constitution is that of a limited monarchy, in which the legislative power is lodged in the King, Lords and Commons; but the King is intrusted with the executive part, and from whom all justice is falfed, and hence he is filled the head of the Commonwealth, supreme protector, the lawgiver, but still it is to make the law of the land the rule of his government; that being the measure as well of his power, as of the subject's obedience. For as the law afferts, maintains and provides for the safety of the King's royal person, crown and dignity, and all his just rights, revenues, powers and prerogatives; so it likewise declares and afferts the rights and liberties of the subject. 11 Id. 13 Co. Lit. 19, 75. 4 Co. 124. 4 Bac. Abr. 149.

Hence we may without peradventure rule a rule, that all prerogatives must be for the advantage and good of the people, otherwise they ought not to be allowed by the law. Mow. 672. Shaw. P. C. 75. 4 Bac. Abr. 149.

The rights and prerogatives of the crown are in most things as ancient as the law itself; for though the King in private, by what is called the nature of prerogativa Regis, seems to be invested with an exclusive power, yet for the most part it is but a form or collection of certain prerogatives that were known law long before: As that the King's wardship of lands held in capitis, did attract the wardship of land held of others; that the grant of a manor did not pass an advowson appentant, unless named; that the King hath a right to ефетіш, wrecks, royal fifies and many others which are appertinent to the ancient prerogatives of the crown. Bentl. 117. 2 Inft. 263. 496. To Co. 64. 4 Bac. Abr. 149.

1. Of the commencement of the King's reign, and his prerogative as universal occupant.

Upon the death or demise of the King, his heir is the moment invested with the kingly office and regal power, and commences his reign the fame day his ancestor dies, whence it is held as a maxim, that the King never died 7 Co. 12. in Cabins's eale. 6 Co. 27. 7 Co. 30.

And herein we must take notice, that the rules which make the law for those that govern private inheritances, except only as to the rule of fullest patronage, and which do not hold in the deficit of the crown or its possessions: Neither is half blood so imprisoned in such case; for the brother of the half blood shall be preferred to the fifter, in the enjoyment of the crown as the most capable of the two, by the advantages an prerogative of his fex. Co. Lit. 15. b.

Therefore, if the King hath issue a fone and a daughter by one venter, and a son by another venter, and pat- clas lands and dies, and the eldest fone enters, and do without issue, the daughter shall not inherit those lands nor any other fee-fimple lands of the crown, but if younger brother shall have them together with the crown Co. Lit. 15. b.

But the King commences his reign from the day of the death of his ancestor, it hath been held, that commiss his death before coronation, ye a before proclamation of him, is commissing of the King's death within the extent of 25 Ed. 3. he being King present, and the proclamation and coronation only honourable ceremonies is the further notification thereof. 3 Inft. 7. 1 Hal. Hy. Pau. 7.

Also it is held, That every King for the time being is the actual possiffion of the crown, is a King within the intension of the abovementioned statute; for there is a munificency that the realm fhould have a King, by whom, as in whole name, the laws are to be administered; the King in possession, being the only person who either doth or can administer the laws. Those laws must be the only person who hath a right to that obedience which is due to him who administers those laws; and since by virtue there he secures to us our lives, liberties and properties; and other advantages of government, he may jufly claim retu
PRE

by inestimable degrees, they belong to the soil adjoining.

Dyer 326. 2 Roll. Abr. 170.

So, if a river, so far as there is a flux of the sea, leaves its channel, it belongs to the King; for the English sea and channels belong to the King; and he hath a property in the soil, having never distributed them out to subjects. 2 Roll. Abr. 170.

But if a river, in which there is no tide, should leave its bed, it belongs to the owners on both sides; for they have in that case the property of the soil; this being no original part or appendix to the sea, but distributed out as other lands. 2 Roll. Abr. 170.

If land be drowned, and so continue for divers years; if it be after his death, other lands of the subject, he can have no recompence, unless he should be intitled to what he regains from the sea. 8 Med. 107.

2. Of the King's prerogative in escheats; in seas and navigable rivers; in swans and fish; in beacons and lighthouses; in wrecks; in coins and mines; in dower goods; and in masts, ships and treasure trove.

An escheat may be either per defetum fanguinis, or per delictum tenentis; but it is said, That in case of an attainer of felony, the escheat to the lord is pro defetum tenentis; and the not confecrating the consequence of the corruption of the blood; but in case of treason, the lands come to the crown as an immediate forfeiture, and not as an escheat. Co. Lit. 13, 92. Grot. 211.

If the King's tenant dies without heir, the lands shall escheate and revert again to the crown; but the lands holden of any other lord shall, for want of heirs of the body, be granted to the King. 2 Inst. 36. Rit. Fl. 104. 2 Bell. Rep. 251. 4 Inst. 224.

If lands be held of the King as of an honour come to him by a common escheat, as the tenants dying without heir, or committing felony, these lands are part of the honour; otherwise if forfeited for treason, for then it comes to the King by reason of his perfon and crown; and if he grants them over, Q.E., the patentee shall hold of the King in chief. 2 Inst. 64.

It was found by special verdict, That the prior of Merton was feized of a house in Southwalk, held of the archbishop of Canterbury, as of his borough of Southwalk; and 30 Edw. surrendere to the King H. 8. who granted the said house to one George, a London, Middlesex and Essex to J.S. and his heirs, to hold in lie of him in libre burgagens, by fealty, for all services and demands, and not in capite; and afterwards Q. Mar. granted the manor and borough of Southwalk to the mayor and commonalty of London; and the tenant of the said mef- diage died without issue; and the question was, whether Q. E., or the patentees of the borough should have the escheat; and adjudged for the Queen; for the first pat- tency of the mefliage held it of the Queen in socage in capite, as of a feignory in gros; and the words in libre burgagens are decently void; for the land out of the borough cannot be held in libre burgagens; and there shall not be several tenures for one time or tenure was reftored by the King for all; and therefore of necessity it shall be a tenure in socage of the King. Cr. Eliz. 120. May v. Street.

It is universally agreed, That the King hath the sovereign dominion in all seas and great rivers; which is plain from Selden's account of the ancient Saxons who reigned over the parties in all geographical affairs; and therefore the territories of the English seas and rivers always belonged in the King. Seld. Mar. Cl. 254, 26. 1 Roll. Abr. 168, 169. 5 Coh. 106. 1 Coh. 141.

And as the King hath a prerogative in the seas, so hath he likewise a right to the fishery and to the tides; so that if a river as far as there is a flux of the sea leaves its channel, it belongs to the King. Dyer 326. 2 Roll. Abr. 170.

Hence the Admiralty court, which is a court for all maritime causes or matters arising upon the high seas, is deemed

PRE

turn of duty, allegiance and sujeéion. 1 Hawk. P. C. 361.

It hath been settled, That all judicial acts done by any the Sixth, while he was King, and also all acts of felony and charters of denization granted by him, were valid; but that a pardon made by Ed. 4. before he was actually King, was void even after he came to the crown. Hawk. 56, and the authorities there cited.

The rightful heir of the crown, during such time as the usurper is in plenary possession of it, and no possession thereof in the heir, is not a King within this act, as was the case of the house of Tudor, during the plenary possession of the crown in Hen. 4. Hen. 5. Hen. 6. But if the King retains once the possession of the crown, as King, though an usurper had gotten the possession thereat, yet the other continues his title, and claim thereat, and afterwards re-enters the full possession thereof; a compounding the death of the rightful heir, during that interval, is compounding of the King's death within this act; as it continued a King full and pleni possession of his kingdom; which was the case of Ed. 4. in that small interval wherein Hen. 6. re-obtained the crown; and the act of Ed. 5. notwithstanding the usurpation of his uncle Rich. 3. 1 Hal. Hist. P. C. 104.

It was resolved by the judges, in the case of Sir H. and Ann. That King 2, was King de facto as well as de jure, and that last's death, and that therefore all those who acted against him kept out of possession, in ob- currence to the powers then in being, were traitors. Keding 4, 15. 1 Kebr. 315. That no person was in possession of my sovereign power known to our laws. 1 Hawk. P. C. 6.

By the 1. M. 2. 3. cap. 1. sect. 3. "The kinging office of this realm, and all prerogative, royal power, authori- ties, and jurisdiction concern- ing, annexed, being invested neither male nor female, are as absolutely invested in the one as the other."

By W. & M. M. 2. c. 2. sect. 7. "Every person that shall hold the church of a city, or shall profess the popish religion; shall marry a papist, shall be incapable to inherit or en- joy the crown of this realm, and Ireland; and in such case the people shall be abolished of their allegiance, and no crown shall descend to such persons, being protestants, as should have inherited the same, in case the person so deceased was dead."

And by sect. 10. "Every king and Queen, who shall ascend in the imperial crown of this kingdom, shall on the first day of the meeting of the first parliament, next after his or her coming to the crown, sitting in the house of the peers, in the presence of the lords, and that he partitioned it out in large duchies to the great men who had deferved well of him in the wars, and were able to advise him in time of peace. Hence it is said, That the King hath the direct dominion; and that all lands are held mediately or immediately from the crown. Co. Lit. 1. Dyer 154. 1 Bend. 3d. Sed. More Clauf."

Hence it is, That if the seas leave any arch by a sudden falling off of the water, such derelict lands belong to the King; but if a man's lands lying to the sea are increased
declared the King's court; and its jurisdiction derived from him who protects his subjects from pirates, and provides for the security of trade and navigation. 4 Inf. 142. Milly 66.

From the King's dominion over the sea it was held, that the King, as protector and guardian of the seas, might before any statute made for commotions of seamen, provide against inundations by lands, banks, &c., and that he had a prerogative therein as well as in defending his subjects from pirates, &c. 10 Co. 141. Cafe of ile of E.35.

It is notwithstanding the King's prerogative in seas and navigable rivers, yet it hath always been held, that a subject may fish in the sea; which being a matter of common right, and the means of livelihood, and for the good of the commonwealth, cannot be restrained by grant or prescription. 8 Ed. 4. 18, 19. Brs. Cufirom, 4th Pl. Bar. 4 Mod. 105, 106. 1 Salt. 657.

Alfo it is held, that every subject of common right may fish with lawful nets, &c., in a navigable river as well as in the sea; and the King's grant cannot bar them thereof; but the crown only has a right to royal fish, and that the King only may grant. 6 Mod. 74. 1 War. v. Matthew. 4 Salt. 357. S. C. & P. for Hot Ch. J. on demand of Salmon fisharium in the river E.; by grant from the King.

The King, as a perpetual sign and acknowledgment of his dominion of the seas, hath several creatures reffered to him under the denomination of royal creatures, as fea-vans,feareans and whales; all which are natives of seas and rivers. 10 Co. 145. 6

It is clearly agreed, that the King only has a prerogative in beaches and light-houses; and that he may erect any fuch, and in fuch places as will be most convenient for the safety and preervation of fhips, mariners and navigation; alas it seems to be the better opinion, that this being for the publick utility, and one of the prerogatives that he is entitled with for the safety of the whole realm, he may erect fuch beacon, &c., as well in the fog or ground of a subject as in that of the crown; and that he may do this without the subjects content. 4 Inf. 148. 12 Co. 13. Carter 90. 2 Inf. 204.

Alfo it is clear, that the subject hath not any power to erect any fuch beacon, &c., without the King's licence and authority for that purpole. See the authorities Supra and Carter 90.

But by the 8 Eliz. it is enrolled, That the master, wardens, and affillants of the Trinity house of Ripoff Street, fhall and may law fully from time to time at their own charge and pleaure, and at their cofts, make, erect, and fet up fuch and so many beacons, marks and figues for the fuch in the fsea shores and uplands near the fsea coasts, or forlands of the fsea only, for fee-marks, as to them faille feem meet; whereby the dangers may be avoided, and the fhips the better come to their ports; and all fuch beacons, marks and figues fo by them to be erected, fhall be continued, renewed and maintained from time to time at the costs and charges of the faid master, wardens and affillants.

By the common law the King hath an undoubted right to freds; and his prerogative herein is founded on the dominion he hath over the fsea; and being fovereign thereof and protector of fhips and mariners, he is intitulated to the delict goods of the merchant; which is the more common, as it is a means of preventing the barbarous cuftom of defrauing persons who in fhipwrecks approach the shore, by removing the temptations to inhumanity. Gr. Tra. Bell. 117, 133, 141. 2 Inf. 167. Milly 127.

It is clearly agreed, that by the common law the King hath a prerogative in, and is intituled to, all royal mines of gold and silver and treasures of gold and filver hid in the earth; and that he is intituled with the coinage and making money current; and that he alone can bring the mines and treasures of any conquered country into use, by coining them out into his money; and this prerogative is lodged in the King as he administers justice to all; and therefore the power and regulation of that which is the common standard and measure of all bartering and commerce is committed to his care. Dau. 19. 2 Rel. Atr. 166. 5 Co. 114. 1 Co. 146.

This prerogative is given to the King as a necessary conftquence of the power of war and peace; for there can be no wars made without the experience and conftumption of ftreame. Plow. 315.

Besides it was thought, that if any other persons had power of mines of gold and filver, they might by their own fucces too formidable, and reft the authority from the King which was deposited in his hands only. Plow 316.

All delict goods, and in which no man hath a property, belong to the King as delict goods; fo of extraprochial tithes, though things of an ecclefiallinary nature. Bra. tit. Prerog. pl. 12. 2 Vent. 267, 2. 5 Co. 128. 2 Inf. 646.

So if a perfon dies intelette, and without kindred, his goods and chattels belong to the King; and herein the usual course is faid to be for a perfon to procure the King's letters patents, and then the ordinary admits the patente to administration. 1 Salt. 37.

As the goods belonging to the King, and in howis without any office; because the property is in nobody, and therefore by publick agreement is put out of the finder, in whom it was by the flate of nature, and is vested in the King, in recompence for his trouble and charge in the execution of justice. 5 Co. 109.

But at the common law, the owner purfuing the felon and the goods, the owner may retain them; and upon an appeal of felony, the owner is entitled to a writ of rilletution; and as a farther encouragement for the procufion of felons, by the 21 H. 8 c. 11. it is provided, that if the party comes in as evi dence on the indictment, and attaint the felon, he fhall have a writ of rilletution awarded by the judge of all 4 Bar. Atr. 164.

3. Of the King's prerogative over the perffns of his faltjeffers, in restraining them from going abroad, and commanding them to return home.

All perffns born in any part of the King's dominion and within his protection are his subjects; and anchor born in Ireland, Scotland, Wales, the King's plantation or on the English sea; who by their birth owe such an ineparable allegiance to the King, that they cannot be in any act of their removce or transfer their subjects. 4 Co. 1, 2. Cartcns cafe. Me by 370. Co. Litt. 159. Dyer 300. See Milles. All the subjefts of a foreign prince coming into land, and living under the protection of our King, may in repect of that local liguage which they owe to the be guilty of high trefeon, and infedted that they comt dominium regem (the words naturalem dominum jam bei ing omitted) did comfort, et contra leges tut et bar. et comm. the King, may be condemp and executed here, and that for other trefeons he fhall fent home. 3 Inf. 4, 5. Dyer 145. Salt. 630. Hawt. P. C. 35. 1 Hal. Hyf. P. C. 59. And this accords with what is done by the king do, whether their King were at war or peace wit ours, and whether they come by themselves, or in com pany with English traitors, cannot be punifhed as traitors, but fhall be dealt with by martial law. 1 Haw. P. C. 35.

If the king of England makes a new conqueft of any country, the perffns there born are his subjects; for by the lives of the people conquered he gains a right and property in fuch people, and may impose on them what law he pleafes. Dyer 224. Parkinson. 281.

But unitl fuch laws given by the conquering prince the laws and cuftoms of the conquered country fhall be notionally confornt to the laws and cuftoms of the country where they were contrary to our relative, or access any thing that is mutu in fu, or a fient; for in all fuch cases the laws of the conquered country fhall prevail. 2 P. Inf. 75, 76.
There may be a new and uninhabited country found out y English subjects, as the law is the birth-right of every object, so wherever they go they carry their laws with them, and therefore such new found country is to be governed by the laws of England; though after such conquests, acts of parliament made in England without naming the foreign plants, will at first obtain. 2 P. Will. 75. 2 SaLT. 411. like

But the Common law every subject may go out of the kingdom for merchandise or travel, or other cause, as long as he abides by the acts of parliament: this appears from the statute 5 & 6. cap. 2. made to restrain erors palling out of the realm, but excepts lords, great men, and notable merchants; as also by the statute 26 & 27. cap. 10. which gave power to the King during his life to restrain persons from trading to some certain places as which he had been vain and idle, if the King by his prerogative might have done it. F. N. B. 5. Dyer 165. 266. 2 Harl. Rep. 12. 3 Med. 131. 442.

But notwithstanding this general freedom and liberty allowed by the Common law, it appears plainly that the King, by his prerogative, and without any help of an act of parliament, may prohibit his subjects from going out of the realm; but this must be by some express prohibition; as by laying on embargoes, which can be only one in time of danger, or by writ of Ne exeat Regnum, which, from the words Quamplurima robis & coram munera habes, it appears it is an absolute writ, but is never granted universally, but to restrain a particular person, upon oath made that he intends to go out of the realm; indeed Fitcherburys says, the King may restrain his subjects by proclamation: he alleges as a reason for it, that the King may not now where to find his subjects, fo as to direct a writ to 12. Co. 33. 11. Co. 92. 1 Fiz. N. B. 89. 2 Inst. 4.

As the King may restrain any of his subjects from going abroad, in like manner it is clearly agreed, that he may command them to return home; and that the disponing a pryve fee for this purpose is the highest contempt, and the most absolute writ, but is never granted universally, but to restrain a particular person, upon oath made that he intends to go out of the realm; indeed Fitcherburys says, the King may restrain his subjects by proclamation: he alleges as a reason for it, that the King may not now where to find his subjects, so as to direct a writ to 12. Co. 33. 11. Co. 92. 1 Fiz. N. B. 89. 2 Inst. 4.

The punishment for this offence is, the seizing the atty's estate till he return; and of this there are divers instances in our books. And when he does return he shall be fined. 1 Hen. P. C. 55. 60. 2 Ed. 5. of William de Britto in the 19 of Ed. 2. who refusing to return upon the King's writ, his goods and chattels, lands and tenements, were seised into the King's hands; and the like was done in the case of Edward of Woodstock, Earl of Kent in the same reign. Dyer 128. 175. Lant 444. Mar 109. 2 Sea. 179.

The punishment for this offence is, the seizing the atty's estate till he return; and of this there are divers instances in our books. And when he does return he shall be fined. 1 Hen. P. C. 55. 60. 2 Ed. 5. of William de Britto in the 19 of Ed. 2. who refusing to return upon the King's writ, his goods and chattels, lands and tenements, were seised into the King's hands; and the like was done in the case of Edward of Woodstock, Earl of Kent in the same reign. Dyer 128. 175.

So in the case of one Bartue who married the Dutchess of Suffolk, they obtained a licence from Q. Mary to go out of the realm, under pretence of recovering some debts they were intituled as executors to the Duke; when in reality it was on account of the religion afflicted by Q. Mary, and living with other fugitives for the protection of the Palgrave of the King in Germany, who was an eminent Calvinist, were sent to by private fee; but the messenger in endeavouring to serve them with his letters, being obstructed, beat and abused by their servants and attendants, a certificate was made of this, and their lands and tenements seised. Dyer 176. 177. 187. 1 Inst. 4.

So in the case of Sir Francis Englefield, who departed the kingdom on a licence obtained for three years; but not returning at the expiration of the three years, a private fee was sent to him by Q. Elizabeth, which he not obeying, this matter certified into Chancery by her Queen, under her sign manual, in the fifth year of Vol. II. N°. 116. her reign, by virtue of a commission under the Great seal, directed to Sir Henry Nevil and others, his lands and tenements were seised. 1 Lev. 9. Mar 109. 1 And. 95. S. C. Sir Francis Englefield's cafe. See also 7 Co. 18. Poph. 18. 4 Lev. 135.

So in the case of Sir Robert dellafield, who intending to travel, obtained a licence from King James I. to go to Venice; but before his departure he by indenture intolled for valuable consideration, as was expressed in the deed (but none paid) conveyed the manor of Killingworth with other lands to the Earl of Nottingham and others in fee, with a pretence that upon tender of an angel of gold all should be voided; and with a covenant on the part of the bargainers that they should make all such eftates as the said Sir Robert should appoint; the bargainers were not parties to the deed, nor had they notice of it till sometime after; but afterwards they made a lease to Sir Robert Lea, to the great prejudice of the new possessors of part of the premises for ten years, if their eftate continued so long unrevoked. The King hearing that Sir Robert had been guilty of some bad practices beyond sea, in the fifth year of his reign sent his Privy feal to him, which he not obeying, the great question in this case was, Whether those lands thus conveyed were forfeited, and adjudged that they were, the conveyance being fraudulent as to the King. Lane 42. &c. The King v. Earl of Nottingham, Puch. 7 fasc. 1. in peace.

In these cases it hath been held, that the King hath only an interest in the offender's lands till he return; and that his reftorung to them to him is not a matter of grace mut at right of. Lane 48. Per Tanfield Ch. Baron.

4. Of the King's prerogative in relation to Civil and Ecclesiastical jurisdiction; in creating officers, and in making war and peace.

All jurisdiction exercised in these kingdoms that are in obedience to our King, is derived from the crown; and the laws, whether of a temporal, ecclesiastical or military nature, are called his laws; and it is his prerogative to take care of the due execution of them. Hence all judges must derive their authority from the crown, and they have no power to change or alter the laws which have been received and established in these kingdoms, and are the birthright of every subject; for it is by those very laws that he is to govern; and as they prescribe the extent and bounds of his power, in like manner do they declare and ascertain the rights and liberties of the people, and the already due of innovation or change, but by act of parliament. 1 Inst. 164. 2 Inst. 54. 478. 2 Hal. Hift. P. C. 131. 282. Vain. 418. 2 SaLT. 51c.

From the inherent right infeparable from the King to distribute justice among his subjects, it hath been held, that an appeal from the Ista of Man lies to the King in council, without any reference either to the Ista of Man or any such right; and it was said, that though there had been exclusive words, that yet the grant must have been confined to be void upon the King's being deceased, rather than the subject should be deprived of a right infeparable to him as a subject, of applying to the crown for justice. 1 P. Will. 349. 2 Ch. Cor. 2. 17.

The supremacy of the crown of England in matters ecclesiastical, is a most unquestionable right, which, as my Lord Hare says, may be proved by records of undoubted truth and authority; and though, as he says, the pope made great usurpations and encroachments on this right, yet there were others that did contain to the same; and those encroachments are now pored off by the statutes 25 Hen. 8. cap. 19. 20. 21. and 26 Hen. 8. cap. 1.

So that the King of England doth not recognize any foreign authority superior or equal to him in this kingdom, neither do the laws of the emperor or pope of Rome, as such, bind in the kingdom of England; but all the
The King, as the fountain of justice hath an undoubted prerogative in creating officers, and all officers are said to derive their authority mediate or immediately from him; those who derive their authority from him are called the officers of the crown, and are created by letters patent; such as the great officers of state, judges, &c. and there needs no greater or stronger evidence of a right in the crown herein, than that the King hath created all such officers time immemorial.

The power of making war or peace is inter jura humain imperii, and in England is lodged fully in the King; though by my Lord Hale says, it ever was hitherto left to the crown, and for the better marking of all bills, informations and letters memorials in the council of York, was unreasonable and void. I jen. 231. Munf. v. Esfer.

The power of making war or peace is inter jura humain imperii, and in England is lodged fully in the King; though by my Lord Hale says, it ever was hitherto left to the crown, and for the better marking of all bills, informations and letters memorials in the council of York, was unreasonable and void. I jen. 231. Munf. v. Esfer.

A general war, according to my Lord Hale, is of two kinds, 1. Bellum folenamit denunciam. 2. Bellum non folenamit denunciam. The first is, When war is solemnly declared or proclaimed by our King against another prince or state, which is the most formal formality of a war now in use. 2dly, When a nation slips suddenly into a war without any formality, which happens by granting of letters of marque, by a foreign prince invading our coasts, or setting upon the King’s navy at sea; and hereupon a real, though not a formal war may and must do, and therefore to prove a nation to be at enmity with England, or to prove a perfon to be an alien enemy, there is no necessity of shewing any war proclaimed; but it may be averred, and so put upon the trial of the country, whether there was a war or not. 1 Hal. Hisf. P. C. 163.

5. Of the King’s prerogative in relation to his debts.

By stat. 9 H. 3. c. 8. The King nor his bailiffs shall levy any debts upon lands or rents so long as the debtor hath goods and chattels to satisfy, neither shall the pledges be detained so long as the principal is sufficient; but if he fail, then shall the pledges answer the debt; howbeit they shall have the debtor’s lands and rents until they be satisfied, unless he can acquit himself against the pledges.

Goods and chattels. By order of the Common law, the King for his debt had execution of the body, lands and goods of his debtor; this is an act of grace, and renews the power that the King before had. 2 Inf. 19. Pledge is disfavored. It was resoluted by the court, that this act be null and void, nor may the King extend to sureties in a bond or recognition, if they may be so called, being bound themselves equally with the principal, as sureties to perform covenants and agreements are in like manner; but to pledges and manuacks only, who by express words are not refundable, unless by special principles become involvent, and so are conditional debts. But if the act has always been conformed, and the words themselves imply as much Hord. 378. Mich. 16 Carn. 2. Attorney General v. Reyb. By stat. 9 Hen. 3. c. 18. The King’s debtors dying, the King shall be served before the executor.

2. By this statute, the King by his prerogative shall be preferred in satisfaction of his debt by the executors before any other. And if the executors have sufficient to pay the King’s debt, the heir nor any purchaser of his lands shall not be charged. 2 Inf. 32.

Stat. Wiften. 1. Ed. 1. c. 19. enacteth. That the sheriff having received the King’s debt, upon his next account to render to him as we are made of law, but not so much to the debtor, and to make fine at the King’s will. And the sheriff and his heirs shall answer all monies that they whom he employed did receive, and if any other that is answerable to the exchequer by his own hands do so, he shall render thirds so much to the plaintiff, and make fine as before. And upon payment of the King’s debt, the sheriff shall give a talley to the debtor, and the process for levying the same shall be followed him upon demand without fee, or pain to be grievously punished.

The King’s debt. Under this word debt all things due to the King are comprehended, and not only debt of the proper feme, but duties on things due, as fines, amercements and other duties to the King received or levied by the sheriff; for debt in its large sense signifies whatsoever a man doth owe; and debera de causa debent habere, debitori enim debeat quod habet, capi creditoris, maxime in calami domini regis. 2 Inf. 198. With whatever taken. This is to be understood, quod restitutionem, but not quod paenam that is for the civil but not for the criminal part; for is a maxim in law, pendes ex deleto defuncti hares tenes non debent; and again in restitutionem non in paenam hares succedit. 2 Inf. 198.

Stat. 15 Ed. 3. cap. 12. enacts. That beasts of the plough shall not be disfavored for the King’s debts so long as others may be found, upon such pain as is elsewhere ordained by statute (viz. by the statute De distillation fiscarior, 51 H. 3.) And the great distresses shall not be taken for his debts, nor driven too far; and if the debtor can find convenient surety, the distress shall in the mean time be released; and he that does otherwise shall be grievously punished.

This is an act of grace, and upon this act there lies writ directed to the sheriff, commanding him to receive surety according to this act, which if he refuses, an at tachment lies against him, or the party offering surety according to this act, if he be refused, may have a attachment made against him. 2 Stat. 25 Ed. 3. stat. 5. cap. 19. enacts a common pet for to sue a debtor of his (who is likewise a debtor to the King) to judgment, but he cannot proceed to execution, unless the plaintiff gives security to pay the King’s debt first, and then he may take execution for his own debt.

For otherwise, if without giving such security, the party takes forth execution upon his judgment, and levies the money, the same money may be seized up on to satisfy the King’s debt: per Dideresq. J. Cdb. 290. cites 45 Ed. 3. Decies taisium 12.

Stat. 33 Ed. 8. cap. 39. sect. 2. enacts. That all obstructions and obstructions concerning the King and his heir
made to his or her use, shall be made to his Highness
and to his heirs, Kings, in his or her name or names,
by those words, domina regi, and to no other person
in his use, and to be paid to his Highness, by those words, fol-
domum domino regi heredi, et secutoribus suis, with
other words used in common obligations, which oblige-
s mentioned in the Act, from hence as charged and charged to and for the payment of the same debt, and of every part thereof.

But if, after the death of either or both of such
heirs, or the death of their children, or of any
their issue, or if there shall be no issue of
such heirs, or if the said debts, and all
debts of a like nature, remain unpaid
forever, such debts shall be
forever liable to the
King, his or her
heirs, in
his or her
name, or names,
by those
words, domina regi, for the
payment of the said
debts, and all such
debts of a like
nature, as aforesaid.

And if any suit be
brought against such
debtor, or any
other who
shall be his
heirs, in
his or her
name, or
names,
by those
words, domina regi, for the
payment of the said
debts, and all such
debts of a like
nature, then and in that case, such
debtor, or such other person, shall be
liable to be sued in the name of the
said deceased, or shall be liable to the
same as if the said deceased had been
living, in all cases and matters;
and shall be liable to be sued for
such debts in the name of
the said deceased,
in all cases and matters;
and shall be liable to be sued for
such debts in the name of
the said deceased,
in all cases and matters;
and shall be liable to be sued for
such debts in the name of
the said deceased,
in all cases and matters;
and shall be liable to be sued for
such debts in the name of
the said deceased,
in all cases and matters;
The issue in tail (the land being in his hands) is liable in either of the said four cases, but not the bona fide issue for the words of the statute do not extend to this alienation; the Common law did not help the King in these cases; the statute helps the King in the said case against the issue in tail. *Jenkel. 226. pl. 59.*


The issue in tail shall not be charged by this statute for the reason of recency of the tenant in tail by proclamation, by the statute 25 Eliz. but otherwise it had been if he had been convicted by the 3 Edw. 1 Rel. Rep. 94. Mich. 22 Jac. B. in case of The King v. Doctor Pyler, cites as reolved Mich. 39 & 40 Eliz. of the such case. By the express purview of this act, the land shall be freely extended as long as it is in the possession or seisin of the heir in tail for this act says, That in every such case the land shall be charged. And in as much as the land against the issue in tail was not extendable before this act, the King has benefit to extend it in the possession of the heir in tail, which he could not do before; but the King cannot extend the lands of the alience; for the statute does not extend to this, and the makers of the act have reason to favour the purchasers, farmers, &c. of the heir in tail, more than the heir himself; for they are strangers to the debts of the tenant in tail, and they came to the land bona fide, and upon good consideration. *7 Rep. 21. b. &c. 41 Eliz. in Secord Lord Anderson's case.*

*The same manner* 

If the goods and chattels of the King's debtors be sufficient, and so can be made appear to the sheriff, whereupon he may levy the King's debt, then ought not the sheriff to extend the lands and tenements of the debtor or of his heirs, or of any purchaser or tenant.

2 Inf. 19. 2d. c. 2d. 41.

Sect. 28. The King shall not be excluded to demand his debts against any of his subjects, as heir to any person indebted to his Highness or to his wife, albeit this word heir be not comprised in such recognition or specialty, or that such persons shall say, that they have not any redemptions to them defended, but only such as be intailed or given to them by the ancestors. By this clause the intent of the makers of the act appears, that the heir in tail shall be only charged with the debt of the King; but lands in fee-simple were extensible under the Common law in whatsoever hands they came, and therefore this act does not extend to them only.

41. *Declarat. non sunt jurati* but as to the estates in tail, it was *introductum noui juris* against the issue in tail. Resolved, *7 Rep. 21. b. &c. 41 Eliz. in sect. in Lord Anderson's case.*

One P. was indebted to the Queen, and one W. was bound to P. in 100l. in which obligation *W.* did not mention his heirs; *P.* affaged the obligation in which *W.* was bound to him, to the Queen; and upon this process was made against the heir of *W.* And it was held by the court, that inasmuch as *W.* did not oblige himself and his heirs, that the heir by the death of the father was discharged; and if the assignment had been made in the life-time of the father, then the father had died, the heir should be discharged, but the son may be charged as executor or administrator, &c. *Sav. 2. Poch. 22 Eliz.* Warren's case.

Sect. 29. Provided, That the King may at his liberty demand the debts of any executors or administrators of any person indebted, if the executors, &c. have affected to mention his heirs; *P.* affaged the obligation in which *W.* was bound to him, to the Queen; and upon this process was made against those who were tertiaries of the said *J. S. tempore confessionibus scripto prædito* made to the said Sir Richard. *Per Monmouth Ch. B.* The tertiaries are not chargeable in this case, but the heirs and executors. *Per Shute* second Baron. If an obligation be made to the King, it shall be of the same nature as a statute flippe to all intents, by this statute; but obligations made to other persons to the use of the King, shall be executed against the obligor, his heirs, executors or administrators, and not against other persons, but if *J.* N. be bound to *J.* S. and *J.* S. aligns this to Sir Richard Cavendish, and he over to the King, no procces shall be made thereupon, which the court and all the clerks agreed. And it was held, that the obligation being to the King, by the Common law, makes sefcoffment of lands, such sefcoffes shall be charged otherwise it is of purchasers before the obligation made in case of the King. *Sav. 12. pl. 33. Poch. 22 Eliz. Annu. Sect. 30.* If the said hereditaments shall be evicted out of the possession of such persons by jufit title without fraud, the said hereditaments shall be chargeable as is above said; then all such hereditaments shall be acquired of the same debts.

B. was indebted to the Queen, for the payment of which debt certain lands, which were the lands of the said *B.* at the time of the said debt, were purchased by the King, and one *C.* was tenant in tail to the said *B.* who exhibited his bill in the Exchequer-chamber, praying that the equity of the case might there be examined, before any answer made *W.* pay the debt, and then demanded judgment if the court would hold further plea, inasmuch as the cause of the privilege was determined, which is the debt due to the Queen. And it was held by the court, that upon this reason the court ought to dismiss the cause, and so it was done. *Sav. 15. pl. 39. Poch. 22 Eliz. Sir Thomas Rogland v. Withchild.

Sect. 31. If any person of whom any such debt shall be demanded, flew in any of the said courts sufficient matter in law, reason or good confidence, why such person charged with the debt ought to be acquitted; and such matter so shewed be sufficiently proved, the said courts shall have power to allow the proof and acquit all persons so implicated; any thing in this act to the contrary notwithstanding.

*Sufficient matter in law* This proof does not give benefit only to him who has matter in good confidence, but also to him who has good, perfect and sufficient cause, and matter in law, reason (and then comes) good confidence; and without question the first words, viz. cause, and matter in law shall extend to all the debts of the King, and proceeds thereupon, as well as Common law as upon this act. And the conclusion of the said branch does not make against it. For the cause therefore that he should plead matter in law or good confidence, and that nothing contained in the said act should be an impediment thereto. Resolved per cur. *7 Rep. 19. b. Mich. 39 & 40 Eliz.* in Sir Thomas Cecils case.

*Seire factis illius against Sir W. H. as heir to M. H.* In this case the court put the case against Sir Edward VI. by the said M. H. the sheriff returned *fire fac* and upon his default judgment was given. And because in truth he never was fummoned, and had good matter, if he had had notice thereof, to plead in discharge of the recognizance acknowledged, all which he shewed in a bill in English in the Exchequer-chamber; upon which, upon conference had by *Monmouth* and the other Barons, with the two Ch. J. he was discharged of the said recognizance. *7 Rep. 20. a. in Sir Thomas Cecils case.* As 3 Rep. Trin. 37 Eliz. Sir William Herbert's case.

*In a vice longum in good confidence* A. obtained of the King a Priy seal, whereby the forfeiture of certain recognizances for appearing at the felonies, amounting in the whole to 800l. was granted to her. And it was now made a question, Whether the court might compound thole for feiturey virtue of their Privy seal which was granted before the Priy seal and grant to A.? And it was doubted whether the said Priy seal did not take away and revoke the power given to the court in this particular? But it was held clearly per cur. That the court might upon good matter in equity discharge thos debts by virtue of this statute. And the case in question feem'd a hard case to the court, because the party him- self was in the court, and there was no objection to the party so hearing the very day before they ought to have appeared, that they were disabled thereby to appear. *Hard. 334. Mich. 15 Car. 2. in facis. Maior's case.*

*W.* put 100l. out of interest to a defendant, and took bond in the name of one *F.* who became fide de fe, and now the plaintiff was relieved against the King.
Cing upon this trnth, in equity upon this statute. Sed
Quere. Whether this statute extends to any equity against
the King, otherwise than in case of plea by way of
lifescharge? But it was likewise decreed in that case, that
he plaintiff should be freed harmless from all others.
Exchequer, and Sir William Edgar.
And the matter so found be sufficiently proved feire
facts incurred against T. the father, and T. the son,
to have cause whereof they did not pay to the King 1000l.,
or the mean profits of certain lands held by them from
his Majesty, for which land judgment was given in his
favour, and he was indemified by inquisition,
which returned that the said meane profits came to
1000l. upon which inquisition this seire facts incurred;
whereupon the sheriff returned that T. the father was dead;
and T. the son now appeared, and pleaded that he took
the profits but as a servant to his father, and by his command.
Indemnification for this fault was not allowed by the
court, and also the judgment for the said lands was given against
his father and him for default of sufficient pleading, and
not for the truth of the fact; and he threw out this statute,
which he pretended aided him for his equity.
Whereupon the King demurred. 1stly. That equity ought to be sufficiently proved,
and here is nothing but the allegation of the party, and
the demurrer of Mr. Attorney for the King; and if the
matter be in law an admittance of the allegation, and
not a sufficient proof within the statute, it is to be ad-
vised upon; and for that point the court of Chancery
may not have execution of the same. 2dly. That this court has execution of the same.
Which within this act ought by prentice
and the defendant be to be discharged for mat-
er in equity, and the defendant lends his matter in eq-
ui, and the King supposing this not to be equity within
his statute, demurs in law, whether that demurrer be
an insufficient to go into the matter of the statute
not? Adinftrari. Lane 51. Palfch. 7 Jac. in
the Exchequer, Trollope's cafe.
Setl. 33. This act shall not take away any liberties
clonging to the dutchy and county Palatine of Lancaster.
Setl. 34. Proceeds and executions for debts in the court of
Exchequer, and doth in the Exchequer by such
ficer as hath been used, as by this act is limited.
Stat. 13.tit. cap. 4. sect. 1. enacts, That all the
lands, tenements and herediments, which any ac-
comptant of the Queen, her heirs and successors, hath while
he remains accountable, shall for the payment of her debts
be in like manner liable, and put in execution in like manner, as if such
accountant had found bound by writ obligatory (having the efl"f
of the statute-flaype) to her Majesty, her heirs and suc-
ceors, of payment for the same.
The Queen by her letters patents, granted Catalla au-
cumatum & feorum de se, within such a precint; one
who was indebted to the Queen is sefo de se within the
precinct. It was the opinion of all the Basons, and
did, that notwithstanding the grant by the said letters
patents, the Queen shall have the goods for satisfying her
debt. 3 Le. 113. pl. 161. Hill 26 Elia in the
Exchequer.
Setl. 14. 15. 16. 17. 18. 20. The Queen and Bishop of Sarum and Cashord, and there per
Manwood. Ch. B. the patent does not extend to have the
goods of sefo de se against the Queen for her debt, be-
cause it wanted the words (lrcet tagant nas) but he
agreed, that if the lands of the felon be liable [sufficient
to answer] all the debt of the Queen, the court may take
those lands in extent, and leave the goods to the patente.
And as to a petition of Cashord paying a discharge of the lands, &c. by him purchased
of the officer debtor to the Queen, it was answered, that
the land was subject to the Queen's extent for all arrear
of receipts by his office received, and the receipt be after the conveyance, and
by reason of this statute; but as to another office ac-
cepted after the conveyance of the land, the arrears of
that shall not charge the land so conveyed.
B. L. having purchased a long term for years in the
Lamb Inn, and of other houses in St. Clement's parish,
warden purchased the inheritance; afterwards he be-

Vol. II. No. 110.
Presbyterianism. The prebendaries: the choir or chanter
s, or other similar offices, are the place appropriated to the
Bishop and priests; and, other clergy, while the laity were
confined to the nave; or body of the church. Id. 32.
Preface, (Prefatio,). Is a title acquired by
lives permitted to be receiver again,
and afterwards appointed to be receiver again, and
And he, who forfeits the
and as in his
life-time, and as well where the account is made, and the
death known within eight years after his death,
where the account is made, and the debt known
in his life-time.

Sed 5. Provided, that after the accountant's death,
and before the lands be sold, a fair sais will be
awarded to garnish the heirs, to whom the
unpaid debts, as well as the
returns of the
accountant, shall be paid by the
accountant's executors.

Sed 4. Provided, that if the
heir's will be hostile to
the King, the debt shall be
satisfied by the
growth, when the
account, and as well after the
death, as in his life-time, and
as well where the account is made, and the
debt known within eight years after his death,
where the account is made, and the debt known
in his life-time.

Sed 3. Provided, that after the accountant's death,
and before the lands be sold, a fair sais will be
awarded to garnish the heirs, to whom the
unpaid debts, as well as the
returns of the
accountant, shall be paid by the
accountant's executors.

Sed 6. If the debt grow in the courts of the
dutche or wardens, a Privy Seal shall issue out against the heir
to appear at a certain day, to shew cause, &c. when, if he
appears not, upon affidavit made that it was duly served,
an attachment with proclamation shall issue out against
him, to be proclaimed in some open market in the county
where he dwelt twenty days (at least) before the return
thereof, whereupon, if he appears not, the lands, &c.
shall be sold and disposed of as before.

Sed 7. The heir's lands shall not be sold during his
minority; but at any time within eight years after his full
age they shall be liable as aforesaid.

For more learning concerning the King's prerogative, see
4 Ed. 1. c. 10. and 12 Vin. Abr. tit. Prerogative.

Prerogative court, (Curia praeparatoria Diocesii Cantuariensis,) Is the court wherein all wills are
proved, and all administrations taken that belong to the
Archbishop by his prerogative; that is, in cause where the
defended had goods of any considerable value out of the
diocese wherein he died; and that value is ordinarily £ 1,
except it be otherwise by composition between the said
Archbishop, and some other Bishop, as in the diocese of
London it is ten pounds: And if any contention grow
between two or more, touching any such will or admin-
istration, the cause is properly debated and decided in this
court. The Judge whereof is termed Judex curiae Praeparatoria Cantuariensis, the Judge of the
Prerogative court of Canterbury. The Archbishop hath also
all other courts, which are known by the
like court, which is termed his Exchequer, but far
inferior to this in power and profit. 4 Aift. 3o5.

Prerogative of the Bishop of Canterbury or York, (Prerogativa Archipretis Cantuariensis et Eccl. 
Abbas,) Is an especial prerogative that these fees have in every will above ordinary Bishops within their pro-
vince, of which whoever defers to receive more full
information, may read the book, intituled, De Antiquitatis
Britannicae Ecclesiae Cantuariensis Historia, and especially in the eighth chapter of that book, pag. 25. Cowell,
ed. 1727.

Presbyter, A priest. Id. 18.

Presbyterius Huaecumius Angliae, Was a

A temporal office in Henry the Third's time, being the
Custos rotulorum, or Controller of the Exchequer, for the
Town. Seacarti Tudoufmi offici. Clauz. 27 H. 3.

pres 13. m. 3. 

Pretend, (Pretendost,.) A legal form denotes
the King's Lieutenant in a province or function; as the
President of Wales, York, Berwick, &c.
President of the Council. 

Relates to the function of the person, and is the fourth great officer of State:

It is as ancient as the reign of King John; and hath sometimes been called Principalsi Conclusoria, and other

men Copiscalis Conclusoria. The office of President of the Council is heretofore used in the fitting forth from any

havens, (mentioned in fl. 22 H. 4.)

... for some places, is a penny in the pound; in others six-pence for every pack, or bale, or otherwise, according to the

custom of the place.

Primitius, The first of any degree of men; but

sometimes it signifies the eldest. Primitius estus Angli-

cae were the nobility of England, A.D. 1277.

Primitius Feifer. (Prima fefera) The first poffeffion, or jeffer was heretofore used as a branch of the King's prerogative,

whereby he had the first poffeffion, that is, the entire

profits for a year of all the lands and tenements,

(wealth held in capite) which he died seized in his denuence as of fee, his heir being then at

full age, until he do his hommage, or if under age, un-

til he were of age. Staunf. Prerag. cap. 3. and Braffon,

lib. 4. trat. 3. c. 1. But all the charges arising by pri-

miteria jefera are taken away by the statute 12 Car. 2. c. 24.

Preamtionmoney. The title of an elder brother in the right of his birth, and of which Co. upon Lit. says, is, Qui prius officio tempore, pe-

rior officio, affirming moreover, That in King Alfred's time, knights fees defended to the elder son; for that by the deter-

mination of such fees between males, the defence of the realm might be useful. Judg. Doregie in his treatize of

nobility, p. 119. It was anciently ordained, That all

knights fees should come unto the elder son by suc-

ceffion of heritage, whereby he succeeding his ancestors in the whole inheritance, might be the better enabled to main-

tain the wars against the King's enemies, or his lords:

...and his sons, being crowned and crowned and crowned or in the French, King of France, is called Dauphine, both being born princes.

Perni's Glory of Genealogy, p. 138. Before Edward the

Second, who was born at Carnarvon, and the fifth English

Prince of Wales, the King's elder son was called Lord


15. and 27 H. 6. See also at 27 H. 6. See also Stow's Annals, p. 303. But

Prince was a name of dignity long used in the time in

England; for in a charter of King Offa, after the bishops

had subscribed their names, we read, Breddanus Patrizius,

Binnanus princes; and afterwards the dukes subscribed their

names. And in a charter of King Edgar in Mon.

Angl. tom. 3. pag. 302. Ego Edvardii Rex regnans ob epip-

ces me decretis, & princeps me Alfredus, &. And in

Matt. Paris. pag. 155. Ego Haltoni princeps Regis pro vi-

nibus offinm praebis, & ego Turcellius duo concilis. See

Bing.

Patria, (Principality,) An heredom, which fee.

It was at first sometimes used for a mortuary, or corpe-prent.

—Item legatum post mortem vocatum in Bay-Gilding, ut ef-

fessor ante corpus mun in the stitution

name Principali. Ul. vol. 40. Johannis Marsfeld. 9 Hen. 5.

in Uerberfeld, in the county of Horsford, certain prin-

cipal ad, the best beall, the best bed, best table, &c. pafs to the eldest child, and are not liable to partition.

Also the chief person in some of the inns of Chancery is cal-

led principal of the hoafe. Cowell, edit. 1727.

Principal and accipar. The principal is the person

who actually commits any crime; and the accipar is he who is assisting him in the doing thereof. 2 Litt. Abt. 355.

It seems to have been always an uncontroverted

maxim, That there can be no accessories in high treason, or

trefpa; also it seems to have been always agreed, That

whatever will make a man an accipar before in felony,

will make him a principal in high treason and tref-

pa; as battery, riot, rout, forcible entry, and even in

forgery.
foryery and petit larceny. And therefore, wherever a man commands another to commit a trespass, who afterwards commits it in pursuance of such command, he seems by necessary consequence to be guilty of it, if he holds his command to be from hence it follows. That being in judgment of law a principal offender, he may be tried and found guilty, before any trial of the person who actually did the fact. 2 H. 4. P. C. 310.

It seems agreed, that whoever agrees to a trespass on lands or goods of another, whereby becomes a principal offender. But that no one can become a principal in trespasses on the person of a man by any such agreement: Allo it seems agreed, that no one shall be adjudged a principal in any common trespass, or inferior crime of the like nature, for barely receiving, comforting and concealing the offender, though he know him to have been guilty, and that there is a warrant out against him, which by reason of such concealment cannot be executed. And if he cannot be punished as a principal, it is certain that he cannot be punished as an accessory; because in such omissions, all who are punished as partakers of the guilt of him who did the fact, must be punished as principals in that crime. Yet if a man knowing that there is a warrant against such offender, advise and persuade him to absent himself, perhaps he may be indihtable for a contempt of the law in hindering the due course of justice. 2 Haw. P. C. 311. See Arretrial, and 2 Hawk. P. C. 317.

Prior. Pleas. See Books.

Plaints, Property of engraved prints secured. 8 Geo. 2. c. 13.

Prior, Was he who was first in dignity next to the abbot. Camden, edit. 1727.

Prioriit, (Prioriat.) Signifies an antiquity of tenure, in comparison of another not so ancient, as to hold by prioriity to the benefit of a lord more anciently than of another. Old Nat. Br. fol. 94. So, to hold by prioriity, is used in Stannul. Prior. cap. 2. fol. 11. And Crompton in his Jur. fel. 117, utters this word in the same signification. The lord of the priority shall have the custody of the body, Ce. and fel. 150. If the tenant hold by priority of one, and by posteriority of another, &c. To which effect, see also F. N. B. fol. 142.

Priorities of debts and fines. A prioriit depending may be pleaded in abatement of a subfquent action or prosecution. A prior mortgage ought to be first paid off, and debts first due should be first satisfied; for as the tenant himself advances his money before his debtor is incumbered, it is but reasonable he should be paid his debt before the discharge of the subfsequent in-cumbrances: But debts first due must likewise be first prosecuted; otherwise in some cases priority will not be allowed. Comp. Attorn. 120. There is no priority of time in judgments; for the judgment first executed shall be first paid.

It seems agreed, that wherever any suit on a penal statute may be said to be actually depending, it may be pleaded in abatement of a subfquent prosecution, being expressly averred to be for the same offence. Neither will it be an exception to such a plea, that the offence in the subfsequent prosecution is laid on a day different from that in the former. Neither doth a mistake in such a plea of the very day, wherein the fact pleaded as prior was commenced, seem to be material on the issue of mutual record, if it appear in truth to have been commenced before the other, and for the same matter. And if two informations be exhibited on the very same day, it seems that they may mutually abate one another, because there is no prioriy to attach the right of the suit in one informer more than in the other. Allo it seems, that an information or bill the same day that they are filed, may be so far paid that there may be maintained to be paid up on them, that they may be pleaded in abatement of any other suit on the same factuate. And from the same reason it seems also, that a writ of debt may be so pleaded after it is returned; because then it seems to be agreed, that it may be properly paid to be depending; and whether it may not also be so pleaded before it is returned, it seems questionable; because, according to some opinions a writ may be said to be depending as soon as purchased. 2 Car. 1. c. 75.

Priest, pontiff, or dative and removable. Are mentioned in flax. 9 Ric. 2. cap. 4. and I Ed. 4. cap. 1. Lord Prior of St. John of Jerusalem, who was Primos Barb Anglica. 26 H. 28. cap. 2.

Priors aliens, (Priores alieni,) Were religious men born in France, and governors of religious houses, cre- ced in England, whom we called King Henry the Fifth, after his conquests in France, thought no good members for this land, and therefore supplicd them; whose living afterwards were by King Henry the Sixth, given to other monasteries and houses of learning. Stow's Annals, pag. 582, and 1 Hen. 5. cap. 7. but especially to the elecution of these two famous col- leges, called the one King's College in Cambridge, the other Eaton. 2 Par. Inf. fol. 584.

Pillage, Is that tumult or share that belongs to the King, out of such merchandize as are taken at sea by way of lawful prize. Anno 13 El. cap. 5. Priugion aff ee preia capiendi, vel ulla eurit.

Pillage, of wities, (mentioned in flax. 1 Hen. 8. cap. 5) Is a word almost out of use, being now called bulter- age (because the King's chief butler receives it). It is a tumult whereby the prince challenge out of every bark laden with wine, containing less than forty tun, two tun only being therefore, the other behind the ship, at his own price, which twenty fhillings a tun yet this varies according to the custom of the place: For at Bofon, every bark laden with ten tuns of wine or above, pays priage. See Buttage, and Calters's Reports, f. 20. and 4 Pur. Inf. f. 50.

Pluff, (Prius, From the French premier, coucher.) Signifies in our statutes the things taken of the King's subiects by pursuverer, Anno 13 El. 1. cap. 7. and 28 E. 1. flat. 3. cap. 2. It signifies also a custom due to the King, 25 E. 1. cap. 5. Reg. Orig. f. 117.

Plufum, (Priusno,) Is a place of restraint for the flag custody of a per son to answer any action personal or crimi- nal: And here we are to note; That this foluta ex- tedia must only be cedieida, non panca; for carer ad homi- nes cediedienus, non ad panninarii debet. Co. liit. 3. cap. 7. fol. 438. See Gual, Piinfenr, Piinfonr, (Priuscanus, captianus, from the French priferen,) Signifies a man restrained of his liberty up- on a charge of manslaughter or treason committed by commandment. And a man may be a prisoner upon matter of record, or matter of fact. Prisoner upon matter of record is he which is present in court, is by the court committed only upon arrest, be it by the sheriff, constable or other. Stannul. Pl. Cor. lib. 1. cap. 33. f. 34 & 35.

Plures, may be complained but his criminal trial, etc. as by the law of the land, M. C. 9. 3. e. 29.

A debtor in execution upon a statute merchant, shall be found in bread and water, St. de Mercator, 13 Ed. 1. b. 3.

Breaking of prius shall not be capital, unless the of- fence for which it was imprisoned, was 60, St. de Prig. Fr. 2. Ed. 2. f. 2.

Guolrs shall take no fee of perfons committed on the statute of labourers, 12 R. 2. c. 9.

A prisoner in the Fleet my be charged with an action in the Common Pleas by Habees corpus ad respendendam. 13 Car. 2. f. 2. & 2. f. 5.

Prisoners not to be charged with liquor without their consent, 22 & 23 Car. 2. c. 20. f. 9.

Felons and prisoners for debt to be kept apart, 22 &

23 Car. 2. f. 20. f. 13.

Declarations may be delivered against prisoners in cul- tody of any sheriff, 4 & 5 W. & M. c. 21.

Declarations against prisoners may be delivered to the turnkey, 8 & 9 W. 3. c. 27. f. 13.

Penalty for extorting chamber rent, 8 & 9 W. 3. c.

27. f. 14.

Against refuses in pretended privileged places, 8 &

W. 3. c. 27. f. 15.

Keeps
Keep of a prison permitting a clandestine marriage, forfeits 100 l. 10 Ann. c. 19. f. 176.

Penalties on refusing the execution of process in the Assizes in Scotland, 9 Geo. 1. c. 26.

In Wapping, St. Dunstan and other places prefixed by the Grand Jury, 11 Geo. 1. c. 22.

Prisoners to have liberty to fend for viuals, and provide their own bedding, &c. 2 Geo. 2. c. 32. f. 3.

Tables of fees to be hung up, 2 Geo. 2. c. 28. f. 4.

Tables of gifts to be hung up, &c. 2 Geo. 2. c. 27.

Prisoners in execution for lefs than 100 l. to be discharged upon petition, 2 Geo. 2. c. 22. f. 8. 3 Geo. 2. c. 27. 29 Geo. 2. c. 28. Must petition before the end of the first terms. 3 Geo. 2. c. 24. f. 2. Their oath, 21 Geo. 2. c. 5. f. 3.

The crown to grant the wardship of the fleet during the life of Thomas Barnardice, 2 Geo. 2. c. 32. For building a gal for the western division of Kent, 9 Geo. 2. c. 12.

The money for the king's bench and marshall's persons, to be paid by the treasurers of the counties, and enforced by rule of the king's bench, 11 Geo. 1. c. 2. 12 Geo. 2. c. 29. f. 23. No attorney in prioll shall commence any suit, 12 Geo. 2. c. 13. f. 9 & 10.

Regulations on the house and imprisonment in Scotland, 2 Geo. 3. c. 43. f. 18.

The power of appointing the Marshal of the king's bench, revoc'd in the crown, 27 Geo. 2. c. 17. Persons retaining ale, &c. in prions to be licenced, 29 Geo. 2. c. 12. f. 26. Prisoners not to be carried to towns, &c. 32 Geo. 2. c. 18.

Prisoners for less than 100 l. how to be discharged, 32 Geo. 2. c. 28. f. 13.

Prisoner compelled to deliver his effects, 32 Geo. 2. c. 18. f. 16.

Refusing to affign his effects may be transported, 32 Geo. 2. c. 28. f. 17.

Pull-breakings. See Bail. Pat. 4.

Prizemasters, Directions for trying offenders by courts martial, 17 Geo. 2. c. 34. f. 26.

Going into ports in the British colonies, subject to the laws there, 29 Geo. 2. c. 34. f. 31.

Offences on board privates, punishable as on board his king's ships, 29 Geo. 2. c. 34. f. 33.

Crimes to be tried by a court martial of the king's ships, 29 Geo. 2. c. 34. f. 34.

Farther regulations of privates, 32 Geo. 2. c. 25.

Prizes to belong to owners and captors, 32 Geo. 2. c. 36. f. 1.

See Trials, 36 Geo. 2. c. 36.

Privilege. (Privilege.) Is defined by Cicero in his nation pro domo fac., to be prava privata omnium. It is, says another, the king's case, whereby a private corporation is exempted from the rigour of the common law. It is sometimes used in the Common law for a place that hath some special immunity. Kiteibin, fol. 118. Privilege is either personal or real: A personal privilege is that which is granted to a one person, either against the world or against the court of the Common law. An example, A member of parliament may not be arrested, nor any of his servants, during the fitting of the parliament; nor for a certain time before and after. A privilege real is that which is granted to a place, as to the universities, that none of either sex, excepted in the case of the Common law, may make within their own premises, or professed in other courts: And one belonging to the court of Chancery cannot be fed in any other court, certain cases excepted; and VoL II. N° 116.
the Exchequer, which seemed that he was an officer, and so an accountant to the King, the privilege was allowed. 

By 40. Wall. v. Wrench. 

If one holds or has been, or is a barrister, or other person, he shall not have the privilege of the Exchequer for that cause; but if the King grants titles, and thereupon referes a rent 

for ducies, and a tenure of him, there he shall have privilege. 2 Lev. 21. Lightfoot v. Butler. 

On a lawsuit being filed out against the commissioners of the Treasury, and the judges of the Exchequer came 

into the privilege of B. R., and brought into court the red book of the Exchequer, which is deemed a record in that court; and thereby it appeared, that the Treasurer had privilege of being sued only in that court; and the patent being produced in court which constituted the defendants, G., and granted them the office of Treasurer of England, he was not entitled to exhibit such a writ, and in the court of King's Bench, it was held, that the law judges thereby, and in such a court, with the writ privilege; the court 

grounding themselves on the record before them. 2 Show. 299. Larpent v. Sir Edward Duering & al. 

It had been held, that the Treasurer of the navy is to ipso an accountant; and that an accountant's privilege will hold against a special privilege in another court, as 
officer of the court or otherwise; though it be not alleged, that such an accountant is entitled upon his account; for that every accountant may be attacked by the court to make up his account, and must attend for that purpose ad die in diem. Hard. 316. Ser. Moor 753. 

2 Inh. 23. 551/2. 

It had been held, that in B. R. against J. S. he pleaded to the jurisdic 
tion, That none of the privy chamber ought to be sued in any other court, without the special licence of the Lord chamberlain of the household, and that he was one of the privy chamber; on demurrer to this plea, the court overruled it with great refutement, and awarded a Reverses under. Show. 34. 1 Keh. 137. Barrington v. Venables. 

It was agreed in Serjeant Segr's cafe, That the privilege of the court of C. B. which Serjeants claimed, extended only to inferior courts, not to the courts in Westminster-Hall; and that he may be sued in any of those, because he is not confined to that court alone, but may prosecute in any other court; but it is otherwise 
as to attorneys or philosopher, who cannot prosecute in their own name in any other court but such as they repective 

vely belong to; and that therefore a Serjeant at law is to be sued by original, and not by bill of privilege. 2 Lev. 129. 3 Keh. 42. 

_Moor 296. S. C. 1 Keh. 137. 3 Inh. 7. 

As barrister, attorney, or other privileged person, the whole attendance is necessary in Westminster-Hall, particularly to the offering of a affidavit; and that in order to the writ privilege was granted on mo 
tion; the court having agreed, That he had no more privilege than an attorney's clerk. 2 Show. 287. Ward v. Lawrence. 

A Serjeant at law, barrister, attorney or other privileged person, whose attendance is necessary in Westminster-Hall, has the privilege will not insist in his own behalf, but the King's cause, in Westminster-Hall, through the chief of action accrued in another county; and the court on the usual affidavit will not change the venue. Stil. 450. Moor 64. 2 Show. 242. 

But it hath been held, That if a privileged person be sued, and the action brought against him in the right court, and thereon the plaintiff will not insist in the true court, Jo. M. in Middlesex. Courth. 126. 1 Show. 148. Biff v. Har 
court. 

If an attorney lays his action in London, the court will 

change the venue on the usual affidavit; for by not laying it in Middlesex, he seems regardless of his privilege, and in so be considered as a pervert at large. 2 Vent. 47. 

Salk. 688. 

On a motion to disdarge a rule which had been ob 

tained for changing the venue, it appeared. That the plaintiff was a barrister and master in Chancery; and the 
court held that he had a privilege, by reason of his at 
tendance, to lay his action in Middlesex, and therefore discharged the rule. 2 Lord Raym. 1556. Fiss. 40. &C. 

Burrough v. Wills. 

Of the privilege of peers and members of parliament. 

All peers, without any distinction as to degree or rank, are intitled to privilege; for they are equally obliged to attend the service of the publick, and are always supposed amenable, and to have sufficient property to answer in future, to the actions that might be brought against them, and on their grounds are not to be arraigned or molested in their per 

sons. This privilege extended formerly to abbots, as it does to bishops, members of the convocation, and mem 
bers of the house of commons at this day. 4 Inh. 24. 


The privilege of parliament according to the law of parliament is of a very extensive nature; but all that is here intended to be treated of is only the taking notice of actions that fall upon them, so that they may be re 

ferred to be found in the books of law; not to determine concerning this privilege as settled by the rules and orders of each house, of which they themselves are the sole judges, though the King's courts incidently take 

notice thereof, and are bound to determine in matters of privilege when so directed by act of parliament. Lord Coke lays of this law, ob another quaternity, c, a multi 

gnorurate, a puicti cognitii. 4 Inh. 15. 12 Co. 69. 4 Inh. 


Cair. 181. 604. 2 Lord Raym. 1111. See 2 Med. 66. 

This privilege extends only to the peers of Great Brit 

ain; so that a nobleman of any other country, or a lord of Ireland, hath not any other privileges in this kingdom 

than a common person; also the son and heir apparent of a nobleman is not entitled to the privilege of being tried by his peers, which is confined to such persons as is a lord of parliament at the time; but it seems that an infant peer is privileged from arrests, his person being held sacred. 

_Cor. 23. 50. 393. 

The courts of Scotland had no privilege in this kingdom before the union, but now by the 230 article of the uni 

on, the sixteen elected peers shall have all the privileges of the peers of parliament of Great Britain; also all the rest of the peers of Scotland shall have all the privileges of the peerage of England, except such as that of sitting and voting in parliament. 

Q. Cor. 17. 1 P. Will 583. 

A perciefs by birth is intitled to privilege; so of a perciefs by marriage, and that as well during the coverture as after; but as a perciefs by marriage is said to lose her dignity by marrying a commoner, if after such mar 

riage she is intitled to any privilege. 2 Inh. 50. Stil. 

44. 252. 2 Ch. Co. 224. Cor. Lit. 16. 6 Co. 53. 

Dyer 759. 

It was held by my Lord. Ch. J. Holt, in the case of the 

Lord Banbury, that where a person is called by writ to the house of Peers, he is no peer 'till he sits in parlia 

ment, the writ giving him no nobility or honour; but that it was the sitting in the house of Lords, and associ 
ating himself with them that enabled his blood; and that therefore, if the King or he dies before a parliament 
meets, the writ is determined, and the party remains a commoner; but he held otherwise in a creation by letters patents, by which the party is immediately noble without any other seal or ceremony; and though the par 

ties duties remain to him and his posterity, according to the limitations in the patent. 4 B. E. Abr. 229. 

A member of parliament shall have privilege of parliament, not only for his servants, but for his horses, &c. or other goods indefinitely. 4 Inh. 24. 

J. S.
J. S. brought debt for rent against H., who pleaded that he was tenant and servant to Lord Mo-- and prayed in writ of privilege might be allowed him; the plaintiff answered; it was argued, that the matter of the plea was against the Common law, but not against the privilege; and the court held that the privilege did not extend generally to prevent the privilege of parliament; every court hath its privilege; I conceive the writ of privilege belongs to a parliament man, so far as to protect his lands and estate; and you have admitted it is privilege by your demurrer. Steil 129, Smith v. Hals. of Latch 150. and the C. S. Cit. 150, 223. 2 Jan. 1555. The lord chancellor, on a writ of fi--ge, alleging that he was obliged to attend the house of lords; but it appearing that he was fined upon an eject, and the court considering the great inconvenience which could ensue, and being of opinion that it was in their discretion whether they would grant such writ or no, upon an application he might plead it if he would, but they would not award such a writ, or if his privilege was strangled, he might complain to the house of Lords. Var. 154.

In debt, the defendant pleads he was a servant to a member of parliament, and also capi.f for arresti non pendit; this plea was overruled, and he was obliged to stay proess to quod magnatum, &c. and curum familt- ret capi for arresti was denied; for nullum habitation plebii privilege non debet impediuntur; idem refpic.tans. Pro. 105.

Defendant also a general implication pleaded, that he had given his consent to a peer, the Earl of Paradise; and to North Ch. J. it is not receivable, for it is not privilege to the matter and not the servant; but the defendant is of right to sue his writ of privilege, for perhaps his master will not protect him; and if he will not, he is then left an answer; like to the case of a counsellor, where it is privilege of privilege, but is not reflected to the secrets of his client but if the client be willing the court will compel the counsel to discover what he knows; which Serjeant Maynard laid was his father's before the Lord Chief, in the court of wards. North it, as it was a matter of great consequence, he would have with Lord Chancellor and the rest of the judges, and he used to be done in such cases; afterwards it was handed over, and North said it was moved in the house Lords, and that they had left it to the judges; and therefore the plea was rejected. Pafab. 30 Car. 2. p. 2. in B. Law v. Writelsby.

By an order of the 24th of January 1566, in the court of wards, the libel was revived, That no common attor- ney or solicitor, though employed by any peer, should have the privilege of this house.

By an order of the 24th of May 1724, this privilege as referred to menial servants, and others necessarily employed about the affairs of peers, was revived.

An attorney was taken in execution upon a 24. fa. the plaintiff, State, judgment, and great was con- torted of the Lord Say and Seal, the sheriff discharged his act as steward to his lordship; a rule was obtained at the fide-bar for the return of the writ; and now on motion in court to discharge this rule, it was urged in beh-alf of the sheriff, that this privilege belonged only to peers, and not to the party, and was not rebuttable by the proceeds; and that therefore the court ought not to sift upon a return, as the sheriff could not justify the detention of the defendant, but under peril of the house peers; but on consideration of the above-mentioned laws, and on considering the nature of this case, that the plaintiff had an important office in the privy council to a return of his writ; that without such return the plaintiff might be debarred from any further execution; but inculpably from the great inconvenience that might arise allowances of attorneys, who are officers to the courts in which they respectively practice, and therefore amenable to those courts, this kind of privilege; the court gave the plaintiff liberty to proceed against the sheriff, but gave him time till next term to make his return. Mich. 10. Gre. 2. in B. R. Wickham v. Hobart. 4 B. 4. Dec. 230.

In all civil causes this privilege is regularly to be allowed; so that a peer of the realm, or a member of the house of Commons, is not to be arrested or molested in his person or estate. Bre. Exigent.

But privilege of parliament doth not extend to high treason, felony, breach of the peace, or for party of the peace. 4 H. 25. Privy Council of Parliament Writs. And therefore not an infraction for treason or felony to trespass vi et armis, affaill or riot, proceed of outlawry shall issue against a peer of the realm; for the suit is for the King, and the offence is a contempt against him; but in civil actions between party and party, regularly a capias or exias does not issue against a lord of parliament. 2 Hel. H. P. 3. C. 2.

If a peer of parliament be convicted of a diffidvin with force, a capias pro fine and exias shall issue; for the fine is given by statute, in which no person is exempted. Gre. Eliz. 170. Lord Stafford v. Thynke. See Dyce 514.

So in debt upon an obligation against the Earl of Lin- coln, who pleaded non est factum, though it was argued against him, the judgment was idio capitator; which on a writ of error brought by him was objected to, that in a capias does not lie against a peer of the realm; sed non allevium; for by this plea found against him, a fine is due to the King, against whom none shall have any privilege. Gre. Eliz. 170.

An information was exhibited in B. R. against the Earl of Devonshire, for striking in the King's palace, which being in time of parliament, he insisted on his privilege of a peer, and refused to plead in chief, but put in his plea of privilege, to which there was a demurrer, and the plea overruled, and he was fined 3000l. Cond. 49. The King v. Earl of Devonshire.

In the case of the seven bishops it was infifted, that peers of the realm could not be committed in the first in- stance, for a misdemeanor before judgment; and that no precedent could be allowed where a peer had been brought in by a capias, which is the first process for a bare mide- member; and they put in a plea in writing of their be- longing peers, &c. but the plea was rejected. 3 Mod. 215.

Alfo peers of the realm are punishable by attachment for contempt in many instances; as for refusing a per- son arrested by due course of law; for proceeding in a exias against the King's writ of prohibition; for dis- charging other men's causes, or that the King's prerogative, or the liberty of the subject are nearly concerned; and for other contempts which are of an enormous nature. 2 Hazk. P. C. 152.

If a peer be returned on a jury, on his bringing a writ of privilege he may be discharged; also it forms the bet- ter opinion, that without such writ he may either chal- lenge himself, or be challenged by the party. Dyer 314. Mait 1679. 9 Co. 49. C. Litt. 157. 1 Jan. 1553.

Also in the case of Sir Edward Banton, who being returned on a jury, the court would not force him to be sworn against his will, he being a parliament man, and the parliament then sitting. Pach. 37 Car. 2. in B. 2.

A day of grace shall not be given against a lord of par- liament; for he is presumed to be attendant on the ser- vice of the public. 9 Co. 49. a.

So if a peer be made stedward of a bar court, or ran- ger of a forest, he may from the dignity of his person, and the presumption that he is engaged in the more weighty affairs of the Commonwealth, exercise the offices by deputy; though there are no words for this pur- pose in his creation. 9 Co. 49. a.

So if a licence be granted to a peer to hunt in a chase or forest, he may take such a number of attendants with him as are for the chase or forest. 9 Co. 49. 3.

A peer or lord of parliament cannot be an approver for it is against Magna Charta for him to pray a coroner. 3 H. 25. 129.

If a peer of the realm bring an appeal, the defendant shall not be admitted to wage battle, by reason of the dignity of his person. 2 Hazk. P. C. 427.
In *Trench* the following privileges are laid down as belonging to peers: 1. They are intitled to a letter mis-
five. 2. They have a knight to try an issue which con-
cerns them. 3. They are not to be arrested for debt, 
trespass or any personal action. 4. They are exempted 
from forcible process. 5. To have no day of grace 
against them. 6. Upon the trial of a peer for treason or 
felony, they try him upon their honour only, and 
not upon oath. 7. When they pass through any of 
the King's forts to attend upon the King, upon blowing 
a horn they may have a buck or doe, as the feast of 
the year. 8. They have power in the King's court to 
revise judgments given in the King's Bench. 9. They 
have the benefit of clergy, tho' they cannot read. 10. 
They are not liable to find carriages for the King when 
he removes from one place to another. *Jenck* 127.

In the case of Colonel Pit, the parliament was pro-
rogued the 16th of *April* 1734, dissolved the 17th, 
and the new writs bore *the* 18th following, and 
the defendant Pit, who was a member of that parliament, 
was arrested on the 20th; one of the questions in this 
case was, Whether the arrest was within the time of 
privilege? And it was determined that it was, although 
the defendant had lived for two years before, no further 
direct action could be brought against him, but the court 
did not think it necessary, in the determination of this cause, 
to ascertain the exact time of privilege that members of 
the house of Commons were intitled to after a dissolution 
of the house of parliament. *Trin. 8 Geo. 2. in B. R. Col. Pit's* 
ex. See *Skean* 985. and *Reports in Time of Lord 
Hardwicke* 16-27.

3. Of the proceedings in courts by and against perfons in-
titled to privilege of parliament.

By the statute 12 & 13 W. 3. cap. 13. sect. 1. it is 
enacted, That any perfon may prosecute any suit in 
any of his Majesty's courts at Westminster, or Chancery, 
or Exchequer, or the Dutchy court, or in the court of 
Admiralty; and in all causes matrimonial and testamentary 
in the courts of arches, the prerogative courts of Canter-
bury and York, and the delegates, and all courts of appeal, 
against any lord of parliament, or any of the knights, 
citizens and burgesses of the house of Commons, or their 
serveys, or any other person intituled to privilege of 
parliament, at any time immediately after the dissolution 
or prorogation of parliament until a new parliament shall 
meet, or the same be re-affembled, and immediately af-
ter the dissolution or prorogation of both houses for fourteen 
days until both houses shall meet; and the said courts may 
after such dissolution, prorogation or adjournment, pro-
cceed to give judgment, and make final decrees and 
sentences thereupon; any privilege of parliament notwith-
standing.

Stat. 2. Provided, That this act shall not subject 
the perfor of any of the knights, citizens and burgesses, 
or any other person intituled to privilege of parliament, to 
be arrested during the time of privilege; nevertheless all 
any person have cause of action or complaint against any 
peer, such perfon after such dissolution, prorogation or 
adjournment as aforesaid, or before any fifons of parlia-
ment, may give any interrogatories, out of the court of 
King's Bench, Common Pleas and Exchequer against 
such peer, as he might have had out of time of privilege; 
and if any person have cause of action against any of 
the knights, citizens or burgesses, or any other person 
titled to privilege of parliament, after any such dissolution, 
prorogation or such adjournment, &c. Such person may 
perforc such knight, citizen or burgess, or other perfon 
titled to privilege, in his Majesty's courts of King's 
Bench, Common Pleas and Exchequer, by summons and 
diftrefs infinite, or by original bill and summons, attach-
ment and diftrefs infinite, which the said courts are 
intitled to pass upon, and they may enter a commum 
appearance on file common bail; and any person having 
cause of suit or complaint may in the times aforesaid exhibit any bill or 
complaint against any peer, or against any of the said 
knights, citizens or burgesses, or other person intituled 
to privilege, in the Chancery, Exchequer or Dutchy court, 
and proceed thereupon by letter or *judicata* as usual; and 
upon leaving a copy of the bill with the defendant, or at 
his last place of abode, may proceed thereon; and for 
want of an appearance or answer, or for non-performance 
of any order or decree, may assize the efface of the 
party, as is the case of a peer, but shall not arrest the body of any of the said knights, citizens and burgesses, or other privileged person, during the 
continuance of privilege of parliament.

Sect. 3. Where any plaintiff shall by reason of privilege 
of parliament be stay'd from prosecuting any suit com-
pleted by such plaintiff, he may be heard by any fusture 
of limitation, or nonqualified, dismissed, or his suit dit-
continued for want of prosecution, but shall upon the 
riuing of the parliament be at liberty to proceed.

Sect. 4. No suit or proceeding in law or equity against 
the King's original and immediate debtor, for the rece-
very of any debt originally and immediately due to his 
Majesty, or against any person liable to render an account 
to his Majesty for any part of his revenues, or other ori-
ginal or immediate duty, or the execution of any fuch 
proceedings, shall be impaired or delayed by privilege of 
parliament; yet so that the perfon of fuch debtor or ac-
countant, being a peer, shall not be liable to be arrested, 
or being a peer, be imprisoned, or his estate be sequestrated, 
nor, during the continuance of privilege, be arrested by 
such proceeding. See *the Stat. 2 B. 3 Ann. cap. 18. 
Geo. 2. cap. 74.

Sect. 5. This act shall not give any jurisdiction to any 
court to hold plea of any real or mixed action in other 
manner than such court might have had thereon before.

It hath been always held, that a peer is to put in his an-
fwer to a bill in equity, on his honour only, and not 
his oath; but when he is examined as a witness, he must 
be sworn.

Alfo if a peer be brought in court to be examined on 
interrogatories, or to make an affidavit, the fame must 
be on oath. *Salk. 512. & vid. Preced. Ch. 3. p. 72*.

As where the Lord Sturton brought a bill against Sir 
Thomas Meers, to compel him to a specific performance 
of articles for the purchasing of Lord Sturton's estate, Sir 
Thomas in his defence intitled that there were defects 
in Lord Sturton's title to the estate; and it being ordered 
that Lord Sturton should be examined on interrogatories, 
touching his said title; it was objectted, that Lord Stur-
ton being a peer of the realm ought to answer upon ho-
our only; but it was ruled by Lord Harcourt, that the 
privilege of peerage did allow a peer to put in his an-
fwer upon honour only, yet this was restrained to an an-
fwer; and he added, that where a peer is examined as a 
witnefs, he must be upon oath; and that this examina-
tion upon interrogatories, being in a cause wherein his Lord-
ship was plaintiff, to enforce the Execution of an agree-
ment, as his lordship would have equity, fo he should do 
equity, and allow the other side the benefit of a discovery; 
and that in a legal manner; and accordingly ordered Lord 
Sturton to put in his examination on oath. 1 *Wills* 145.


It hath been held, that though a court of equity will 
not proceed against a member that hath privilege of 
parliament, yet if a parliament man fuses at law, and a bill 
is brought here to be relieved against that action, the 
court will make an order to stay proceedings at law 'till 
affirmative order. 1 *Vern* 329.

R. T. being chose a burgess for Buckingham, and 
having a trial at bar to be had on Tuesday before the sitting 
of the parliament, moved to have his privilege allowed 
him; but was denied, in regard the parliament was not 
fitting, nor to fit 'till after the trial had. *Rog. 11.* 
1 *Sid. 43. S. C.*

It hath been held, that in an action founded on the 
statute 15 & 16 Car. 2. sect. 12 W. 3. the defendant 
shall have an impeachment; and it was said in this cafe, 
that the practice is to file a bill in nature of a special 
complaint against the defendant, and then to sumon him; and if he appears upon such summons, the plaintiff may 
declare against him, as in *vulguis marlhill*. *Hill. 10 *Geo. 1. 
1 B. R. *Waithworth v. Handlee.*
Peers are intitled to a letter missive, which method was introduced on a presumption that peers would pay towards the costs of suit, as it were, if it were not so plain as to be intimated on that respect that it is due to the peerage.

177. If the lord doth not appear upon the letter, a solaspana on motion is awarded against him; because no subse-
quent process can be awarded but upon a contempt to the Great seal, and the Chancellor's letter is only ex gratia.

If on the voir dire of the solaspana, the peer doth not
appear, or if he appears, and does not put in his answer, no
attachment can be awarded against him, because his
person cannot be imprisoned; but the proceedings must be
by sequestration, unlesse caufe, &c. and this is regularly
made out, upon affidavit made of the service of the letter
and the solaspana, although sometimes it is moved for
without, since the peer may have writ of service at the
day assigned to shew cause why the sequestration should
not issue; and this order for a sequestration is never made
absolute without an affidavit of the service of the order
to shew cause, and a certificate of no cause flown.

2 art. (which have been put off on that account) the
very first causes in the paper, when the court sits after
delay, is privileged.

A bill being filed against a peer or peers, the first ap-
plication is for my Lord Chancellor's letter returnable in
term of time; or it may be immediate, if the peer or peer-
cess lives in town; but in this case there must be an affidav-
it, that the original letter is left with the peer at his
broad, and that the letter is received, and the answer therewith is also left an office copy of the bill signed by
the fix clerk; for if the bill is not signed, the issue is
irregular.

4 Bar. Abr. 298.

This letter is only a compliment, and no procels to
found proceedings on; so that the peer may appear or
not, as he pleases; if he fail a solaspana issues against
him, and his time for appearing and answering being
out, an attachment must be actually false and entered
against him, though never executed, to ground a seque-
stration upon. It is a motion of course for a sequestra-
tion upon an attachment for want of an answer.

4 Bar. Abr. 298.

The peer must be personally served with this order,
and be eight days to shew cause after personal ser-
vice of the order; if no cause, the order is absolute;
as if the sequestration is for want of an appearance, and
appears, the plaintiff run must file race over again on
or want of an answer, and the peer must pay time to
flower, as suitors do.

4 Bar. Abr. 298.

The fame proceeding is against a member of the house of
Commons; there the party proceeds by way of sequestra-
tion, only with this difference, that instead of a letter,
here is always a solaspana issued out; and when a caufe
arises against him, or a cause for contempt in the paper,
if the bill is put in, and cannot proceed (privilege being in
the court never strikes it out as they do in other cases
where the party is not ready, they let it fland over from
one term to another, till privilege is out, and never put
the party to sue out a solaspana to hear judgment; and
the direction of the court to the registre to put privilege
of the party who have been put off on that account,
the very first causes in the paper, when the court sits after
delay, is privileged.

4 Bar. Abr. 298.

A sequestration was granted, unless cause, against the
Lord Clifford for want of an answer; he afterwards put
in an answer, which being reported insufficient, it was
refused, and the suit for contempt in the paper, if the bill
is put in, and cannot proceed (privilege being in
the court never strikes it out as they do in other cases
where the party is not ready, they let it fland over from
one term to another, till privilege is out, and never put
the party to sue out a solaspana to hear judgment; and
the direction of the court to the registre to put privilege
of the party who have been put off on that account,
the very first causes in the paper, when the court sits after
delay, is privileged.

4 Bar. Abr. 298.

W. 3. Likewise granted the motion, it appearing to be
both within the meaning and words of the statute; and
the party had it. But should it have been denied was
not granted by the Master of the Rolls, yet the registre
refused to draw it up as thinking it against the course of
the courts; which being moved again before the Lord
Chancellor, his Lordship, upon reading the statute,
Vol. II. No. 117.

117. There are three sorts of privacies, viz. privilege in
effate, in blood and in law. Privy in blood in
kindness of privies in blood inheritable, and this is in
three manner, sic, inherited as general heir, or as special
heir, or as general and special heir. Privies in effate are
as joint tenants, baron and feme, donor and donee, leaffer
and leffe, and joint tenancy in law are, when the law with
out blood or privy of effate cafe, the right of the
privy, makes his entry lawful, as lord by effeet, lord that
tners for mortmain, lord of villains, &c. Rep. 42. b. Hill
45 Eft. Wislingham's cafe. C. Cited per James J.
fs. 32. in the cafe of Godfrey v. Wade.

There are town of privacies, viz. in respect of
effate only, contras only, effate and contract together.
Privy in effate is, as if the leffer grants over his
reversion, (or if the reverfion ecbate.) Now between
the granting (or the lord by effeet) and the leffe, there
is privy in effate only. So between the leffer and af-
fiagene of leeffe; for no contract was made between them.
Privy of effate is personal privy, and ex-
tends only to the person of the leffer, and the privy of
the leffe, as in the principal cafe when the leffe
affigned over his intereft, notwithstanding his affiliation
the privy of the contract remained between them, tho'
privy of the effate be removed by the act of the leeffe
himself; and the reason of this, is, flue. Because the leeffe
himself shall not prevent by his own act such remedy
which the leffer had against him by his own contract,
but when the leffer granted over his reverfion, there,
agains his own grant, he cannot have remedv; because
he has granted the reverfion to the other, to which the
rent is incident. 32. The leeffe may grant the term
of land for the use of a poor man, and not to be able to
fale the land, and who will by iudgence, or for malfice, permit
it to be frefed, and then the leffer shall be without remedv,
either by diftrife, or by action of debt, which shall be
inconvenient, and will concern in effect every man,
(because for the most part every man is a leeffe, or a
leffe,) and for those two reasons all the cafes of entry
by tort, evifion, fupenfion and apportionment of the
rent are anwered; for in cafe it is either the act
of the leffer himfelf, or the act of a ftranger, and in
none of the fad cafes, the folc act of the leeffe himfelf
shall prevent the leffe of his remedv, and will introduce
such inconvenience to the term of land; and the feffe,
and eaffe together, is between the leffer and leffe himfelf.

Privies, (derived from the French privie, familiarit) Signifies him that is par-taker, or hath an interef in any
action or thing; as prives of blood, Old Nat. Bre. 117.
are those persons who are linked in kindred, every
peer in their heir in privy is privileged.

2. As for sole dividers divers, see Mas. 21. fol. 147.

Privy was between me and the tenant.

Littleton, fol. 136. If I deliver goods to a man, to
be carried to such a place, and he, after he hath brought
them thither, doth flay them, 'tis felony; because the
privy of delivery is determined, as soon as they are
brought through the hand of the man.

25. Merchants privy are opposite to merchant strangers,
2 Ed. 3. 9 & 14. The author of the New Terms of the
Law maketh divers sorts of privies, sic, privies in effate,
privies
privies in ded, privies in law, privies in right, and privies in blood. See Parkin 831, 832, 833, and Geo. l. 3. fol. 23. Walker's cafe, and lib. 4. fol. 125, 124. mentions four kinds of privies, viz. Privies in blood, as the heirs of any person; privies in representation, as executors or administrators to the deceased; privies in estate, as he in the revenue, and he in the remainder, when land is given to one for life, to another in fee, for that their estates are created both at one time: The fourth is priory in tenure, as the lord by osche, that is, when the land escheats to the lord for want of heirs. Cowell, edit. 1777.

Privies inheritable, as heir general, shall take benefit of the infamy, as if infant tenant in fee-simple makes sequestration, and dies, his heir shall enter. The same law of him that is heir general and special, and also of him that is heir special, and not general. But privies in estate (unles in some special cases) shall not take advantage of the infancy of the other. 8 Rep. 42. b. 53. Westminster's cafe.

A sufferer by an idlet of an estatte for life to destroy a contingent remainder is void at initis, and therefore any perfon may take advantage of it, as well privy in estatte as heir at law. But a sequestration and livery made propriis manibus of the idmet, not being merely void, makes a difference. Carth. 436. Hill. 9 W. 3. B. R. Thompson v. Litch.

Privy Council. (Concilium Regii. Privatum Concilium) Is in most honourable assembly of the King and Privy Councilors in the King's court or palace, for matters of State. 4 Inst. 53.

Stat. 3 H. 7. c. 14. The Steward, Treasurer and Controller of the King's house, or one of them, shall have power to invoke by twelve discreet perons of the cheque roll of the King's houehold, if any servant sworn, and his name put into the cheque roll under the flate of a lord, make any confedervatives, compounding, conspiracies or imaginations, with any peron, to defry or murder the King, or any lord of this realm, or any other peron sworn to the King's Council, Steward, Treasurer or Controller of the King's house; and if it be found before the said steward by the said twelve men, that any such of the King's servants have confederated, &c. as above- said, he shall be put to answer. And the Steward, Treasurer and Controller, or two of them, shall have power to determine the matter according to law. And if he put him in trial, it shall be tried by other twelve men of the house, and such twelve shall have no challenge, but for mallice; and if such twelve be found guilty, by confession or otherwise, the offence shall be judged felony.

Stat. 9 Ann. cap. 16. sect. 1. If any peron shall unlawfully attempt to kill, or shall unlawfully affright or terrorize any one of the most honourable Privy Council, when in the execution of his office of a Privy Councilor in Council, or in any Committee of Council, the perons so offending being convicted shall be felons, and suffer death without benefit of clergy. See 1 Haw. P. C. c. 17. sect. 25. c. 18. sect. 2. 2 Haw. P. C. c. 16. sect. 14. c. 15. sect. 2. 25. sect. 12. Privy Seal (Privatum sigillum). Is a seal that the King uteth to such grants, or other things, as pass the Great seal: First they pass the Privy seal; then the Privy seal; and lastly, the Great seal of England. The Privy seal is sometimes uted in lieu of lesser seals, that never pass the Great seal. No writs pass under the Privy seal which touch in the Common law. 2 Inst. f. 555. See Clerk of the Privy seal, Clerk of the Great Seal.

Pitzen. Was the name of the seal of King Arthur, on which the Virgin Mary was painted. 'Tis mention- ed in Geoffrey of Monmouth, 1. 7. c. 2.

Plates. Goods may be imported and exported out of the plantations, in prize ships, 7 & 8 W. 3. c. 32. f. 3.

Prize ships to be regeristered, and oath made that the property is English, 7 & 8 W. 3. c. 22. f. 19.

The property of prizes in the captors, and the prizes to be appraised, and divided amongst them, and the King's duties thereon Secured, 6 Ann. cap. 13.

9 Ann. c. 27. f. 4. Duty on French prize wine during the war, 6 Ann. c. 19. f. 11.


Appeal to the Privy Council, 6 Ann. c. 37. f. 8.

Privaters, &c. subject to the laws concerning flaves, 6 Ann. c. 37. f. 18. 17 Geo. 2. c. 34. f. 22.

Regulations of the duties on prize goods from America, 10 Geo. 2. c. 26. f. 113. 15 Geo. 2. c. 31. f. 5.

Property of prizes given to the captors, 13 Geo. 2. c. 4.

17 Geo. 2. c. 34.

Directors for condemning prizes, 13 Geo. 2. c. 34. f. 3.

17 Geo. 2. c. 34. f. 3. 20 Geo. 2. c. 24. f. 10. 29 Geo. 2. c. 34. f. 3.

Ability to give commissions to privaters, 17 Geo. 2. c. 34. f. 2.

Penalty for imbeziling applied in part to Greenwich Hospital, 17 Geo. 2. c. 34. f. 11.

Shares, &c. not demanded in three years, go to Greenwich Hospital, 17 Geo. 2. c. 34. f. 14. 19.

Prizes not exempted from customs, 17 Geo. 2. c. 34. f. 19.

29 Geo. 2. c. 4.

Penalty on privaters taking ships by collision, 13 Geo. 2. c. 27. f. 3. 29 Geo. 2. c. 25. f. 3.

Duty on prize quick-silver during the war, aften- earned, 15 Geo. 2. c. 19. f. 22.

Agents for privaters to register their powers, 18 Geo. 2. c. 19. f. 5. 20 Geo. 2. c. 24. f. 11. 29 Geo. 2. c. 35. f. 14.

Matters of privaters to inquire if mariners have deferted, 19 Geo. 2. c. 30. f. 2.

Bills of sale of prize money made void, 20 Geo. 2. c. 24. f. 4.

Runaway men forfeit their money to Greenwich Hospital, 20 Geo. 2. c. 34. f. 1. 17. 13. 14.

Prize goods to be warehoused and exported duty free, 20 Geo. 2. c. 45. f. 10. reproved, 21 Geo. 2. c. 2. f. 8.

No drawback on prize goods, 21 Geo. 2. c. 2. f. 9.

Commission for hearing appeals relating to prizes, declared void, 22 Geo. 2. c. 2. f. 3.

Prizes made by the King's ships to be divided among the captors in such proportion as his Majesty shall order, 29 Geo. 2. c. 34.

Captures in America how to be disposed of, 29 Geo. 2. c. 34. f. 5.

Penalties on judges or officers of courts of Admiralty in neglecting their duty, 29 Geo. 2. c. 34. f. 6.

Fees of courts of Admiralty in America, 29 Geo. 2. c. 34. f. 8.

Regulations concerning agents for prizes, 29 Geo. 2. c. 34. f. 12. Geo. 28. &c. 35. &c.

Shares of runaway men, &c. not demanded in three years to be paid to Greenwich Hospital, 29 Geo. 2. c. 34. f. 16. 26. 28. 29. 30.

Bounty to the captors for all men on board the enemies ships of war taken or destroyed, 29 Geo. 2. c. 34. f. 21.

Ships or goods taken by the enemy, and retaken by the King's ships or privaters, to be restored on paying duty, 29 Geo. 2. c. 34. f. 17.

Penalty on the capturers of privaters or King's ships, taking ships by collusion, 29 Geo. 2. c. 34. f. 25.

Run men forfeit their share of prize and bounty money, 29 Geo. 2. c. 34. f. 26. 27.

Privaters to be subject to the laws of the colonies, 29 Geo. 2. c. 34. f. 31.

Navy Act. Prize flags on board neutral ships, 29 Geo. 2. c. 34. f. 38.

What duties shall be paid on prize goods, 30 Geo. 2. c. 18.

Military or ship flags exempt from duty, 30 Geo. 2. c. 18.

Notifications of payment of prizes how to be given, 33 Geo. 2. c. 19. f. 1.

Duties on prize goods, 32 Geo. 2. c. 10. f. 3.

Notifications to be good evidence of the persons being agents, 33 Geo. 2. c. 19. f. 5.
we have left the order, and almost the devotion, as well as the pomp and superflition of it. *Cowell, edit. 1727.*

**Pororum continuum.** Is a writ for the continuance of a process, after the death of the Chief Justice, or other justices in the writ of *Oyer and Terminer.* *Regist. Ordin. XVII. 128.

**Porchein any.** *(Parisium aniclis, vel preparisquin, the next friend)* Is used in the Common law for him that is next of kin to a child in his male, and is in that respect allowed by law to deal for him in the managing his affairs; as to be his guardian, if he hold any land in *feeps,* etc. All the redress of any wrong done to him. *See Wym. 1. cap. 48. and Wym. 2. cap. 15. and in the prosecution of any action at law per *guardianam,* where the plaintiff is an infant; & *per proximum aniclis,* where the infant is defendant. *See Ca. 2. bift. fol. 261. See Infant.*

**Proclamation.** *(Proclamation)* Is a notice publickly given of any thing, whereof the King thinks fit to advertise his subjects, and so it is used, 7 Ric. 2. cap. 6.

It is plain that the King by his prerogative may, in certain cases and special occasions make and issue out proclamations for prevention of offenses, to ratify and confirm an ancient law, or as a foreseen evil, to prevent them, that they keep the laws of his displeasure; and such proclamations being ground on the laws of the realm are of great force. *Partes, de Laud. cap. 9. 12 Co. 74. 75. 11 Co. 87. Dalf. 20. pl. 10. 2 Rel. Atr. 209.* 3 bift. 162.

It is likewise clear, that the subjects being charged on pain of fine and imprisonment to obey every proclamation legally made; that though the thing prohibited were an offence before, that yet the proclamation is a circumstance which highly aggravates it; and upon which alone the party disobeying may be punished. *12 Co. 74. *Hob. 251.*

It is clearly agreed, that no private person can make any proclamation of a publick nature except by custom, as is usual in some cities and boroughs; this being a prerogative act, with which alone the King is intrusted. *Bra. Proclamat. pl. 1. 12 Co. 75. Cramer, Jur. 41.*

But notwithstanding the King's prerogative herein, it seems clearly agreed, that the King cannot by his proclamation change any part of the Common law, statutes or customs of this realm; nor can he by his proclamation create any offence which was not an offence before; for that these things cannot be done without a legislative power, of which in our constitution the King is but a part. *Dalf. 20. pl. 10. 12 Co. 75. 11 Co. 87. 1.*

On this foundation hath been laid the ground of the King's proclamation prohibiting the importation of wines from France, upon pain of forfeiture, was against law and void; there being no war at that time subsisting between the nations. *2 bift. 63.*

So where an act was made by which foreigners were licensed to merchandise within London; and *4. 4. by proclamation prohibited the execution of it, and ordered that it should be in supfense *ufque ad proximum parliaments,* and this was held to be against law. *12 Co. 75.*

Upon a conference between some Lords of the Privy Council and the two Chief Justices (of which the Lord Coke was one) and Ch. B. and Bacon were of the question was, Whether the King by proclamation might prohibit new buildings in and about London, 2dly, If the King might prohibit the making of flarch of wheat. And the judges were of opinion, that the subject could not be restrained in these particulars by the King's proclamation. *12 Co. 74.*

In the light of the above-mentioned opinion, there are instances of persons who have been sentenced in the star-chamber upon proclamations against the increase of buildings; and particularly in *Hob. where a perfon was fined in the star-chamber for building without brick, though upon an old foundation; and it is there said, that such buildings had an ill effect, as a preventer of fire, consumption of timber, and difficulty of feeding, clearing and governing the city; and it was said in general, that proclamations were so far just as they were made for public service; and for public utility. *Hob. 251. *Arm. Stead's case.

*The King by proclamation may call or diftive parliaments, or declare war or peace; for these are prerogative acts with which he is intrusted as the executive part of the law; but if there be an actual war between us and a foreign nation, it is not necessary in pleading to shew that such war was proclaimed. *3 bift. 162. 1 Hal. Hist. P. C. 163. Owen 45. *Roil. Ent. 605. *The King by proclamation may let into public company, and make it a current money of this kingdom, according to the value imposed by such proclamation; he may legitimate base coin, or mixed below the standard of *sterling,* he may enhance coin to a higher denomination or value; and may decree money that is current in use and payment, and in all these cases a proclamation, which was, made under the Great seal, is necessary. *Ca. Lit. 207. b. 5 Co. 114. b. *Dev. 21. 1 Hal. Hist. P. C. 192. 197.*

The King by proclamation may appoint fads and days of thanksgiving and humiliation; and ifue proclamations for preventing and punishing immorality and proclamations, and injoin the reading the same in churches and chapels. *Comp. Incumb. 354.*

A proclamation must be under the Great seal, and if denied is to be tried by the record thereof; but if a man pleads that he was prevented doing a thing by proclamation, it seems the better opinion, that he need not aver that such proclamation was under the Great seal, for that if proclamation was made, it shall be intended to have been duly made. *Cra. Car. 180. *Kely v. Manning,* and fee 1 Rel. Rep. 172.

**Proclamation of a fine.** Is a notice openly and formally given at all the assizes held in the county, within one year after the enrolling it. And these proclamations are made upon transcript of the fines, sent by the judges of the Common Pleas to the justices of assizes, and justices of peace. *Witl. Synph. 2 par. tit. Finis, sect. 132. See Fine.*

**Proclamation of rebellion.** Is a publick notice given by the officers, that a man not appearing upon a *summons* nor an attachment in the Chancery, shall be required rebel, unless he surrender himself by a day assign'd in this writ. *Cowell, edit. 1727.* See **Commision** of rebellion.

**Pro contello.** Is when a bill is exhibited in the Chancery, to which the defendant appears, and is in contempt for not answering, or makes no defence, the complaint or matter contained in the bill shall be taken as if it were confessed by the defendant. *Terms de la le 494.*

*Where the defendant has not appeared, Chancery can't decree the bill *pro contello,* but ordered a *sequel contello* against his real and personal effects, till he clears the contempt. *2 Ch. 284. 32 Car. 2. Neds v. Battle.*

The course of the court now is to take a bill *pro con- fello* after the party has once appeared, and stands in contempt till the plaintiff has got to the end of the line and has run through all the process of the court against him; yet formerly this court did not do it even in this case, without putting the plaintiff to prove the subsistence of his bill. *Arg. Ven. 224. Hill. 1683. in the case of* *Gibbons v. Definiers.*

Two defendants, the one having answered, the other refutes, he shall be bound by the other's answer, if the cause pails against them. *Tesh. 74. cities 7. *Mallin.*

Defendant being a prisoner in the King's Bench re- futes to answer. The bill can't be taken *pro confello, unless he was in the prison of this court; whereupon he was removed by bokas corpus into the *Fluis,* and had a day given him to answer, and he still refusing, the bill was taken, and he was ordered to be kept in close prisoner. *N. Ch. R. 50. 1653. Thomas v. Jones.*

Where the defendants were not brought in upon any process of contempt, but they appeared to the *subpensa* to answer, and craved a further day, and had it, and...
PRO

Good out all contemptes, and could not be taken, the bill was taken pro confesso, and a decree upon it decreed to be well grounded, and a bill of review ordered to be inscribed.


In a suit for tithes the defendant was in contempt for not answering, and was brought by several orders to the arity and being a quaker, refused to answer on oath, but stayed to answer without oath. Finch C. admonished him of the perils, viz. that the bill must be taken for pro confesso, and, saying he was sure after hearing what the Lord Chancellor pronounced the decree, though Sir J. Clerk, as amicus curiae, said, that this suit for tithes, especially small tithes, was not proper for this court, and had not been used; but decreed for him plaintiff, and referred the valuation to the Maller. C. Cnap.

The defendant having appeared, and afterwards found in contempt 'til fequestration was returned; it was infilled, that the bill ought to be taken pro confesso; but he Lord Keeper said, He would consider of it 'til the next term. And it being alleged, that baron and fee were defendants, and that it was the wife only who had answered, and that without the husband's privy, Lord Keeper referred it to a Maller to examine the fact, and said, if it should fall out to be so, he could not decree against the husband, but they must proceed, and lay on him to sequestration to bring him in. Vern. 247. Trin. 684. Gilson v. Stormont.

The court was going to answer, and flanding out all contemptes 'til an order was made for a sequestration; it was prayed by the plaintiff's counsel, that the bill might be taken pro confesso. To which it was objected by the counsel on the other side, that this could not be done, because the sequestration was neither under seal nor executed, and also because the Maller did not produce the original indent, but only a copy of it. Lord Chancellor Parker held the last objection certain a good one, but as or the other, there seemed to him to be no reason for it; for the putting the seal to the sequestration, and actually executing it, seems to be then only necessary when he plaintiff is not ripe for a decree upon his own bill, it want some discovery from the defendant's senec, upon which the decree may be founded; and therefore he actual executing a sequestration to extort an answer, of which the plaintiff has no occasion, seemed to him very unnecessary. 10 Mod. 431. Pofb. 5 Geo. Ann. Stat. 5 Geo. cap. 25. drafts, Lord Chief-Justice, Lemuel, and equity judges, whom processe shall infire, shall not cause his appearance to be entered according to the rules of the court, in case such processe had been served, and suffit shall be made, that such defendant is beyond the seas; or that, upon inquiry at his usual place of abode, he could not be found, so as to be served, and that there was full ground to believe that such defendant is gone out of the realm, or absconds to avoid being served; the court may make an order, appointing such defendant to appear at a day therein to be named, and a copy of such order shall, within 14 days, be entered in the London Gazette, and published on some Lord's day, after divine service, in the church where the defendant usually abode within 30 days next before his absencing; and a copy of such order shall be posted up, viz. a copy of such order made in Chancery, Exchequer or Dutehy Chamber, shall be posted up at the Royal Exchange; and a copy of every such order made in any of the courts of equity of the counties Palatine, or of the great sefions in Wales, shall be posted up in some market town within the jurisdiction of the court, nearest to the place where such defendant made his usual abode, such place of abode being also within the jurisdiction of the court; and if the defendant do not appear within such time as shall be set by the court for the purpose of declaring such publication of such order as aforesaid, the court may order the defendant's bill to be taken pro confesso, and make such decree thereupon as shall be just; and the court may order such plaintiff to be paid his demands out of the estate sequeftrated according to the decree; such plaintiff giving security to abide such order touching the refi-
fent for every cathedral or collegiate church, and two for the body of the inferior clergy of each diocese: And by virtue of these letters authentically sealed, the said bishop of London directed his like letters severally to the bishop of every diocese of the province putting them in like manner, and commanding them not only to appear, but also to admonish the said deans and archbishops personally to appear, and the cathedral or collegiate churches, as also the common clergy of the diocese to send their proctors to the place at the day appointed; and also willed them, to certify to the archbishop the names of all and every person and persons summoned by them, in a schedule annexed to their letter certificatory. The bishops proceed accordingly, and the cathedral and collegiate churches, and also the clergy make choice of their proctors; which done and certificated to the bishop, he returneth all at the day. These proctors of the clergy had heretofore place and suffrage in the Commons house of parliament, as appears by the statute 21 R. 2. cap. 2. & 12. See Prio foronum, Convocation, and 4 Inst. fol. 4.

Procurations (Procurations). Are certain sums of money which parish-priests pay to the bishop or archdeacon, ratione satisfactorum: They were ancienly paid in necessary wheather for the visitor and minister, and afterwards turned into money. Complaints were often made to the pope of the excessive charges of the procurations, which were prohibited by several councils and bulls. That of Clement IV. mentioned in the Monachism, 2 tom. pag. 165, is particularly, wherein that pope tells us, that complaint had been made to him, that the archdeacon of Aginhal in Normandy, received money with fifty bound and three horses, twenty-one dogs and three hawks, and did so grievously oppress a religious house with that vast equipment, that he caused the monks to spend in an hour as much as would have maintained them long time. Conv. edit. 1777. See 17 Fin. Ann. 355.

Procurator, Is a person who has a charge committed to him by another. So the proxies of lords in parliament, are in our Law books called procuratores. It signifies also a vicar or lieutenant; one who acts instead of another. In Petrus Blisfens, &p. 47. we read of a procurator Eccez. So procurator reipublica is a public magistrate. There are also procuratores clerici sent to the convocation; and the bishops sometimes are called procuratores ecclesiarum. And from this word proceed the civil right of procurator in the civil court. It is also used for him that gathers the fruit of a benefice for another man. Stat. 3 Ric. 2. rec. 1. cap. 3. and procuracy for the writing or registering that he is authorized. Procurators are at this day in the west parts called proctors. Procuratores ecclesiasticis parochialis, The churchwardens who were to act as proxies and representatives of the church, for the true honour and interest of it. Paroch. Antiq. 562.

Procurationum, The procuratory, or outlayment by which any person or community did constitute or delegate their provost or provtors, to represent them in any judicial court or cause.

Proucator monasterii, The advocate of a religious house, who was to solicit the interest, and plead the causes of the society. See Prish bishop monasterii.

Proucatoris is the genealogy of a man. Matt. Par. eorno 1130.

Prouces homes, Is a title often given in our old books, to the barons or other military tenants, who were called to the king’s council, and was no more than dixit & facles hominis, discreet liege men, who, according to the king’s pleasure and knowledge were to give their counsel and advice. Convall. edit. 1777.

Proucitor, A word necessary to indictions of treason. 2 Hen. P. C. 274.

Proucanets (Oue procud a fumas) Is a displeased paid to the name of God, and to things and persons confecrated by him. See Inst. fol. 396. And procanets is punishable by divers statutes; as for example the Sacrament of the Lord’s Supper, profanely using the name of God in plays, &c. profaning the Lord’s day, cursing and swearing, &c. 1 Ed. 6. c. 1. 1 Eliz. c. 1. 3 Jar. 1.

Prouces, A device of the profits of lands, is a devise of the land itself. Dyer 210. A husband deviseth the profits of his lands to his wife, until his own came of age; this was held to be a devise of the lands until that came of age. It hath been held, that the husband should take the profits of it until he came of age, &c. this would give the wife only an authority, and not an interdict. 2 Leon. 221. By devise of the profits,
P

unlefs

in

prohibition

writ

that

ijnd.ijg.

but

which

of

the

caufe

ordeing

court,

prohibition,

iliud

xral

there

to

xamen

of

bition,

which

the

hath

fliew

fometime

to

the

granting

officer

eafe

within

King's

of

the

of

the

a

to

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the

the
opinion that a prohibition ought by law to be granted; in this case they will not compel the party to find special bail to the action in the common law. Salis. 22. Gurr. 5. Com. 74. 1 Lord Raym. 576. S. C. Clay v. Smelgrove.

If there is judgment against a fimoniff, who by the {affent} of parties is to continue for a certain time on the benefice, and who at the expiration of the time refuses to remove, but commits waste on the house or glebe, a prohibition to stay doing waste may be had by the patron, incumbent or any other person, because that is the King's writ; and any one may pray a prohibition for the King, and it is grantable ex debito justitiae, and not honorary, and in the dioces of the court. Comp. Incomb. 43. 1 Sid 65. Hob. 247.

2. Who have a right to, and may demand, and join in a prohibition.

The King may sue for a prohibition, though the plea in the spiritual court be between two common persons, because the suit is in derogation of his crown and dignity. F. N. B. 40.

So if the ecclesiastical court will hold plea of any matter which belongs not to their jurisdiction, upon information thereof to the King's courts, either by the plaintiff, defendant or by a mere stranger, a prohibition will issue. 2 Leiz. 651.

And where a matter is in the spiritual court for a matter which does not appertain to that court, but to the Common law, as a matter of frank-tenement; yet he himself, against his own suit, may pray a prohibition, and shall have it. 2 Rol. Ab. 312. 1 Leon. 130. Godilf. 149. 12 Ch. 56.

So where the plaintiff in the spiritual court brought a prohibition to stay his own suit there, for that he suing for tithes by virtue of a lease made by the vicar of A. for three years, the defendant claimed to be discharge of the tithes by a former lease and composition by deed; and in this case it was held, that the plaintiff himself may have a prohibition to stay the suit; for the ecclesiastical judges are not to meddle with the trial of leases or real contracts, though they have jurisdiction of the original cause (viz. the tithes); for the lease is in the reality, and is not merely accidental; and it makes no difference, that the plaintiff brings prohibition to stay his own suit; for if the temporal court has knowledge by the fact, that the spiritual court meddles with temporal trials, a prohibition ought to be awarded. Cro. Jac. 351. 2 Bull. 283. Lit. Rep. 20. Wurtz v. Cliffon.

If a vicar sues a parochioner for tithes in the spiritual court, and the parson appropriate appears there pro interesse sua, and prays a prohibition, it shall be granted. 2 Rol. Ab. 312. Robert's cafe. Cro. Eliz. 251. Eliz. 110.

If lease for years is sued in the spiritual court for tithes, he in reversion may have a prohibition. Most 915. Cro. Eliz. 55.

But no man is intitled to a prohibition unless he is in danger of being injured by some suit actually depending, and the suit is upon the petition to the archdeacon, or other ecclesiastical judge no prohibition lies. March 25, 45.

A prohibition quia timet does not lie. Allen 56.

If several libels are exhibited against A. and B. in a matter in which the court hath not conscience, A. and B. cannot join in a prohibition; so if the griefs be several, as in the books say. Nay 131. 1 Leon 288. Cro. Car. 129.

But where the vicar of A. libelled several persons severally for tithes, who joined in a prohibition, suspecting a med; and though the court held in this cafe, that the prohibition was not regularly brought, being in all their moves, where there were several libels; yet insomuch as this was on a custom, and matter triable at Common law, in which the Ecclesiastical court was properly prohibited, tho' not in exact form, they refused to award a confutation; but directed that the parties should put in several declarations, as if there had been several prohibi-

3. Of the figigation for, and manner of obtaining a prohibition.

Where the matter suggested for a prohibition appears upon the face of the libel, an affidavit is never intituled upon; but if it does not appear upon the face of the libel, or if a prohibition is moved for, more than appears upon the face of the libel, to be out of their jurisdiction, there ought to be an affidavit of the truth of the figigation. 2 Salk. 549. Per Talst. Ch. J. 1 Per. Will. 477, 65. S. P. cited.

The figigation in the temporal courts may be traversed. 2 Ifl. 611. 2 Co. 44. Mort 525.

On a rule to file caufe, why a prohibition should not be granted to stay a suit against the plaintiff in the court of the archdeacon, for not going to his own church, or any other church, on Sundays or holidays, nor receiving the sacrament thrice a year, upon figigation of the statute of Eliza, and tole ration act, and then qualifying himself into the act, and alleging, that he pleaded it below, and they refused to receive his plea; caufe was shewn, that this fact was false, and that the plaintiff was not a dissenter, nor had qualified himself at first, and therefore hoped the court would not suffer the rule to stand unless there was an affidavit of the fact; for by that means any person might come and figigate a false fact, and out the spiritual court of their jurisdiction, which the court admitted; and therefore for want of such affidavit the rule was discharged. 1 Id. Raym. 1211. Burdett v. Newell.

If a plea to an inferior jurisdiction be properly tendered, which they refuse, tho' this be a good caufe for a prohibition, yet an affidavit must be made of the referral. Sin. 20. Hard. 406. 3 Ed. 217.

For a post made for a prohibition to the Ecclesiastical court of London, for calling a woman whore, upon a figigation that the words were actionable there by custom of the place; but the court would not grant a prohibition without oath made, that if any such words were spoken, it was in London, and not elsewhere. 4 Adn. 35.

On a libel for calling the plaintiff old thief and old whore; the defendant suggested for a prohibition, that if any such words were spoken, they were spoken at the same time; but this figigation was held ill, because the words ought to have been fully confided. 1 Vent. 10. Day v. Pitts.

But as 3 Ed. 6. cap. 13, it is enabled, "that if any party at any time hereafter, for any matter or cause before reheard, limited or appointed by this act to be sued or determined in the King's Ecclesiastical court, or before the Ecclesiastical judge, do sue for any prohibition to any of the King's courts where prohibitions before this time have been used to be granted; that then in an action of Libel, where the party shall be granted to him or them, shall bring and deliver to the hands of some of the justices or judges of the same court, where such party demanded prohibition, the very true copy of the libel depending in the Ecclesiastical court concerning the matter where the party demanded prohibition, subscribed or marked with the hand of the same party, and under the copy of the said libel shall be written the figigation, whereby the party to demandeth the said prohibition; and in case the said figigation, by two honest and sufficient witneses at the levell, be not proved true in the court where the said prohibition shall be grant-
should be no part of the time; but this hath been twice adjudged otherwise, and that the time shall commence from the issue of the writ of prohibition, and not from the time of the rule made for awarding it. 

Mo. 573. 2 Leet. 100 325.

If the defendant be proved before one of the judges within the six months, although it be not recorded till after the fix months by the court, it is well enough. Noy 30. That it must be entered in the office. 2 Sher. 308.

It hath been held, that proof which is not sufficient may be supplied by better proof within the fix months, but not after. C. Litt. 153.

The party on failure of proof of the fuggestion, shall not only have double costs and damages, but also his costs and damages in the action he brings for the recovery of them. 

Bendl. 143. See fl. 8 & 9 W. 3. cap. 11.

But if the prohibition be ground ed partly on a malus, which need not be shown on the oath of the parties, which needs no proof, ought not to be double costs; for the mixing the contract with the manner of titling privileges the whole. 

Brewn. 99. Tlov. 119.

So where for a variance between the libel and fuggestion, a consultation was awarded, and double costs adjudged to the defendant; and this was held to be error by the very letter of the statute, which gives double costs only for want of proving the fuggestion, and for no other cause. Tlov. 79, 80. So where a prohibition was obtained upon a fuggestion which was not proved within the fix months, when the defendant took issue with the plaintiff, which was found for the plaintiff; and in this case it was revolved, that the defendant should not have double costs for want of the fuggestion's being proved; for the statute is, that he shall have a consultation and double costs; but in this case he could not have a consultation, the matter and issue being found against him; but ought to have prayed a consultation upon the fuggestion's not being proved, and then should have had his double costs. 

Latorb 140. 


The furnace or fuggestion may be brought in by attorneys, and need not be in proper person. 2 Leen. 286.

A prohibition is not to be granted the last day of term, but on motion a rule may be obtained to stay proceedings till the ensuing term. 


At what time a prohibition is to be granted; and in what cases it may be granted to inferior temporal courts.

It is clearly agreed, that in all cases where it appears upon the face of the libel, that the admiralty, spiritual court, &c. have not a jurisdiction, a prohibition may be awarded, and is granted as well after as before sentence; for the King's supremacy, and partly on a superintendency over all inferior jurisdictions, and are to take care that they keep within their due bounds. 

2 Inf. 602. 2 Rol. Rep. 319. 

Noy 137. 1 Sid. 65. C. Lorn. 571. 

Mo. 402, 907. 

Shin. 299. 

Carib. 463. 

March 153. 2 Rol. Rep. 74. 

Carrn. 356.

But where the court has a natural jurisdiction of the thing, but is restrained by some statute; as by 23 H. 8. for not citing out of the diocese, there the party must come before sentence; for after pleading and admitting the jurisdiction of the court below, it would be hard and inconvenient to grant a prohibition. See the authorities supra, and C. Cen. 

Shaw. 165. 167. 217. 

Vent. 61. 6 Mod. 252. 

Farq. 137. 

Goth. 163. 243. 5 Mod. 341. 

Heal. 19. 12 Co. 70. 

Salk. 543.

Upon a motion for a prohibition in the spiritual court for tithe of faggots made of lopings of trees; and the fuggestion for a prohibition was made before the lopping was cut, and the faggots or timber trees above the growth of twenty years; and it was alleged, that fentence was given in the spiritual court, and therefore the plaintiff comes here too late to have a prohibition: But per Holt Ch. J. the sentence will not hinder the having a prohibition in any case, but in case of prohibitions grounded upon 23 H. 8, c. 9, for citing out of the

Vol. II. N° 117.
the diocese; but because the plaintiff had not pleaded this matter in the spiritual court, they denied the prohibition, because the spiritual court has a general jurisdiction of titles; and if any special matter deprives them of their jurisdiction, it must be pleaded there; and if it had been pleaded there, and illud joined upon it, and upon the trial it had been found not to be sola causa, it had been held to be insufficient, if they had refused to admit the plea, the prohibition should have been granted. 2 Ld. Raym. 825.

Dike v. Brow.

It is clearly agreed, that a prohibition doth lie as well to a temporal court as to the spiritual, court of admiralty or other court, whole proceedings are different from the Common law, if such temporal court exceed the bounds of its jurisdiction, and take cognizance of matters not arising within its jurisdiction. F. N. B. 45. 2 Iflgl. 229, 240. 401. 2 Rol. Rep. 379. 1 Rol. Rep. 252.

As if trespass & arrest be brought in the county, a prohibition lies to the plaintiff. F. N. B. 47.

If so one sues another in a court baron or other court, which is not a court of record, for charters concerning inheritances or freehold, he shall have a prohibition. 2 N. & N. 47.

A person having obtained judgment in B. R. for his debt and damages, brought his action for the recovery of them against the bail in the court of the Tower of Lon- den, in which action the party was taken on a capias, and was refused, after which the plaintiff brought his action on the bond for the rescue; and all this appears to the court of B. R. they granted a prohibition. 1 Rol. Rep. 54.

So where an action of debt was brought in the Marshalsea, on a judgment in B. R. and a prohibition was granted. 2 Salk. 439.

A suit was furnished to be before the Lord president of the marches, for an office, between the grantee of the Lord president, and his party, whether the other question would be, whether the grant of that office belonged to the Lord president; and because in this case he would be as it were both judge and party, a prohibition was granted. 1 Keb. 648.

If there be one intire contract above 40l. and a man sues for it in a court baron, the Court will grant. 2 Vent. 65.

So in a prohibition to the court of the honour of Ely, where the cause was:—one contracted with another for divers parcels of malt, the money to be paid for each parcel being under 40l. and he levied divers plants thereupon in the said court; wherefore the court here granted a prohibition, because though there be several contracts, yet so much as the plaintiff might have joined them all in one action, he ought to have so done, and fixed here, and not put the defendant to unnecessary vexation, any more than he could splt an intire deed into divers, to give the inferior court jurisdiction in fraudem legat. 2 Vent. 231.

And therefore, in an action on a promiss in an inferior court, not only the promiss, but the consideration must be alleged to arise within the inferior jurisdiction, and must be so proved on the trial. 1 Rel. Air. 545.

But if the plaintiff had shown that the money had been lent infra jurisdictionem currus, or if it had been for goods there sold, the plaintiff would have had no need to say, that the defendant affirmed to pay infra jurisdictionem cu- ris, because the law creates the promiss upon the creation of the debt, which debt being within the jurisdiction, the promiss shall be intended there also. 1 Lord Raym. 211.

In all cases where inferior courts assume a jurisdiction, or hold plea of a matter not arising within their limits, the party hath his remedy, and may flay their proceed- ings, and the court shall have power to regul- arly be obtained by its appearing on oath made, that the fact did arise out of the jurisdiction, and that the defendant tendered a foreign plea, which was refused, 6 Mad. 146. Carth. 402. 1 Salk. 201. 1 Per Will. 476.

In the case of Minda v. Stint it was greatly illuminated upon, that though the party neglected to plead to the jur- isdiction, and to the matter arising thereout, the inferior court, there assumed jurisdiction, the superior courts ought to grant a prob- hition; for that otherwise the parties, their counsel and attorneys, would give a jurisdiction to inferior courts which they were not intituled to by law; but it was otherwise adjudged in this case; and it seems to be now appeared, for whatsoever does arise the jurisdiction, the impa- rchly, the party cannot apply for a prohibition. 2 Mad. 271.

But in the abovementioned case these things were agreed by the court. 1. That if any matter appears in the declaration, which sheweth that the cause of action did not arise infra jurisdictionem, there a prohibition may be granted at any time. 2. If the subject matter in the declaration be not proper for the judgment and de- termination of fuch court, there also a prohibition may be granted at any time. 3. If the defendant, who in- tended to plead to the jurisdiction, is prevented by any artifice, as by giving a short day, or by the attorney's refusing to plead it, etc. or if his plea be not accepted, or is over-ruled; in all these cases a prohibition likewise will lie at any time. 2 Mad. 273.

A motion was made for a prohibition to be directed to the sheriff's court in Bridgeton, upon application that cause of action arising out of the jurisdiction of the sheriff's court ought not to be sued there; and this motion was granted at any time. 2. If the subject matter in the declaration be not proper for the judgment and determination of such court, there also a prohibition may be granted at any time. 3. If the defendant, who intended to plead to the jurisdiction, is prevented by any artifice, as by giving a short day, or by the attorney's refusing to plead it, etc. or if his plea be not accepted, or is over-ruled; in all these cases a prohibition likewise will lie at any time. 2 Mad. 273.

A motion was made for a prohibition to be directed to the sheriff's court in Bridgeton, upon application that cause of action arising out of the jurisdiction of the sheriff's court ought not to be sued there; and this motion was granted at any time. 2. If the subject matter in the declaration be not proper for the judgment and determination of such court, there also a prohibition may be granted at any time. 3. If the defendant, who intended to plead to the jurisdiction, is prevented by any artifice, as by giving a short day, or by the attorney's refusing to plead it, etc. or if his plea be not accepted, or is over-ruled; in all these cases a prohibition likewise will lie at any time. 2 Mad. 273.

A motion was made for a prohibition to be directed to the sheriff's court in Bridgeton, upon application that cause of action arising out of the jurisdiction of the sheriff's court ought not to be sued there; and this motion was granted at any time. 2. If the subject matter in the declaration be not proper for the judgment and determination of such court, there also a prohibition may be granted at any time. 3. If the defendant, who intended to plead to the jurisdiction, is prevented by any artifice, as by giving a short day, or by the attorney's refusing to plead it, etc. or if his plea be not accepted, or is over-ruled; in all these cases a prohibition likewise will lie at any time. 2 Mad. 273.

A motion was made for a prohibition to be directed to the sheriff's court in Bridgeton, upon application that cause of action arising out of the jurisdiction of the sheriff's court ought not to be sued there; and this motion was granted at any time. 2. If the subject matter in the declaration be not proper for the judgment and determination of such court, there also a prohibition may be granted at any time. 3. If the defendant, who intended to plead to the jurisdiction, is prevented by any artifice, as by giving a short day, or by the attorney's refusing to plead it, etc. or if his plea be not accepted, or is over-ruled; in all these cases a prohibition likewise will lie at any time. 2 Mad. 273.
If the spiritual courts take upon them to try the boundaries of a parish, a prohibition lies. 2 Rel. Atr. 191. 7 Co. 44. 1 Rep. Rep. 331. Cro. Eliz. 218. 3 Lem. 829. 3 Exch. 286. S. P. v. Hale Ch. J. because the prescription is the ground thereof.

As if a fait be by a parson for tithes, and the defence pleaded, that the place where in is another parish, a prohibition lies; because they meddle with that which is out of their jurisdiction, though the original thing be of their cognizance, and this comes in obliquely. 2 Rel. Atr. 282. 1 Sumo. 10. cited. Nyp. 147. S. P.

So if a vicar of a parish libels against another to avoid his prohibition to the church of D., which he (supposeth to) be a chapel of a church appertaining to his vicarage, and the defendant foggetsh, that D. is a parish of itself, and not a chapel of a church; a prohibition will be granted, for they shall not try the bounds of the parson. 2 Rel. Atr. 297.

So if the question be in the court chfritian, whether a church be a parochial church, or but a chapel of a church; a prohibition lies. 2 Rel. Atr. 291. several cafes to this purpose.

But if the bounds of two vills lying in the fame paroch come in question in the spiritual court, no prohibition lies; for that such bounds are treble in the ecclesiastical court, & those of parishes are not. 1 Lev. 78. Vellet v. Vyleman.
The ecclesiastical courts have cognizance of a way to a church, and for not repairing such way the parties may be proceeded against in the spiritual court. March 45.

So if a parson is prevented from carrying away his tithe by the stopping up the usual way, he may have his remedy in the ecclesiastical court, grounded on the statute 2 Ed. 6. Bulst. 67. 1 Jan. 230.

But if the question be, whether he it have to one way or another, or whether such a way be a highway or not; whether he or the office in which he is may be tried in the spiritual court. March 15. 1 Bulst. 67. 2 Rel. Atr. 287. S. P. adjourned.

So if the churchwardens of a church sue for a way to the church, which they claim to appertain to all the parishioners by prescription, a prohibition shall be granted; for this right being grounded on the prescription, is to be tried in the temporal courts. 2 Rel. Rep. 287. 2 Rel. Rep. 41.

If a man be admitted, influated and indicted, and a suit is commenced in the ecclesiastical court for to avoid the infutiation, supposing it not valid; though the thing be of their cognizance, yet because the injunction, which is temporal, and goes to an injunction in the spiritual court. Hob. 15. Latst. 205. 1 Bulst. 174. Lit. Rep. 165. Poph. 133. 1 Rel. Atr. 282. 1 Sumo. Rep. 10.

If there be a suit for tithes in the ecclesiastical court, and the tenant pleads, that the party who sues is not in contempt, but that 5. 5. and this plea, because it goes to the right of the incumbency, is rejected, a prohibition lies; for by denying the tenant this liberty he might be twice charged for tithes. Cre. El. 228. 3 Lem. 265. Green v. Pentiden.

There are frequent instances of prohibitions being granted to the ecclesiastical courts, to flay fluxs for fees by the spiritual court, which at length are good, for the reasons acquired on this foundation, that demands pro oper & labore are properly determinable at Common law, and that fees cannot be settled by the canon law; and that the spiritual court can only give costs and expenses of suit, but that no action of debt will lie for such costs at Common law; and that the profits arising from the office being temporal, the remedy in the spiritual court to be by quantum meruit or in case it be an office of freehold, by seisin; the denial of just fees being a dijfisen; and therefore it seems to be now settled that neither a proctor nor registre can sue for fees in the spiritual court, but that the proper remedy is, in case of a fee certain, by an indivisibilis affinmitis, or in case of such it is said not to be necessary to prove a tenant, that being implied by law. 2 Rel. Rep. 59. 3 Lem. 268. 1 Med. 176. 2 Kh. 615. 3 Kh. 303, 441, 516. 1 Selk. 333. and 4 Med. 254.

If a legatee takes a bond from the executor for payment of the legacy, and afterwards sues him in the spiritual court for the legacy, a prohibition will be granted; for by the taking the obligation the nature of the demand is changed, and it becomes a debt or duty recoverable in the temporal court. Yews. 38. 2 Vern. 31. but 2 Rel. Rep. 160. S. P. cent.

Matters of freehold, and the rights of inheritance, are only determinable in the temporal courts; so that if the ecclesiastical courts intervene with thesis, a prohibition lies. F. N. B. 40. 2 Rel. Atr. 286. Lit. Rep. 164.

As in a sequestration of tithes and lands, where there is no livery, if they do adjudge the tithes to pass, notwithstanding there is no livery, a prohibition will lie. Cro. Jar. 270. 1 Vent. 41. cited.

So if a man deviseth, that his lands shall be sold for the payment of his debts, and that the overplus shall be paid to such and such persons in certain shares; the legatees in this case cannot sue in the ecclesiastical court; for the provisions intended them arise originally out of lands, and their proper remedy in this case is in a court of equity. Dyer 151, 264. 2Hbk. 127. 2 Rel. Atr. 282—5. 2 Sumo. 50.

But if a rent be devised out of a farm for years, the ecclesiastical courts may hold plea thereof; for the term for years being only a chattel is tainamental, and consequently the rent devised thereout. 1 Sid. 279. 2 Kh. 5. 1 Lev. 179.

The rights of leasing for life in the ecclesiastical or courts of Admiralty are determinable at Common law; as in the question concerning the validity of two patents, by which the office of regifter to a bishop was granted; it was held, that this should not be tried in the spiritual court, though the subject matter be spiritual; because the matter of freedom is for the reason of temporal cognizance. 2 Rel. Atr. 285—6. Nyp 91. Latst. 228. Palm. 450. Godh. 330. Cro. Car. 65. 2 Rel. Rep. 326. Raym. 88. 1 Lev. 125. 4 Med. 27. Camb. 306.

Trespass on a glebe being freehold, cannot be determin'd in the ecclesiastical courts. Bro. Jurisdiction. pl. 41.

A parson libelled against the defendant in the spiritual court of York for having cut elms in the church-yard; and a prohibition was granted, upon suggestion that they grew on his freehold. 1 Ld. Raym. 212. Hillard v. Toferan.

For more learning on this subject, see 4 Bac. Abr. and 17 of 18 Vin. Abr. tit. Prohibition.

Prohibitu de vacuo dicta parti, is a writ judicial, directed to the tenant, prohibiting him from making waste upon the land in controversy during the suit. Reg. Juridic. fol. 21. And it hath been adjudged, that a prohibition shall be granted to any one who commits waste, either in the houses, or buildings of the incumbent, or who cuts down any trees on the glebe, or doth any other waste. Mar 917. 3 Nelf. Abr. 7.

Po Indubito, is a possession or occupation of lands or tenements, belonging to two or more persons, whereof none knows his several portion, as assignerers before parturation. Bull. Et. 5. tract. 2. cap. 1, num. 7. See Parturpart and Parturparte facinone.

Yoles, in English progy, is properly such as proceed from a lawful marriage; though if the word be taken at large, it may well denote the issue of an unlawful bed.

A beauty of the Convocation house. (Proctor damus convocationis,) Is an officer chosen by persons ecclesiastical, publicly assembled by virtue of the King's writ for every parliament; and as there are two houses of convocation, so there are two procuratores, one of the lower, and one of the higher house. He of the lower house, presently upon the first assembly, by the motion of the business of the house being chosen by the members of the lower house, is presented to the bishops for procurator, that is, the person by whom they intend to deliver their resolutions.
PRO

leions to the higher houses; and to have their own house effectually ordered and governed. His office is to cause the clerk to call the names of such as are of that house when he fees caue, to read all things prepounded, gather suffrages, and the like. Cowell, edd. 1727.

Praemire, (Praemotis,) Is when, upon a valuable considera-
tion, we bind ourselves by our words to do or perform such an act as is agreed upon, which is not ground, upon which it is without consideration; whereas, if it be without consideration, it is called nuldam factum, ex quo non artir actis. Cowell, edd. 1727.

If promissory is executory on both sides, performance need not be avered; because it is the counter-promissor, and not the performance that raises the consideration. Act. Promissory is a thing subsisting for the time, and there is no breach of it, the same may be discharged by parole; but if it be once broken, it cannot be discharged without release in writing, being then a debt. 1 Med. Rep. 206. 2 Med. 44.

And when an action is grounded on a promise, payment or some other legal discharge must be pleaded. 1 Med. 210.

If a promise be to pay interest by several monthly payments, the promise being intire, a breach of payment of the first month is a breach of the whole promise. 2 Rel. Rep. 47. See Action, Allmumfit.

Promoters, (Promotores,) Are those who in public and penal actions do prosecute offenders in their own name and the King’s, having part of the fines or penal-
ities, and also hired to do a thing, and the King’s, having part of the fines or penal-
ties, and also hired to do a thing, among the Romans, were called gnodiophores or delatores. They belong especially to the Exchequer and King’s Bench. Smith de Rep. Angl. lib. 2, cap. 14. Coke calls them turbidan hominem genus. 3 Inst. fol. 191.

Promise a law, (Pronomare legem) Is first to make a law, and then to declare, publish and proclaim the same to publick view, and to promulgate, dignify publick and important laws. 6 Inst. 8. 44.

Promunary. See Patronymary.

Preg. (Probatio) Is the proving the truth of any matter alleged: Bratton says, There is probatio duplex, viz. vio, as by witnesses, vio vose; and Martinus, by deeds, writings, &c. A wife cannot be produced either against or for her husband, qua due font anime in eorne ans a, but it might be a case of irreconcilable discord, and a means of great inconveniences. Ca. en Lit. 6. 6.

Where a man speaks generally of proof, it shall be intended of proof by a jury; as for instance, in debt on a bond conditioned to pay so much within six months after his return from Venice, and proving it, which he did under the hand of the doge himself; but it was held by the court, it ought not to have been in this case, because the defendant had three months time to make satisfaction after proof made, and notice given thereof. 2 Rel. 488. Leigh v. Fidges. Hob. 217. Croshay v. Woodward, S. P. 1 Balf. 40. S. C.

The plaintiff and defendant discharging about a wager, the plaintiff said it was won by his adversary, the defendant replied, Give me a fulling, and if you can prove that it was won by me, by deceit, I will give you five pounds for it; in an action on the cove brought against the defendant upon his promise to pay the five pounds, the plaintiff alleged in facts, that he had got the wenge by deceit; and it was adjudged, that he need not make any proof of it, but in this action. 2 Balf. 56.Craig v. Griffin.

The masters and clothworkers of Yswich, brought before a by-law, which was, that no person should excise the art of a clothworker or tailor, within the said town unles his made proof before them, or any two of them that he had been apprenticed to the trade for seven years, it was adjudged, that this proof could not be upon oath because the corporation had not power to administer at oath; and if so, then the proof must be by the inden
tures of apprenticeship and witnesses; and probably the corporation may not allow such proof, and there the party can have no remedy against the corporation, be an action on the cove held by the by-law. And to the trade, which is his maintenance, for which reason the by-law was held void. Gold. 253. Iysich Clothworker fit.

Where a prohibition was granted upon a juggiong of a modus, and afterwards this juggiong being not proved in six months, a confirmation was thereupon granted to the party and afterwards there was another prohibition in the same case. Mor 197. Bigge’s case.

Upon a juggiong of a modus decimand, the party were at issue, and the witnesses proved that for a long time, they had heard lay the occupiers of the farm, &c. And used to pay yearly to the parson three shillings for a tithe of the corn. And the defendant believed it was sufficient to maintain the juggiong within the statute. 2 Ed. 6. 54. Webb v. Patt.

Affumpiti, in which the plaintiff declared, that in consideration he would deliver to the defendant his cat, which were then in the pound, he promised, that if he had the benefit of this at the manor of, &c. That he had a right of common at such place in Widdrrow, he would pay the plaintiff ten shi
lings; and the plaintiff averred he had not proved it. The defendant pleaded, that D. R. waseward of the court, and that he, (the defendant) was there ready to make it appear, and the reward refused, &c. And upon a demurrer, this was adjudged an ill plea; for where the consideration is to prove a thing generally, it must be
such as the law requires, and that is by jury; but where
the proof is modified by the agreement of the parties,
块钱, that it shall be in such a manner, or before such a
y, the modification must be observed. Sid. 3133.

On a trial at bar in ejectment, where the plaintiff's
title was as administrator, he proved that administration
was granted to him by the act of the court, without
throwing it under seal, and this was admitted to be good.
1 Lev. 101. Possy's case.

had not a power to sell the deed, but the property remained
in the first owner; for a deed is in the nature of pro-
erty, and a man cannot relinquish the property he has
in goods, unless they are vested in another. 12 Rep.

and delivered A's tickets to B, for his own, A may maintain
trouser against B. This was no change of the property,
or any consideration; for though the goldsmith had
power from the owner to receive money for the tickets,
yet he had no power to exchange them for other tickets.
Per H. Ch. J. 1 Salt. 283. Hill. 11 W. 3. B. R.
Ford v. Hopkins.

A. by articles agrees to pay B $5, for every 100
facks of wood lying in a certain wood, and so for as many
more as shuld be fell till Michaelmas following.
Agreed per cur. that so much an hundred by retail was
the same thing, and that here either party may tell them
out, and that if he that told them had told them wrong,
then the other might flee that, and join issue upon it;
and that the property of every hundred that was cut at
the time of the agreement did vell in the plaintiff, and
fo of the rest as they were cut down. Farr. 88. Mich.
1 Ann. B. R. 129. v. Ingleson. 1 Salt. 658. S. C.
If I require B, to buy a gelding for me, and he
is then to pay a new gelding to replace B, and again, and B buys this gelding for me accordingly;
B. may have an action against me for this money
upon my promise, and I may take the gelding; and
before my taking him, the property is not in B, who
bought him to my use, but in me who requested B, to
buy the gelding for me. Per tit. cur v. Duff. 169. Title
9 f. 1. in case of Moor v. Moor. See 15 Vin. At-
t. Tithe.

Properties, (Proprietes,) Are by our statutes taken
for foretelling of things to come in dark and ambiguous
speeches, whereby great communions have been often
caused in the same. The attempts made by
those to whom these speeces promised good soccor,
though the words are mystically framed, and point only
at the cognizances, arms or some other quality of the
parties. Stat. 3 Ed. 6. cap. 15, and 5 Eliz. cap. 15.
But these for divination fake are called fons, falsae and
fantafical properties.

Iff. fol. 128.


A prior took a man's fon, and put a suit of new
cloaths upon him. The father took away his fon, and
the prior brought trefpass for the cloaths; but adjudged
he should be haid, because he had annexed it to his body.
Vol. II. N. 118.

Arg. Ab. 214. pl. 354. Mich. 27 & 28 Eliz. the vic-
ocounts of Binfern's cafe, cites 12 El. 4.

So if an adulterer clouts a man's wife, the husband
may take his wife away. And another case is, when the
fon and the wife had two foits of apparel, one upon their
bodies, and another suit in their chamber, neither the
father nor the husband can take the spare suit; for the
law which tolerates necessity, does not tolerate excess.
Hid. Arg. S. P. Putting a sheet on a dead body, gives
no property to the dead body, but the property remains
in the first owner; for a dead body is not capable of pro-
pery, and a man cannot relinquish the property he has
in goods, unless they are vested in another. 12 Rep.

Son employed his father to buy a frame for him; fa-
ther agrees for it in his own name, and pays part of the
money down. Send a note for the remainder of the
amount of the money, and giving the note, the property
of the frame was immediately vested in the father; and
the bill of sale, which was not made till a month after,
was made to the fon, the property which was altered and
vested in the father, could not be thereby defeived and
lodged in the fon; but if the bill of sale had been made
to the son at the time of sale, it would have vested the
property in the son. And an earnest does not alter the
property, but only binds the bargain, and property re-
mains in vendor till payment of the money, or delivery
of the goods. Per H. Ch. J. 12 Misc. 344. Mitch. 11
W. 3. B. R.

A goldsmith has lottery tickets of A. and B, and
delivers A's tickets to B, for his own. A may maintain
trover against B. This was no change of the property,
or any consideration; for though the goldsmith had
power from the owner to receive money for the tickets,
yet he had no power to exchange them for other tickets.
Per H. Ch. J. 1 Salt. 283. Hill. 11 W. 3. B. R.
Ford v. Hopkins.

A. by articles agrees to pay B $5, for every 100
facks of wood lying in a certain wood, and so for as many
more as shuld be fell till Michaelmas following.
Agreed per cur. that so much an hundred by retail was
the same thing, and that here either party may tell them
out, and that if he that told them had told them wrong,
then the other might flee that, and join issue upon it;
and that the property of every hundred that was cut at
the time of the agreement did vell in the plaintiff, and
so of the rest as they were cut down. Farr. 88. Mich.
1 Ann. B. R. 129. v. Ingleson. 1 Salt. 658. S. C.
If I require B, to buy a gelding for me, and he
is then to pay a new gelding to replace B, and again, and B buys this gelding for me accordingly;
B. may have an action against me for this money
upon my promise, and I may take the gelding; and
before my taking him, the property is not in B, who
bought him to my use, but in me who requested B, to
buy the gelding for me. Per tit. cur v. Duff. 169. Title
9 f. 1. in case of Moor v. Moor. See 15 Vin. At-
t. Tithe.

Properties, (Proprietes,) Are by our statutes taken
for foretelling of things to come in dark and ambiguous
speeches, whereby great communions have been often
caused in the same. The attempts made by
those to whom these speeces promised good soccor,
though the words are mystically framed, and point only
at the cognizances, arms or some other quality of the
parties. Stat. 3 Ed. 6. cap. 15, and 5 Eliz. cap. 15.
But these for divination fake are called fons, falsae and
fantafical properties.

Iff. fol. 128.


A prior took a man's fon, and put a suit of new
cloaths upon him. The father took away his fon, and
the prior brought trefpass for the cloaths; but adjudged
he should be haid, because he had annexed it to his body.
Vol. II. N. 118.
and, he shall for the first offence be imprisoned for a year, and forfeit 1 l. and for the second offence, shall be imprisoned for life: Half the forfeit ties shall be paid to the half to whom he shall fail for their any court of record.

Proportion. See De orando pro rata potius.

Proprium, Purport, Intention or meaning. Cowell, edit. 1727. Secundum proportum dicti graphi inter est suscetit. Carta Rogeri de Quincy, 31 Hen. 3.

Propriem, &c. Proverbs, in the 51st chapter of Cant. Three In- finctions, to wit, 1. That all persons against monopolys pretenders, and prefessors, where it seems to signify the same as monopolys. Cowell, edit. 1727.

Proprietatis, monopolis, Were those monks who had any goods or substance of their own. They are often mentioned in Mon. Ang. 3 tom. p. 207, & in Addit. ad Matt. Paris. fol. 411.

Proprietarius, (Proprietarius, ) Is he that hath a property in any thing, qux nullius arbitrio obtinat; but was heretofore chiefly used for him that hath the fruits of a benefice to himself, and his heirs and successors, as in times past abbot and priors had to them and their suc-

Proprietary. See Propriovius.

Propriovius, a writ that lies for him that would prove a property before the sheriff. Reg. Orig. fol. 83, 85. See Replevin.

Pro tarata, That is, in proportion. Cowell, ed. 1727.

Protagore, (Pragurate) To prolong, or put off to another day. Stat. 6 H. 8. cap. 8. The difference be-
tween pretendent to an adjournment, or continuance of the parliament, is, that by the prerogative in open court there is a feilion, and such bills as passed in either house, or both houses, and had not the royal at-
fent to them, must at the next assembly begin again; for every seilion of parliament is law a several parliament, but if it be but adjourned or continued, then is there no seilion, and consequently all things continue in the same state they were in before the adjournment. 4 Inf. fol. 27. This difference and difference between pretation and adjournment and adjournment, has not been long in use; for an-
ciently they were used as synonyms. Cowell, ed. 1727.

Prerogative, Is he that follows a cause in another’s name. See Prumater.

Prerogation, (Prerrogati,) Hath a general and a special signification: In the general it is used for that benefit and safety which every subject, denizen or alien, es-
pecially secured, hath by the King’s laws, and so it is used 25 E. 3. 22. Prerogation in the special signification, is used for an exemption or immunity given by the King to a person against suits of law, or other vexations, upon reason able causes him thereby to have, which is a branch of his prerogative. And of this Fitzherbert in his Nat. Brew. fol. 28, maketh two kinds; the first he calls a protection cum clausula volumina, whereas he mentions four particulars: 1. A protection quia præfessorum, for him that is to pass over sea in the King’s service. 2. A pre-
rogation quia maritatorum, for him that is abroad in the King’s service upon the sea, or in the marines. 7 H. 7. cap. 2. A protection for the King’s debtor, that he be not sued or attached till the King be paid his debts. This fame Chris-
tians call maritatorum. And 4. A protection in the King’s service or in the marines of Scolland. Stat. 1 H. 2. cap. 8. Reg. Orig. fol. 23, and Britton, cap. 123. The second form of protection, is cum clausula volumina, which is granted most commonly to a spirituall company for their immunity, from taking of their cattle by the King’s minions: But it may be granted also to one man spirituall or temporal. Reg. Orig. fol. 22, 23. Notwithstanding the refe protection extending to pleas of debet, sure impedit, affife of novel disfin, darren pretendant, and attainats and pleas before Juftice in Hey. Cowell, edit. 1777.

Tines to be paid in the Exchequer for pretensions to persons beyond sea, St. de Libert. peregr. 27 Ed. 1. fl. 9.

Protection may be challenged for that the party is out of the King’s service. St. de Pretell. 33 Ed. 1. fl. 1.

The King’s debtor may be sued by another creditor, notwithstanding the King’s protection, and if the plain-
tiff will undertake for the King’s debt, he shall have execution, 35 Ed. 3. fl. 5. c. 19.

Protection allowed for debts contracted after the date, 1 R. 2. c. 8.

A protection quia pretendentur shall not be allowed in a plea commenced before the date of the protection, 13 R. 2. fl. 1. c. 16.

If the party repair home, the Chancellor shall repeat his protection, 13 R. 2. fl. 1. c. 16.

A protection shall be allowed in actions for ejectment, 7 H. 4. c. 4.

To be granted to fuddiers going with the King without exception of affairs of novel dificiff, 9 H. 5. c. 3. 4 H. 6. c. 2. 8 H. 6. c. 13. 14 Ed. c. 1. 2. 4 H. 7. c. 14.

Not to be allowed to a patentee in a ficta feque upon a traverse of an office, 23 H. 6. c. 16. See 18 I. Ab. fr. it. Pretention.

Protection of ambassadours. See Ambassadore.

Protection of parliament. Peers and members of parliament, & by their privilege, may protect their men-servants, and those actually employed by them in service; but by a late order, this extends not to others, on written protections. One Cates, gentleman to the Earl of Suffolk, was by order of the house of Lords committed to Newgate, on proof of his being guilty of procuring and selling written protections, from and in the name of that peer, to several persons, to the great dan-
ger of his masters, and in breach of the order of that house; and being charged with other crimes, re-
refling on the house of Peers, he was sentenced to pay a fine, and to stand in the pillory, Med. Cas. in L. E. 341. See Privilege.

Protection of the courts at Westminster. The protection of the court of B. R. is allowed for any per-
son who attends his own business in this court, by virtue of any such grants, but this is more properly privilege.

Protectionus, The statute allowing a challenge to be entered against a protection, &c. 33 E. 1. See Dis-
traction.

Prouti, (Prosthetri,) Hath two divers applications; one is by way of caution, to call witnesses (as it were) or openly affirms, that he doth either not at all, or but conditionally yield his content to any act, or unto the proceeding of a judge in a court, wherein his jurisdic-
tion is doubtful, or to answer upon his oath further than by law he is bound. See Plowden, fol. 676. Gryphes's, caf, and Reg. Orig. fol. 360. The word was not in the King’s time a minne bill. For example. If I give money to a merchant in France, taking his bill of exchange to be repaid in England, by one whom he at-

gnith; if at my coming, I find not my self satisfied, but either delayed or denied, then I go to the Exchange, or open concourse of merchants, and protest, that I am not paid; and thereupon, if he hath any good remaining in any man’s hands within the realm, the law of mer-
chant is, that I be paid out of them to my full satisfac-
tion. Cowell, edit. 1727. See Bills of exchange.

Prestate. See Prestation.

Prestation, (Prastation,) Is a defence of safeguard to the party which maketh it from being concluded by the party to be in abut to doit; that silence cannot be joined by it. Plowd. fol. 276. Whereof see Reg. Orig. fol. 316. It is a form of pleading when one does not diredly affirm or, directly deny any thing that is alleged by another, or which he himslef allegeth. Cowell. ed. 1777.

Prestation is a form of pleading, when one doth not directly affirm or, directly deny any thing that is alleged by another, or which he himself allegeth. A prestation that he made no tennament pro placito that he made not the plaintiff his executor; because if he made no testament he could make no executor. Holin's Max. 26, cites Pl. C. 276. Gryphorck v. Pox. 21. See 10 kinds, 18. When a man pleads any thing which he darest not diredly affirm, or that he cannot plead, for fear of making his plea double; as if in conveying to himself by his plea a title to any land he ought to plead diredly defences by diredly perfons, and he darest not affirm that they were all seised at the time.
PRO
of their death, or although he could do it, yet it will be double to plead two defects, of which both every one by himself may be a good bar; then the defendant ought to have pleaded, or as the French say, the yre prothmas, as to pay (by prothmas) that suit, as one died seised, &c. and that the adverse party cannot traverse. 2dly, Another is, when one is to answer to two matters, and yet by the law he ought to plead but to one, then in the beginning of his plea he may say prothmas (as with respect to a suit with which the defendant is so much concerned, as in the case of two partners, &c. and so he may take issue upon the other part of the matter, and then he is not concluded by any of the rest of the matter which he hath by prothmas confessed, but that he may afterwards take issue upon it. Reg. 3. 12. 27. see 18 Fin. Ab. tit. Prothmas.

1. prothonotaries. (Prothonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whose office hath three, the other one; for the prothonotary of the Common Pleas (in fl. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's pleats, and is without commission, the Lord Chancellor having to make an order on populi and single patents refusing to allow their protestant children a maintenance. 1 Ann. f. 1. c. 30.

2. prothonotaries. See Notarie. See King.

3. prothonotary. (Prothonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whose office hath three, the other one; for the prothonotary of the Common Pleas (in fl. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's pleats, and is without commission, the Lord Chancellor having to make an order on populi and single patents refusing to allow their protestant children a maintenance. 1 Ann. f. 1. c. 30.

4. prothonotaries. See Notarie. See King.

5. prothonotary. (Prothonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whose office hath three, the other one; for the prothonotary of the Common Pleas (in fl. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's pleats, and is without commission, the Lord Chancellor having to make an order on populi and single patents refusing to allow their protestant children a maintenance. 1 Ann. f. 1. c. 30.

6. prothonotaries. See Notarie. See King.

7. prothonotary. (Prothonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whose office hath three, the other one; for the prothonotary of the Common Pleas (in fl. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's pleats, and is without commission, the Lord Chancellor having to make an order on populi and single patents refusing to allow their protestant children a maintenance. 1 Ann. f. 1. c. 30.

8. prothonotaries. See Notarie. See King.

9. prothonotary. (Prothonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whose office hath three, the other one; for the prothonotary of the Common Pleas (in fl. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's pleats, and is without commission, the Lord Chancellor having to make an order on populi and single patents refusing to allow their protestant children a maintenance. 1 Ann. f. 1. c. 30.

10. prothonotaries. See Notarie. See King.

11. prothonotary. (Prothonotarius, i.e. primus notarius) is a chief clerk of the Common Pleas and King's Bench, whose office hath three, the other one; for the prothonotary of the Common Pleas (in fl. 5 Hen. 4. c. 14.) is termed a chief clerk of that court. He of the King's pleats, and is without commission, the Lord Chancellor having to make an order on populi and single patents refusing to allow their protestant children a maintenance. 1 Ann. f. 1. c. 30.

12. prothonotaries. See Notarie. See King.
Seems to signify an old fashioned four with one point, not a rowel, and is a kind of service or tenure. 

Cowell, edit. 1727.

Dulberry, (paberata) The riper age of fourteen in men and twelve in women, when they are fit for marriage. But as to crimes and punishments, it is the age of 14 years, in both the male and female sex, and not before.

Hale's Hist. P.C. 18.

Publick, is used of depositions of witnesses in a cause in Chancery, in order to the hearing, and rules may be given to pass publication; which is a power to shew the depositions openly, and to give out copies of them, &c. There is also a publication of a will, which is a solemnity requisite to the making thereof, by declaring to it to be the last will of the testator, in the presence of a number of witnesses; and a will which hath been made many years may be new published with additions, and that makes it equivalent to a new will.

3 Nelf. Abr. 37. See Will.

Publication of a will. See Libel.

Publick accounts. Commissioners are to inquire of the accounts of their customers and other the King's officers, after paid in the Exchequer, and if detected of any fraud, they shall pay treble damages, by stat. 6 H. 8. cap. 1, and all the lands, tenements and hereditaments, which any accountant hath, shall for the payment of debts to the crown, be liable and put in execution in the same manner as it would have been bound by writing obligation, having the effect of a statute fiat. &c. Stat. 13 Edw. cap. 4. and there have been several statutes for taking the publick accounts of the kingdom, and examining and determining the debts due to the army and navy; also corruptions in the management of the King's treasure, &c. imposing commissioners for that purpose, who were to give an account of their proceedings to the King and parliament. Stat. 2 W. & M. 1 Ann. 2 Geo. 1. &c.

Public faith. (Fides publice, mentioned in stat. 16 Car. 1. c. 18.) Was a rebellious cheat to get money from the seduced people, upon (as they called it) The Public Faith of the nation, to make a most horrid and caufed rebellion against the King about the year 1642. Cowell, edit. 1727.

Public worship. See Nonconformists, Recusants, Service and Sacraments.

Puritans, (Puritam, French puritanism) virginit. Equal tenuit com, donee. D. Ablifit puritanism. Iow, s. 11. edit. 170. Cowell, lib. 3. trad. 2. c. 28. num. 2. 3 & 5. In an ancient MS. it is written puritanism. Cowell, edit. 1727.

Pius barrior continuans, Is a plea of new matter, pending an action, post ultimum continuacionem. See Plea.

Pleiner (Fr. Plufa) Younger, pury, born after. See Birth.

Pleijeters, A poulterer. Cowell, edit. 1727.

Poula, (Sax. Pol,) A give or pool of fland water. Id. 1b.

Poulhan, Colo. Magnifico, 1 tom. p. 324.

Poulhannts, A colt bred in the house: Et si equus feratur, post coram postula, postulat tertii deorum, quod eodem cum voluntate, &c. Bradfa, lib. 3. cap. 32. par. 5.

Poultra, The plaintiff or actor. Leg. H. 1. c. 26. and postulat is to accuse any one. Cowell, edit. 1727.

Poultra, An examination: From poulftra, which signifies to ask. see tis so called from the manner, who before they were admitted into the monastie, polluence at first, for several days before they entered. Monast. 2 tom. 1035.

Poundful, A pound, a poundful. Id. 1b.

Punishments. (Pena) Is the penalty of transgressing the laws: And as debts are discharged to private persons by a writ of pardon, so for all offences, for disturbing the society, are discharged when the offender undergoes the punishment inflicted for his offence. Kings, and such as have equal power with them, have a right to require punishment for injuries committed against themselves or their subjects, upon the violation of national law; tho'
A purchaser of lands from A. by which B. makes title to, getting the deeds that make out B.'s title, is not lawful. Chan. C. J. 69. Palf. 17 Cor. 2. Ferley v. Fogg.

Plea of his being a purchaser for a valuable consideration was overruled, because he did not plead the purchase made from one of the plaintiff's ancestors; for a purchase from a stranger, who might have no good title, was not a sufficient plea. N. C. R. 135. 21 Cor. 2. Syme v. Nafadyvya.

A. having a long lease of a house, in which his wife had some interest, by her conveyance for eighty-one years, and in consideration of 400 £. assigns it to B., who assigns it to C. his son, who married M. and died, leaving M. his executor. M. on a second marriage conveys it to trustees; etc. A. by bill sets forth this assignment, and that it was a mortgage, and that B. agreed to execute a reconveyance thereof, etc., and prayed a redemption. The executrix pleads she was a purchaser without notice of such agreement; and in consideration of a marriage with J. S. and of his undertaking to pay her debts, she assigned the original lease, etc., such a day to trustees, to the use of her intended husband, not having any notice of the agreement prior to the executing the said deed on marriage. It was decreed, that defendants were in nature of purchasers; and the plea was allowed. Finch R. 9. Mich. 25 Cor. 2. Hordige v. Hardie.

A. indebted by bond, devolved a debt to be paid out of his personal estate; but if it was not sufficient, then to sell his real estate, and pay it: the estate was sold, and by several meane conveyances came to the defendant, who was sued for the debt as charged on the lands which he bought. The defendant pleaded, that he had no notice of the demand, and was a purchaser for a valuable consideration, and that the personal estate was first liable, and that the purchase money was paid to two other of the defendants was liable in the next place, and that there were other lands, which defended to one of them against the defendant, which ought to come in aid of him, and decreed accordingly. Flr. R. 137. Mich. 26 Cor. 2. Prostat v. Edwards, Braon & al.

A purchaser for a valuable consideration without notice was decreed to pay arrears of an annuity charged on the lands purchased, though the same were due thirty years before, and no demand in all that time. Sitch R. 252. Trin. 28 Cor. 2. Duke of Albemarle v. County of Norfolk.

A voluntary conveyance decreed against a (jointdef) purchaser for a valuable consideration; but it seems, that the not having notice was the laches of the jointdef, etc. The 1°. 293, 294. Mich. 28 Cor. 2. Biff v. E. of Bankury.

A purchaser from T. S. who has a decree against him in Chancery for land, shall be bound by the decree, tho' he had no notice of it. 2 Chan. Caf. 48. Hill. 32 & 33 Cor. 2. Snelling v. Spaul.

Bill to show to a purchase a true term, the defendant pleads himself a purchaser, but does deny notice, and so was ordered to answer. Per Lorn. North. Vern. 179. Trin. 1693. Bodlin v. Vandelkendy.

Bill was brought to prove a will, and peremptuate the testimonies of the witnesses; the defendant pleaded himelf a purchaser without notice of any such will, and in- sided there had been a verdict in affirmance of such will (nothing hindering the plaintiff, but that he had a title he might recover at law) the plaintiff ought not to be admitted to examine his witnesses, thereby to hang a cloud over the purchaser's estate; and upon debate the court allowed the plea. Vern. 334. pl. 330. Hill. 1 & 2 Jan. 24th, 1693. Gen. Bettel. Bennet v. E. A. mortgaged land to B. and afterwards by his will (having sons C. and D.) devised the equity of redemption to D.-B. and C. join in an affinmation of the mortgage to E. though E. pleaded want of notice of the will, and that C. was the visible heir, yet decreed, that D. should have the equity of redemption on the foot of the
the first mortgage. N. Ch. R. 153. Ed. 1. 1869. Cooper v. Cooper. A. purchaser, having notice of a settlement whereby B. the vendor was but tenant for life, remained to his first, &c. in title, and would have had no notice; B. being, leaving a son; the bill was dismissed as to C., but decreed to A. to account for the consideration money, which he held the estate for, with interest from the decease of B. thereof discounting what was due on a mortgage prior to the settlement which he had bought in. 2 Vern. 384. Mich. 1750. Forrest v. Cherry. Cooper v. C. said, His Lordship took it to be a rule in equity, that where a man is a purchaser without notice, he shall not be equitably in equity; not only where he has a prior legal estate, but where he has a better title or right to call for the legal estate than the others; and therefore dismissed the bill. The case was; A. purchases of B. who had done a 26ch of bankruptcy, but without notice of it; afterwards a commission is taken out, and there being a term standing out in trustees, affignee brings a bill against them, and the purchaser to have the term assigned to him. 2 Vern. 599. Mich. 1707. Wilker v. Badington. A bill was to redeem lands mortgaged in 1694. to the defendant's grandfather by the plaintiff's father for 50 years, the rent void on payment of 126l. and interest. The defendant pleaded, that he is a devisee of those lands under his grandfather's will, who in 1692, purchased them for a 200 years term without condition of re- demption, and had enjoyed 15 years quiet possession. But the court over-ruled the plea for the defendant's not answering the summons as to the mortgage, and if the plea for the purchase may be true, it may be only a term for years to attend the inheritance. G. E. q. R. 185. Hill. 12. Gen. Meter v. Birt. For more learning on this subject, see 18 Vin. Abr. tit. Purchaser. Purification (Purgration). Is the clearing a man's field of a crop which he is generally suspected, and of the fame accused before a judge. Of this there was great use in England touching matter of felony, imputed to clerks in former times, as appear by Stawduft. Pl. Cor. Lib. 2. cap. 48. See Clergy, and Wfifm. 1. cap. 2. It is still observed for matters pertaining to the ecclesiastical court, as suspicion or common fame of inconstancy or such like. And here note, That purgation is either canonical, canonicis, or vulgar, vulgaris. Canonical is that which is prescribed by the Canon law, the form whereof is usually thus in the spiritual court, the man suspected takes his oath, That he is clear of the fault objected, and brings a witness to his behalf, and if the burden of proof is not above twelve, as the court shall affigne him, to swear upon their confidence and fidelity, that he sweareth truly. Vulgar purgation was by fire, or water, or by combat, and both by Infidels and Christians, till by the Canon law abolished. Covell. But by the 13 Cor. 2. cap. 14. sect. 4. It shall not be lawful for any peron exercising ecclesiastical jurisdiction, to tender or administer unto any peron whatsoever, the oath usually called the oath ex officis, or any other oath, whereby such peron to whom the fame is tendered or administered, may be charged or compelled to confess, or accuse, or to pave him or herself, of any criminal matter, or thing, whereby he or she may be liable to confinement or punishment. Compiled to confess) So that any peron may still offer himself voluntarily, for the clearing of his innocence, to such purgation as hath been described. Gib. 1542. Anciently, upon the allowance of the benefic of cler- gy, penance was delivered to the ordinary, to make his purgation; which was to be before a jury of twelve clerks, by his own oath affirming his innocence, and the oath of twelve compurgators as to their belief of it. 2. H. 3. 385. Wood's G. L. 669. But now, by the statute of the 18 Edw. 3. this kind of pur- gation is not allowed to any, and the peron admitted to his clergy shall not be delivered to the ordinary. Purification brevate Statar Erituris, mentioned in Stat. 32 H. 8. cap. 21. See Candalman-bap.
Quaestion de praeside, and on so much ground as may be tilted with four horses. Cowell, edit. 1772.

A sine dictamen, in pleading is used to supply the want of a traverse. 2 Litt. 405. In cautum fugit fugit a day, the defendant pleads the plaintiff's licence to him to enter on the same day, and that virtue made he entered

he need not pay the defendant of, and as trespas for taking of goods; if the defendant justifies

the same day and place: And in trespas and battery, if the defendant justifies that the same day and place the plaintiff assaulted him, and that what damages happened to him was of his own wrong; this is good without qua

eft eadem. 2 Hen. 7, pl. 2. A fact laid to be Nou. 1, and a justification Nou. 2. qua eadem, is well enough without a traverse, the day not being material; but, it had been naught, if the day had been material. 1 Lev. 241. If a trespass is alleged to be Nou, and justification the 11 Nou, and there be an averment of qua eadem, it is here held good without making any traverse. Litt. 1457.

Quaute pluta, Was a writ that lay where an inquisition had been made by an ecclesiastic in any county, of such lands or tenements as any man did seize of, and all that was in his possession was imagined not to be found by the office: The form whereof see in Reg. Orig. fol. 292, and in F. N. B. fol. 255. It differs from the writ called medius inquisitionem, according to the same

Firminbert, because this is granted that where the ecclesiastic formerly proceeded by virtue of his office; and the other where he found the first office by virtue of the writ named dacion extremae transitum. The form fee in Reg. of Writs, fol. 293, and in F. N. B. fol. 255. This writ is now made useless by taking away the court of wards and offices juxta morum by flat. 12 Car. 2, c. 24.

Quaere, or query, is where any point of law, or matter in debate is doubted; as not having sufficient authority to maintain it. See 2 Libr. 406.

Quercus non inventa plebius, is a return made by the sheriff upon a writ directed to him with this condition inferred, St. A. Joc. B. ficurum de clamare suo proplegando. 3 F. N. B. fol. 38.

Querciometarii, Were those who carried induclences from door to door, devising charity either for themselves or others. Matth. Writt. anns 1240. tells us, that the King terram suam per papales questionarios depopulatori, 45, permitted.

Quercus, Is that which a man hath by purchase, as arboridatis is what he hath by defent: 'Tis fo in Glanville, lib. 7, c. 1. Aut habeb habeditatem tantam, vel quantum tantum, aut arboridatis et. Quercus, Penalty of their assembling under pretence of religious worship, or refusing an oath, 1359 14 C. 2. 2.

For the third time made by an ecclesiastic in the realm, or be transported, 13 14 Car. 2, c. 1. f. 32. The toleration for the Quaker, 1 W. & M. c. 18. s. 13. Where disabled to vote for members of parliament, 7 & 8 W. 3, c. 27, 6 Ann. c. 23, 2 Geo. 2, c. 24.

Their affirmation to be taken in civil causes, 7 8 W. 3, c. 34. 1 Geo. 1, c. 6. extended to Moravians, 2 Geo. 2, c. 30.

Penalty of false affirmation, 7 8 W. 3, c. 34. f. 3. 2 Geo. 1, c. 6, f. 2. 22 Geo. 2, c. 46, f. 36.

Not permitted to give evidence in criminal causes, or to serve on juries, or bear offices of profit, 7 & 8 W. 3, c. 34. f. 6. Power given to the justices to levy their small tithes, 7 & 8 W. 3, c. 34. f. 4. Extended to all ecclesiastical dues, 1 Geo. 1, c. 6, f. 2.

May be admitted attorneys on taking their affirmation, 12 Geo. 2, c. 13, f. 8.

Affirmation of Quakers to be received where an oath is required by any act of parliament, 22 Geo. 2, c. 46, f. 36.}

Quauestione Sunday, is the first Sunday in Lent, so called, because it is about the fortieth day before Easter. The three preceding Sundays are, Quagnaefima, Susegaffa and Steptanaferia. Cowell, edit. 1772.

Quagnagatina, is Denariori Quadragemaries, in former days it was the custom for people to visit their mother church on Midlent-Sunday, and to make their offerings at the high-altar; as the like devotion was again observed in Whit. Where as the proceedings and oblations at Whitunday, were sometimes commuted into a rated payment of Pentecostals, or Whitfastenings, so likewise the Lent devotion was changed into a customary rate called Quagnagatina, and Denariori Quadragemaries, and sometimes Lutare Jerusalem, because that hymn was sung on Midlent-Sunday. Cowell, edit. 1772.

Quahadans, A farthing, a fourth part of a penny. Obscurve, that before the reign of Edu. 1, the smalllet coin was a flinging or penny, marked with a croft or traverse frokos, by the guidance whereof a penny upon occasion might be cut into halves for a half-penny, or into quarters for farthings or fourth parts, till to avoid the fraud of unequaly cutting, King Ed. 1, coined halfpence and farthings in round distinct pieces. See Mitch. Waltham. fab anns 1279.

Quahanta terra, is the fourth part of an acre. See Farthing-seal.

Quaquarium, A quarry or stone-pit. Paroch. Antiq. 268.
Qua re, was a writ judicial, that lay where a man of religion had judgment to recover land, before execution was made of the judgment; for this writ did go forth to the ecclesiastic, before judgment and execution. In order where there was no religious person, had any right to recover, or whether the judgment was obtained by collusion between the demandant and the tenant, to the intent, that the true lord might not be defrauded. See flat. Wyclif, 2. cap. 32. The form of this writ you have in Reg. judic. rol. 9, 16, 17 and 40. and in the Old Nat. Brev. fol. 101. 43.

Quam sit ut bene geserit, Is a clause often used in letters patent of the grant of offices, as in those to the Baron of the Exchequer, which must be intended only as to matters concerning their office; and is nothing but what the law would have implied, if the office had been called by a different name.

Quantum meruit, That is, how much he has deserved, is an action of the cause so called, grounded upon a promise to pay a man for doing any thing, so much as he should deserve or merit. Cowell, edit. 1727.

Quantum balbunt, Is where goods and wares sold are delivered by a tradesman at no certain price, or to be paid for them as much as they are worth in general; then quantum valebit lies, and the plaintiff is to aver them to be worth so much; so where the law obliges one to furnish another with goods or provisions, as an innkeeper his guests, &c.

Quare ejecta infra terminum, Is a writ that lieth for a tenant in fee of land, but out of his farm before his term be expired, against the fosce or feoffor that ejected him. And it differs from the ejecto firmis, because this lies where the lefser, after the lease made, infocheth another, who ejecteth the lessee: And the ejecta firmis lieth against any other grantor that ejects him. But the effect of both is all one, that is, to recover the residue of the term.

Quare impedit, Is a writ that lieth for him that hath purchased a manor, with an advowson thereto belonging, against him that disfurns him in the right of his advowson, by presenting a cleric thereto when the church is void: And it differs from the writ called a darrere presentment, affilia ultima presentationis, because that lies where a man, or his ancestors, formerly presented; and this for him that is the purchasor himself. See the Expositer of the Terms of the Law. Old Nat. Brev. fol. 27. Bradl. lib. 4. tract. 2. cap. 6. Britton, c. 92. and F. N. B. lib. 18. fol. 6. Reg. Orig. fol. 83. And here note, that where a man may have an affile of darrere presentment, he may have a quare impedit, but not contrarywise. See Bradl. lib. 4. tract. 2. cap. 6. F. N. B. fol. 30. and Wyclif, cap. 5.

Day may be given de quodam in quodam, &c. Stat. Mari. 53 H. 3. c. 12. par. 2. 266.

Given of chapels, prebends, &c. Stat. Wyclif. 2. 13 Ed. 1. c. 5. f. 4.

Caes in penalty was pleadsable against the crown, 14 Ed. 3. fl. 4. c. 2.

He who claims by a recovery, shall maintain a quare impedit on the first avoidance, 7 H. 8. c. 4. The 31st of December and the 12th of March not reckoned in quare impedit, 1 W. & M. s. l. c. 4.

A quare impedit may be maintained notwithstanding a l upration, 7 ann. c. 18.

Actions of quare impedit excepted out of general pardon, 26 Fl. Stew. Anm. 27.

See Advowson, Benefice.

Quare incurribilis, Is a writ that lieth against the bishop, who within six months after the vacation of a benefice, confereth it upon his clerk, while two others are contending in law, for the right of proferting. And here note this writ sometimes lies depending the plea. Old Nat. Brev. fol. 30. F. N. B. fol. 48. and Reg. Orig. fol. 32. See 18 Tin. Abr. 129.

Quare intrudit matrimonio non satisfacta, Is a writ that lay for the lord against his tenant being his ward, who after convenient marriage offered him, marriage another, and enters nevertheless upon his land without agreement first made with his lord and guardian. But all wardships being taken away by the flat, 12 Car 2. 21. the writ is become uilects.

Quare non admititur, Is a writ that lies against a bishop, refusing to admit his clerk that hath recovered in plea of advowson. F. N. B. fol. 47. and Reg. Orig. fol. 32. See 18 Vin. Abr. 131.

Quare non permititur, Is a writ that lies for one that hath right, but cannot form a turn against the proprietary. Fletas, 2. fol. 23.

Quarantine, (Quarantine) Is a benefit allowed by the law of England to the widow of a man dying feised of land, whereby the may challenge to continue in his capital meffuage, or chief manufon-houfe, so it be not caille, by the space of forty days after his decease. Breton, 174. and 128. In this case of the heir, or other next caille ejeject her, may the have the writ De quarantina libelle. but the widow shall not have meat, drink, &c. though if there be no provision in the houfe, the may kill thing for her provision. F. N. B. f. 161. See Magna Charta c. 7. Britton, c. 103. and Fletas, lib. 5. c. 23.

Quarrens, Is also the space of forty days, wherein any person, coming from foreign parts, infected with the plague, is not permitted to land, or come on shore, until so many days are expired. See Plague.

Quarrens, Likewise signifies a quantity of ground containing forty perches. Cowell, edit. 1727.

Quarrenia balbuna, Is a writ that lies for a widow to every year on the day of the death of her husband. Reg. Orig. fol. 175.

Quare obliteratur, Is a writ that lies for him, who having a liberty to pass through his neighbour's ground cannot enjoy his right, for that the owner has obstructed it. Fletas, lib. 4. c. 26.

Quarreria and Quarreria, A quarry of stone. Man. Ang. par. 2. fol. 192.

Quarrel, (Quarrel) a quarrels. Extends not only to actions personal, but also to mixt, and the plain tiff in them is called quarren, and in the mode of the writ it is said quarrer; so that if a man release all quar rels, (a man's deed being taken most strongly against him self) yet it is as beneficial in all actions, for it be actions real and personal are released. Cc. lib. 8. f. 152. and Co. on Litt. lib. 3. c. 8. fol. 511.

Quarteleos, Scurvorts or upper garments, with coat of arms quartered on them, the old habit of our English knights in their military expetions. Weal scing, in Ed. 2 p. 114.

Quarter, (Quarterer) Eight buflhels strikes made the quarter of corn. Stat. 15 Rich. 2. cap. 4.

Quarterlari, To be quartered, or cut into four quarters in execution.—Feci delicari & membranari di vivi, & quarterlari, & capar & ejus quartarius ad regnum civitatis transmittii justit.—Astic. Richard. Scrip Archep. Ebor. apud Angl. Sacr. par. 2. p. 266.

Quarterum, Is a measure of corn, consisting of eight bushels. Fletas, lib. 2. c. 12. Quarterum frumenti cont in ext dicto bujold.


Quarterisato, Is part of the punishment of a traitor, by breaking his body into four parts. Weal scing, R. 2. Audition & conifumifum conjugiorum sedes, traditionis, suffoedion, declamationis, excusationis, & quarterisat, ufus vulgaris loquax, adjudicatior.

Quarterjections, Is a court held by the judges of the peace in every county once every quarter of a year. Hals, 30. and 117. Eren. 1. 4. and Smith de Repub. Anglor. 1. 2. c. 19. To which you may add the several fratures of this realm, by which its power is greatly increased: Originally it seems to have been erected only for matters touching the peace, but now it extends much farther. The holding these fratures quarterly, was first ordained by the statute 25 Ed. 3. fol. 47. and the Statutes of the Realm, fol. 1550.

Naudq Quasares (from the French word quasare, id est, cautum facere,) To overthrow or annul. Britton, lib. 5. tract. 2. c. 3. mun. 4.

As if the bailiff of a liberty return any out of his franchises, the array shall be quashed. And
 multitars, An action preferred in any court of justice, in which the plaintiff was quercus or complainant, and his brief, complaint or declaration, was quercus, whence our quercus against another party. Quercus off, a quercus was to be excepted from the customary fees paid to the King or lord of a court, for the purchase of liberty to prefer such an action. But more to be excepted from fines and amercements, imposed for common trespasses and faults. See Title Reg. Dir. 43, 24.


Quercuss room Kuge & repentit nullituetia & terminanda, Is a writ whereby one is called to justify a complaint of trespass made to the King himself, before the King and the people, and what the laudatur. Pratc. cap. 2. fol. 10. and Coke, lib. 4. Copy. Old Cotis. fol. 23.

The Queen Comfort is an except perfon from the King by the Common law, and is of ability and capacity to exclude and grant without the King; and is capable of taking lands or tenements of the gift of the King. Gr. ed. 133. 6. See Bing, &c.

Queen Dowager, No man may marry the Queen dowager without licence from the King, on pain to forfeit his lands and goods: But if the marry any of the nobility, or under that degree, the foethet not her dignity; and the act of a Queen may maintain a wall as an owne, ed. 18, 50. The statute 25 Ed. 3. making it treason to violate the Queen, extends not to Queen Dowager, to the King's wife and companion; And a Queen Comfort and Queen Dowager shall be tried, in case of election, by the peers. 2 fot. 59.

Queen gold, (Aurum Regum) is a royal duty or revenue belonging to every Queen Comfort, during her marriage to the King of England, both by law, custum and prescription, payable by sundry persons in England and relics, (upon divers grants of the King) by way of fine or oblation, amounting to ten marks or upwards; to sit, one full tenth part to the initial fine, as usual, and every hundred pounds five, upon pardons, contrats or agreements; which becomes a real debt and duty to the Queen, by the name of Aurum Regum, upon his party's bare agreement with the King for his fees, and recording it, without any promise or contract for his tenth part exceeding it. Lib. Nis. Soc. pag. 43.

Coke's 12 Rep. fol. 21, 22, and Pynne's Treas. on his subject. Per se.

One estate, Translated vorkaum, signifies quae nationem: In our common law it is a plea, whereby a man uniting another to land, &c. faith, that the same estate he had, he hath from or by other conveyance, or the plaintiff alleges, that four such perons were lesse of lands whereunto the adowment in question was appendunt in fee, and did prevalent to the church, and afterward the church became void, que estate dei, &c. that is, which estate of the four perons he has now during the vacation, by virtue whereof he pretended, &c. Leis. tit. 1. stat. f. 173. 176. Gr. et Litt. fol. 122. See 18 Vinc. Ab. fol. 133-140.

One eest cadem. See Same eest cadem.

One eest memine, Significis vorkaum, which is the same thing, but is used in a legal sense as a word of art in an action of trespass, or such like, for a positive justification of the complaint of the plaintiff, &c. For example, In an action upon the cafe, the plaintiff says, that the lord threatened his tenants at will in such fort, that he forced them to give up their tenures. The lord for his defence pleaded that he did let unto them, that if they would not depart, he would fee them at law; the defendant was quits, and he was married to a woman artificially, que esti meus, the defence is good. Of this see Kitchen, cap. Que esti meus, fol. 236.

Unum redditum recent. Is a writ judicial that lies for him, to whom a rent-ten or rent-charge is granted, by fine levied in the King's court against the tenant of the fee, by which the tenant is to become an heir to the tenant, to the tenant.


Quintus, A rent-quit, or small acknowledgment paid in money, so called because such payment did acquit the tenant from all other services or duties to the lord. It was sometimes called white-quit, because paid in silver or ready money. See Xittibret.

Quinquefimae Sunda. Is that we call Sawa-San- don, and was so named, because it is about the fifteenth day before Epfter. The reason of the name you may find in Durandt Rationali Divinorum, capit. De Quinquefimis, and we mention it here, because they are frequently spoken of in our ancient law writers, as Brittan. 23, and the other.

Quintus portus, The Cinque ports, which are, 1. Hastings, 2. Romney, 3. Hythe, 4. Dover, and 5. Sandwich. To the first, Windsor and Ryer belong, which 7 F
are reckoned as part, or members of the Cinque ports.

Cowell, edit. 1727. See Cinque ports.

Quaint and Quainten, (Decima quinta) is a French word signifying a fifteenth, with us it is a tax, so called from the way it was raised after the fifteenth part of men's lands or goods. Ann. 10 Rich. 2, cap. 1, and 7 H. 7, c. 5. It is well known by the Exchequer roll, what every town throughout England is to pay for a fifteenth. See Fifteenth. Sometimes this word Quain-

tine or Quainten, is used for the fifteenth day after any feud, as the Quaintme of St. John Baptist. Stat. 13 Ed. 1, in the preamble. It is a mistake that this was a tax of the fifteenth part of all lands, for it was first granted by the par-

liament 18 Ed. 1, void. Compostas quintas dicta Regi, Ann. 18. It was a heavy impost, and was taken, according to the Custom and Laws of England, to be a fifteenth part of the produce of lands and goods.

Quaintnall, (Quinantlun) A weight of lead, iron and copper, which was numbered, and paid for in hundreds of, at sixpence per cent. Cowell, edit. 1727.

Quainten, (Quinanten) Was a Roman military sport or exercise, on men on horseback, formerly practised in this kingdom to try the agility of the country youth: It was a tilting at a mark made in the shape of a man to the navel, in his left hand having a shield, and in his right hand a wooden sword, the whole made to turn round, so that it was flucci with the lance in any other part but full in the breast, it turned with the force of the stroke, and flucci the forsemen with the sword which it held in its right hand: This sport is recorded by Matt. Parry, ann. 1253. See Parecis, Antiq. p. 18.

Quinto crass, (Quinto exadus, mentioned in stat. 31 Edw. cap. 3.) Is the last call of a defendant, who, is fined to the outlay, where, if he appear not, he is, by the judgment of the coroners returned outlawed; if a woman, married. See Quingut, Outlaw.

Outatam. When an information is exhibited against any perfon on a penal statute, at the suit of the King and the party who is the informer, the penalty for breach of the statute is to be divided between them; and the party informer prosecutes for the King and himself. Finch 342. See Information, Anton.

Outatam, see Quingutam.

Outotellin, (Quintai eamiantam) Is a release or acquitting of a man, for any action that he hath or might, or may against him. Also a quittine of one's claim or title. Bradom, lib. 5. tract. c. 9. num. 6. lib. 4. tract. 6. c. 13. num. 1.

Outter, (Quintar redditus) Is a certain small rent payable yearly, by the tenants of manors, upon the payment whereof they are quit and free, till it becomes due again: This in some ancient records, according to Spinns, is written White-rent, because paid in silver. 2 part. 19.

Outwort, Is often used in law pleadings and argument very frely, as to the thing named in the law is so, etc. Such clerks beneficiari de cancellaria, Is a writ to exempt a clerk of the Chancery from the contribution towards the proctors of the clergy in parliament. Reg. Orig. fol. 261.

Outre cleri non elegiendum, (Clerico balliit, gr. Is a writ to the bishop for a clerk, which, by reason of some land he hath, is made, or about to be made bailiff, bearer, receve, or some like fashion officer. See Clerico infracors. gr. Reg. Orig. fol. 185, and F. N. B. fol. 261.

Outre est feciur. Is a writ that lies for the tenant in tall, tenants in dower, or tenants for term of life, hav-

ing loft by default, against him that recovered, or against his heir. See Bract, hoc tit. Reg. Orig. fol. 171. See 16 Pn. Abr. 145—148, 172.

Outre percurt, Is a writ that lies for the heir or his assigns that he is defiled of his common of pature against the heir of the defiler being dead. Terms de la ld. 526. Britton, c. 8, says that this writ lies for him, whom ancestor died lessee of common of pature, or other like thing annexed to his inheritance, against the defiler. Britton, hoc tit. Reg. Orig. fol. 155. See 18 Pn. Abr. 150.

Quo persona nec prebendarii, gr. Is a writ that lies for spiritual persons that are disfrained in their spiritual possessions, for the payment of a fifteenth with the rest of the parish. F. N. B. fol. 176.

Quo jure, Is a writ that lies for him that has land wherein another challegueth common of pature time out of mind: And is to compel him to lose by what so ever he challenges it. F. N. B. fol. 128, and Britton men greatly c. 59. Reg. Orig. fol. 156.

Quo minus, Is a writ that lies for him that hath grants of bunge-bate, and bong bate in another man's woods against the granter, making bung waife as the grante cannot enjoy his grant. Old Nat. Brev. fol. 148. See Kitson fol. 178. This writ also lies for the King's false mer in the Exchequer, against him to whom he sold anything by way of bargain touching his farm, or against any man with any cause of personal action. Perkin Grants, 5. A tax imposed by the vescual's delinet, any due to him, he is made liable to pay the King's rent. And under this present, any one who pays the King a sees-farm rent, may have this writ against any other perfon, for any debt or damage, and bring it to trial in the Exchequer. Cowell, edit. 1727. See 18 Pn. Abr. 122.

Quoitem, Is a word often mentioned in our statutes and much used in commendations both of justices of the peace and others, and so called from the words in the comm-

Inion, Quorum A.B. quam usque volumina: As for exam-

ple, where a commissio is directed to seven person, to c. to any three of them, of A. B. and C. D. to b. two, there A. B. and C. D. are said to be of the quorum because the rest cannot proceed without them: so a y fius, of the peace and quorum, is one, without whom the re-

of the justices in some cases cannot proceed. Stat. 3 H. 7 c. 3. and 32 H. 8 c. 43.

Quoijam nomine, in the reign of E. 6. the King, collective accounts of his sheriffs were much troubled in passing their accounts, by new extorted fees, and force to procure a late invented writ of quorum nomine, for a lowness of the Barons of the Cinque ports and their fim.

out their autes at their own charge, without allowance from the King. Glyn, Angius. Cowell, edit. 1727.

Quod, or for an execution to be levied in an equal manner. Mon. Akt. 358.

Quo warranto, Is a writ that lies against him who or any other person or party, for any debt or damage, and bring it to trial in the Exchequer, Cowell, edit. 1727. See 18 Pn. Abr. 122.

Quo warranto, Is a writ that lies against him who or any other person or party, for any debt or damage, and bring it to trial in the Exchequer, Cowell, edit. 1727.
R A N

R. A C F E S. (Racoeum, or Racbaum, from the French racoteur, robbers.) Is the family thing with theft-laws, which is the combination or composition of a theft. Cowell, edit. 1727.

Rachimburgi, Judges. Leg. Canute, cap. 103.

Rakt. (Péculea, So called, because paucis are there torturated at times inveterant.) An engine in the Tower, against building to evert condescents: John Holland Earl of Huntington, was by King Henry VI. created Duke of Exeter, and made Constable of the Tower: He and William de la Pole Duke of Suffolk, and others, intended to have brought in the Civil laws; for a beginning whereof, the Duke of Exeter first brought into the Tower the rack or broken, allowed in many cases by the Civil law; and thereupon it was called The Duke of Exeter's daughter. 3 Inf. 35.

Ralso, is the fully yearly value of the land by leases, payable by tenant for life or years, &c. Wood's Int. 165.

Rant, is derived from室. (Ranting, mentioned in stat. 32 Hen. 8, c. 14.) Is a second voyage, or voyage, for wines made by our merchants into France, &c. not ranked wines, cleansed and drawn from the lees.

Ranters, in Demise-hash, are Liberti banius. Cowell, edit. 1727. See Co. Litt. 86.

Ratiungis, is mentioned in Peto. lib. 2. cap. 73. par. 32. and it signifies a furrow.

Razman, (mentioned in Domestay, tit. Horscercile 15.) Seems to bear the same with redknight, unless it is derived from read counsel, and fo Rantungis signifies counsellors. Cowell, edit. 1727.

Riggam, is a statute so called of justices, affigned or given by his counsel, to go a circuit through all England, and to hear and determine all complaints of injuries done within five years next before Michaelmas, in the fourth year of his reign. Cowell, ed. 1727.

Rigatia, is a word mentioned in the charter of Edward III. whereby he made his eldest son Edward Prince of Wales, in parliament at Westminster the seventeenth year of his reign, recited by Selden in his Titles of Honour, pag. 597.—Cum forjus, pericis, chrisis, bovis, argentis, hundendis, canatis, rapirosis, ringseldis, worderdis, englandaris, bailatibus, &c. Davit in his Dictatory lays, that ringlaw among the Welsh signifies fentiallis, forragiantis, peiligantis.


Rigantia's tell, (more properly Rigantia's roll) So called from one Rigantia, a legate in Scotland, who, calling before him all the benefited persons in that kingdom, caused them, upon oath, to give in the true value of their benefices, according to which they were afterwards taxed in the court of Rome. This roll, among other records, being taken from the Scots by our King Edward I. was re-delivered to them in the beginning of Edward the Third's time. Sir Richard Baker, in his Chronicles, fol. 137, faith, that Edward III. surrendered, by his charter, all his title of sovereignty to the kingdom of Scotland, relieved divers debts and instruments of their former homage and fealties, with the famous charter called Rigantia's roll. Cowell, edit. 1727.

Rig, Old rags may be imported duty free, 11 Gen. 1, cap. 10.

Rift. See Particulars.

R browsing. See Gorse woods.

Rumilia, Lopping and topping, or the branches, bought or heads of trees, cut off or blown down. Cowell, edit. 1727.

Raj. I. A Sans word, and signifies operta reposin, open or partial theft. Lamb. Archi, f. 125, defines it thus, Ran dictus opera reposin, quae negari non potest. In the Saxon laws of King Canute, cap. 58. Si in presumptis militari ran conmemiperit, pro fidi ratione encondat. How- other in the latter part of Henry II. speaking of some things, William the Conqueror amended in the laws of England, faith, Decretum est in domino, quod Francigana appellaverit Anglicum de perjurio ante maris, furis, homicidio, ran quod dictum apertam ramanum quae negari non potest, Anglicus ille defendet, per quod melius volunt, aut judicis erro ant duels. So we till say, when a man takes away another's goods by violence, or he hath taken all he could rap and ran. Raps, from raptis, to snatch. Cowell, edit. 1727.

Rape, From the French racer, to order, dispose of. It is used in the Forst Laws, both as a verb, as to range, and a substantive as to make range. Charta de Foret, cap. 6. To range allo, signifies to wander and stray about.

Ranger, Is a sworn officer of the forest, of which there are twelve. Id. cap. 7. whole authoritie is in part described by his oath set down by Manwood, part 1, pag. 50. but more particularly part 2. cap. 26. num. 13, 16, 17. His office chiefly consists in three points, To walk daily thro' his charge, to see, hear and inquire, as well of trespasies as trespassers in his bailiwick; To drive the beasts of the forest both of venery and chase out of the deforested into the forested lands: And to prevent all trespasies of the forest at the next court holden for the forest. This office is made by the king's order, and hath a fife of twenty or thirty pounds paid yearly out of the Exchequers, and certain fee-deer. Rangeauer Forst of Whitleywood. Pag. 14 R. 2. m. 3.

Ranfore, (From the French Rancon, redempence) Signifies properly the sum that is paid for the redeeming one that is taken prisoner in war. But it is also for a sum of money paid for the pardoning some great offence, as in the statutes of 1 Hen. 4. cap. 7. 11 Hen. 6. 11, and 23 Hen. 8. cap. 3. where fine and ranfom are joined together: But here note, that when one is to make a fine and ranfom, the ranfom shall be treble to the fine. Crimp. Jogft. of Peace, fol. 134. and Lamb. Eiren. lib. 4. cap r. Pag. 556. Here observe the great difference between amerciament and ranfom, that ranfom is the redemption of a corporall punishment due by law to any offence. Lib. 3. cap. De Americania taxable. See Co. on Lit. fol. 137.

A ship was taken by the French; the master (having a share in her) ranfomed her for 1800 l. and was taken to France as an hostage for this money. And by Lord Chancellor, The ranfom money must be raied out of the profits, notwithstanding any former mortgage of the ship; for if there was a precedent mortgage, what would become of that security, if the ship had not been redeemed? but the Court determined, the perfomer her intended voyage, and the freight money received after redemption was the first profits arising, and out of them the ranfom money is to be satisfied; the inferiors always pay a part of the ranfom money. Esq. 5 Ann. Hope v. Winter, MS. Rep. 2. Esq. Abr. 690.

Rape, (Raps and Basset.) Is part of a county, being in a manner the same with a hundred, and sometimes contains in it more hundreds than one. As all Suffex is divided into six Rapes only, viz. of Chichester, Arundel, Brember, Lewes, Pevensey and Holings; every of which, besides their hundreds, hath a castle, river and foreft, belonging to it. Camb. Brit. pag. 235, and 239. These in other countries are called hundreds, tythings, lathes and wapetakes. Smith de Rep. Ang. lib. 5 c. 16.

Rape of the foreft, (Ruptus forstis,) Is reckond among those crimes, whose cognizance belongs only to the King. Violentus scutatorum, rups forestis, reductionem forettis forasam. See Exchequ. Lib. II. c. 10. Trespasis committed in the forest by violence.

Rape of woman, (Ruptus,) Is a felony committed by a man, in the violent defluruing of a woman against her will, be the old or young. Britton, cap. 2. Wyfem. Symbol. part. 2. st. Indictments, f. 54. hath these words, Culpation velim 3. This is termed a rape or ravishment of the body of a woman against her will, which is carnal knowledge had of a woman who never consented thereto before
before the fact or after. And this in Scotland ought to be commenced of the same day or night that the crime is committed. *Stoic de aeterno, signifi. verb. rapina, and his reason is, quia lapsi dies hac crimine praefcriptur. This offence is felony both in the principal and his aiders, 13 R. 2. f. 2. c. 1. 11 H. 4. c. 13. 1 Edw. 4. c. 1. and Windsor. 2. c. 13. and this is upon the same principle, the ben- efic, if free, and the victor, 8 Eliz. cap. 7. and Picta says, the woman must be made within forty days, or else the woman may not be heard, lib. 3. cap. 5. sect. Prætreas. And carnal knowledge of a woman under ten years old is felony. 6 El. 6. Of the diversity of rapine, see Cramp. *Tоius & Pedic. fol. 43. 44. The offender is called rapinor, and in Bratton's time was punished with the loss of his eyes and fiones, *Quae callimrapit inoffuertur, 3 Inft. fol. 60. The civil law useth rapinis in the same signification; and rapines virginitem, vel mulierem, et ei inferre libidinis. Cowell. Rape is when a man has carnal knowledge of a woman by force and against her will; and rapines, to ravish, signifies as much as carnaliater coacervare, and cannot be expressed in legal proceedings by other words. 2 Inft. 80. Ca. Lit. 123. b. 124. a.- And th'o' there be emittis feminis, yet if there be no penetration, viz. rei in re, it is no rape; for the words of the indictment are, carnis etiam inoffuertur, e.g. woman useth rapinis. 2 H. 8. 164. it must proceed to some degree of penetration to make it amount to a rape, but that it is said however, that emissio is prima factio evidence of penetration. By flt. 1 Ed. 3. c. 13. The King prohbiteth every per- son to ravish, or take away by force, any maid within age, although a maid, or any wife of full age, or any other woman against her will; and if any one will such offenders within 40 days, the King will do common right; but if none sue within 40 days, the King will sue, and the offender, being convicted, shall suffer two years imprisonment, and be fined at the King's pleasure; and if not able to pay that fine, shall suffer beating to be inflicted upon the body to the trefpasant, according to the trefpasant. Rape was felony at Common law, for which the of- fender was to suffer death; but before this act the offender was made false, and the punishment changed, viz. from death to the loss of his members whereby he offended, viz. his eyes and his testicles, so that at the making this act, it was not felony. And in those days, if the of- fender, in the appeal brought by her that was ravished, had been condemned by the country, he shou'd without any redemption lose his eyes and his privy members, unless the that was ravished demanded him for her husband before judgment, and which was only in the will of the husband, or the woman he ravished to be released; and the punishment of loss of members continued till the making of this act, which was on purpose to make it punishable by fine and imprisonment at the suit of the King, unless the should pur chase her remedy within 40 days mentioned in the act. 2 Inft. 180. 181. Stat. 13 Ed. 1. c. 34. enacts. That if one ravished a married woman, a maid, or other, who does not consent neither before nor after, he shall have judgment of life and member. And if a man ravished a married woman, lady, damoef or other, although the consent after, he shall have like judgment, if attained at the King's suit, and the King shall have the suit. See Appeal of Rape. W. D. was indicted for the rape of a girl of seven years old and no more, setting forth the good fiam felinearet rapit on & consensum suæ, Up that he was the husband of such woman, if he have any, and if no husband, the father or next in blood shall have the suit against such offender. W. D. was indicted for the rape of a girl of seven years old and no more, setting forth the good fiam felinearet rapit & consensum suæ, Up that he was the husband of such woman, and he was found guilty; but the court doubted whether a child of that age could be ravished; if she had been nine years old the might; for at that age she may be endow- ed. Dyer 304. pl. 51. Mich. 13 & 14 Eliz ann. The doubt in the case before-mentioned was the cause of mak- ing the following act for the plain declaration of the law. 3 Inft. 60. c. 11. Stat. 18 Eliz. cap. 7. enacts, that the benefit of cle- rgy is taken away from such offenders, and shall be guilty of felony by act of Parliament, and that he shall be adjudged guilty of felony without benefit of clergy, whether it be done with the consent of such child or not. M. P. was indicted for Neuterus felonies for that carnal knowledge of a woman under 14 years, an infamy under 16 years; and because upon evidence to the jury at his arraignment it was not proved that he entered into the child's body, (but the contrary) although he very much had abused her, the jury would not find him guilty of the felony; whereupon, by advice of justice Jones and justice Berkley, who heard the evidence, and taking the fact to be true and fact and fit to be punished, an indictment of battery for abusing the said infant, in lying with her, was pre- ferred and found; and he was thereupon tried this term at the bar; and being found guilty, was adjudged for the misdemeanor to be committed to prison, there to abide until he should do the future, to be made good, and he was fined upon the pillory in Chaucey-lane in Middlesex, near the place where the fact was committed, with a paper upon his head signifying the cause, and to be bound with all furies to the good behaviour during life. Cre. C. 332. pl. 17. Mich. ann 9 Carr in B. R. Martin Paulo case. A woman went for her husband to a bailiff's house, and being threw the rooms by one Sarah Blandford, in the company of one Leisfing, who lodged in the house, the said Blandford locked them in a chamber, and went away laughing, and then Leisfing ravished her. The evi- dence was Mrs. May the woman herfelf, who cried out, and was so much in his affiance, and when the door was open the immediately complained of the injury; but the evidence for the prisoner was, that immediately after she came down stairs, there was an open familiarity be- twixt her and the prisoner, and therefore it could not rea- sonably be intended that they should have a difference f, lastly, which concerned his life; and though a woman cannot be ravished by one man without some extraordinary circumstances of force, yet the jury found them both guilty; but they were both pardoned. 2 Nei. Jov. 93. tit. Rape, cites 1 Geo. 1. May v. Leisfing. The party raviished may give evidence on oath, and in the case of a competent witness; but the evidence of the testimony, for of which fact it was that the jury were to take the evidence of Leisfing be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testi- mony. For instance, If the witness be of good fame; if the presently discovered the offence, and made pursuit after the offender; he gave circumstances and signs of the injury, wherein many are of that nature, that only wom- en are the most proper examiners and inspectors; if the place, wherein the fact was done, was remote from people, inhabitants or passengers; if the offender fled for it: Thence, and the like, are concuring evidences to give greater probability to her testimony, when proved to be genuine. But on the other side, if the concealed the injury for any considerable time, after she had opportunity to complain; if the place where the fact was suppos'd to be committed, were near to inhabi- tants, or common recourec, or pause of passangers, and she made no outcry when the fact was suppos'd to be done, when and where it is probable that he was not in it; if the circum- stances carry a strong presumption, that her testi- mony is false or feigned. And upon the whole, rape is true, to a most destracible crime, and therefore ought
the third part of her husband's goods, after debts and funeral charges decayed. F. N. B. fol. 322, who there quotes the eighteenth chapter of Adamnus Gruartus, and Glanville, to prove that, according to the common law of England, the goods of the deceased, his debts first paid, should be divided into three parts, whereof his wife to have one, his children the second, and the executors the third; and this writ lies as well for the children as wife, which appears by Reg. Orig. f. 142. See 12 Jan., 1425.

Rationalis. Was the same with petitio. It was worn by the high priests of the old law, as a sign of the greatest perfection, and by the pope and bishops as a token of the highest virtue, qua gratia & ratione perfectius, and from hence tis called rationalis.

Rationale, (Rationalism) A quality liable on importation (i.e. not paid). See 2 Wall. & M. c. 5, sect. 2.

Rattus, (Rat) He who defouils a woman by violence. See Rape.

Ravishment, (Rapina) Signifies an unlawful taking away either a woman, or an heir in ward; sometimes also it is used in the same sense with rape, which see.

Ravishment de banc, Was a writ that lay for the guardian by knights-service, or in socage, against him that took from him the body of his ward. See F. N. B. f. 140. and Stat. 12 Car. 2, cap. 24.

Ravishment, (Ravish) See Rape.

Ravishment, (Ravage) See Rape.

Ravage, (Ravage) A work appropriated to cloth never coloured or died. Stat. 17 R. 2, cap. 3. 11 H. 4, cap. 6. and 1 R. 3, cap. 8.

Ravage, (Ravage) See Rape.

Ravage. Is where a forest hath been defolated, and again made forest, as the forest of Deane, by the statute of 20 Car. 2, cap. 3.

Reaply, Is an abraid of real, and contradistinguish'd from perfamory.

Rape-taile, Rip-toule, The gratuity or reward given to customary tenants, when they have reaped their lord's corn, or done their other customary duties. Cowell, ed. 1727.

Reasom, It has been observed, is the very life of the law; and that what is contrary to it, is unlawful. When the reason of the law once ceases, the law itself generally ceases; because reason is the foundation of all our laws. Co. Litt. 97, 183. If maxims of law admit of any difference, those are to be preferred which carry with them the more perfect and excellent reason. Ibid.

Realizable adv. (Rationalite auxilium) Was a duty that the lord of the fee claimed of his tenants holding by knights-service, or in socage, to marry his daughter, or make his son a knight. Wolffmuller v. cap. 39, but now taken away. See the Stat. 12 Car. 2, cap. 24.

Reattachment, (Reattachment) Is a second attachment of him that was formerly attached and disfitted the court without day, as by the not coming of the justices, or some such casualty. Broke, hoc situ, where he makes re-attachment general and special: General is where a man is re-attached for his appearances upon all writs of affize lying against him. Ibid. 2id, nam. 18. So then special must be for one or more causes. Reg. Jux. dict. fol. 35. A cause discontinued, or put without day, cannot be revived without re-attachment or re-suits; which if they are special, may revive the whole proceedings; but if general, the original record only. 2 Hark, 300.

Rebellion, (Rebellion) Signifies the taking up of arms traiterously against the King, be it by natural subjects, or by others once subdued: Amongst the Romans it denoted a second resistance of such as formerly being overcome in battle, yielded to their subjection. The word rebellion is sometimes misapplied here. It willfully breaks a law. 25 3. 8. 17 and 3 R. 3, Stat. 3, cap. 2. Sometimes to a willian disbelieving his Lord. 3 R. 2, cap. 6.

Rebellion, (Rebellious) A gathering together of 12 or more, or intending or going about, practicing or putting in use, unlawfully of their own authority, to change any laws or statutes of this realm; or to destroy the inclofe of any park or ground inclosed, or banks 7 G of
REC

of any fifth pond, pool, or conduit, to the intent the same shall remain void; or to the intent unlawfully to have common, or way in any of the said grounds; or to deal for unrighteously, in any park, or any warren of commons, or dove-houses, or fish in any ponds, or any house, barns, mills or bys, or to burn stacks of corn, or to abate rents, or prices of victuals. Stat. 1 Mer. 12, and 1 Eliz. 17. See Wilt. Symbol. part 2. tit. Indultments, f. 65, and Cram. Jur. of Fees, fol. 21. See Afforarily unlawful.

Defendant, was to plough the ground the third time, Tenup reihumin et qui fujum maortivitati Sancti Johanne Baptistas cum terra pulpilavertit pcj coram, Pleio, lib. 3, cap. 73, par. 10.

Defendant terram. To give a second filing or ploughing, or to plough a ground that lies fallow, in order to prepare it for flowing wheat, Uct. Cowell, edit. 1727.

Defter, from the Fr. Bouter, repperter, to put back or bar) Is the answer of the defendant in a cause to the plaintiff's surrejoinder: And the plaintiff's answer to the defendant's rebutter is called a surrebuter; but it is very rare that the parties go far in pleading. Pratit. Act. tern., edit. 1. pag. 86. Rebutter is also where a man by deed or fine grants to warranty any land or hereditament to another; and the person making the warranty on his heir, sues him to whom the warranty is made, or his heir or assignee, for the same thing; if he who is sued, plead the deed or fine, or warranty, and pray judgment: The defendant shall be required to receive the thing which he ought to warrant to the party against the warranty in the deed, &c. This is called a rebutter. Term. de Ly 511. And if I grant to a tenant to hold without impeachement of waste, and afterwards implied him for waste done, he may deem me of this action by I\.wieving my grant; which is a rebutter. Co. Estr. 284. 1 Ifli. 386.

Recaption, (Recaptts.) Signifies a second disfriv of one formerly disfrained for the same cause, and also during the plea grounded on the former disfriv: It likewise signifies a writ lying for the party thus disfrained; the form, and further use thereof, may be seen to P. N. B. fol. 86. Reg. Judis. fol. 69. See Disfrains, Replevin.

Receipt or receiv. See Receipt.

Receiver, (Receiver) Is by us, as by the Civilians, commonly used in evil part, for such as receive stolen goods, &c. And the receiving a felon, and concealing him, makes a person acccessary to the felony, 1 Ifli. 183. But a receiver of a felon, &c. must have notice of the felony either express or implied, which is to be expressely charged in the indictment; and the felony must be complete at the time of the receipt, and not to become fo afterwards by matter subsequent: If a person is in some manner of felony, barely receive him, and permit him to efcuse, without giving him any advice, oriance, or encouragement, it is a high misdemeanor, but no capital offence; and a wife, in regard to the duty and love which she owes her husband, may receive him when he hath committed felony; but no other relation will exempt the receiver of a felony from punishment. S. P. C. 41. H. P. C. 218, 219, 2 Hawb. P. C. 123, 319, 320. By statute, if any person shall receive or buy knowingly any stolen goods, or conceal felons knowing of the felony, he shall be accssary to the felony, and suffer death as a felon. Stat. 5 Ann. c. 31. Such receivers, &c. may be transported, by a Gen. c. 31. See Felony, Larreny.

Receiver, Annexed to other records, as Receiver of rents, signifies an officer belonging to the King, or other great person. Cram. juriscl. fol. 18.

Receiver of the fines, is an officer, who receives the money of all such as compound with the King upon original writs in Chanccy. Wilt. Symbol. part 2, tit. Fines, sect. 106.

Receiver-General of the Duchy of Lancaster, is an officer belonging to the Duchy court, that gathers in all the revenues and fines of the lands of the said Duchy, and of all forfeitures and affidavits, or what else is there received. Stat. 39 Eliz. cap. 7.

Receiver-General of the court of wards and deficiencies, was an officer belonging to that court; but the court being taken away by the Stat. 12 Car. 2, cap. 24, the benefits of that office were also taken away.

Receiver-General of the mortmain rolls, is mentioned in Stat. 35 Eliz. cap. 4.

Receipts general of the revenue. What the receiver of the King's rents and tenths shall take for acquittances, 33 H. 8. c. 39. f. 65.

Heirs of the King's receivers and collectors shall be charged, 34 & 35 H. 8. c. 2.

Heirs not chargeable but for lands by descent, 34 & 35 H. 8. c. 2. f. 3.

Heirs may have debt against executors or administrators of ancestors, 34 & 35 H. 8. c. 2. f. 5.

Others accountant to the crown shall find survites, and make their accounts duly, 7 Eliz. 6. c. 1.

King's receivers may disfrain for rent, 7 Edw. 6. c. 1. 5. 11.

Lands of accountants to the crown liable, 13 Eliz. 4. c. 4. f. 1. Exception as to billetts, ibid. f. 9.

Lands fraudulously purchas'd made liable to arrearage, 13 Eliz. 6. c. 4. f. 14.

Offices found to be fraudulent conveyances transferable, 13 Eliz. 6. c. f. 14.

Lands of under collectors of the tenths made liable, 14 Eliz. 6. c. 7.

Accountant's lands may be sold after his death, 27 Eliz. 6. c. 7.

Not to be sold during infancy of heirs, 27 Eliz. 6. c. 3. f. 7.

receivers to pay 12 per Cent. in case they neglect to account for two months, 20 Geo. 2. c. 2.

The treasury imposed to make allowances to receivers, 2 Geo. 1. c. 4. f. 7. Geo. 1. c. 20. f. 30.

Receipt, (Receipts) Is the rehearsal or making mention in a deed or writing of something which has been done before, 2 Litt. Abr. 416. A recoil is not conclusive, because it is no direct affirmation; and by feigning recitals in a true deed, men may make what titles they pleased, since facile recitalls are not punissable. 1 Ifli. 352 2. Ifli. 353. If a person by deed of assignment recite that he is possessed of an interest in certain lands, and assign it over the deed, and become bound by bond to perform all the agreements in the deed; if he is not possessed of such interest, the condition is broken; and though a recital of itself is nothing, yet being joined and connected with the rest of the deed, it binds as it was 123.

Recital cannot make a first lease good, which was not good before, or in a better condition than it was before; because the first lease is a stronger to the second deed, and therefore cannot take advantage of it; and by the better opinion, recital of a deed is not material. Del. 13. pl. 23. Pofh. 7. Edw. 6. f. 132.

No one is bound in his declaration to recite more of a record than induces his action, and makes for his purpose. Trench. 233. pl. 34.

Bond was conditioned to pay 10l. being for a rent of certain lands; defendant alleged, that the oblique (the plaintiff) had entered on the land, and so expended the rent, whereas the plaintiff demanded, and adjudged for him; for that being but a recital in a testum, it is taken from the same as he had applied it by pleading to the lease, Uct. Hob. 130. pl. 170. Trin. 11 fasc. 2. Frome v. Digg.

Tijaments ejusfit is only recital. 2 Sutt. 515. Pofh. 2 W. & M. B. R. Woodward v. Ciff.

A. having a wife and seven sons devised 50l. as to fix of them, viz. A. B. D. E. F. G. omitting C and D, R. was the widow, but by articles before material, setting that A. father of the said A. B. D. E. F. and G. had by his will bequeathed cullitum ipsum praeffid. A. B. D. E. F. and G. (omitting C) the sum of 50l. covenants with S. (a friend of the wife) to pay to the aforesaid A. B. D. E. F. and G. of their estate 50l. but the breach was assign'd in not paying C. 50l.
Recognizance (Recognizanz) is a word frequently used for the jury impanelled upon an assize: The reason why they are so called, is, because they acknowledge a difficult in their verdict. Britton, lib. 5. trat. 2, c. 9. num. 2. & lib. 3. trat. 1. c. 11. num. 10.

Recognizance (Recognizanz) is a writ returnable ad edificandum when it is concurrated after, it hath been polluted, or in the possession of Pagans or Heretics. Matt. Pariz. anns 1152. Matt. Wymf. anns 1194.

Records (Recordum, from the Latin recordari, to remember) signifies an authentic and unquestionable tellimony in writing contained in rolls of parchment, and preferred in courts of record, and they are said to be Faciesloris et veritatis ususque Codis Preface to his Rep. Britton, c. 27. and Lamb. Eiren. lib. 1. c. 13. An act committed to writing in any of the King’s courts, during the term wherein it is written, is alterable, being no record; but that term once ended, and the act duly enrolled, it is a record, and of that credit that admits of no alteration or proof to the contrary. Bray. tit. Record. num. 20. 22. yet see Ge. 4. Rep. Rotulins. cafe, fol. 52.

The King may make a court of record by his grant. Glanvill, lib. 8. c. 8. Britton, c. 121. At Queen Elizabeth by her charter, dated the 25th of April in the third year of her reign, made the compulsory record of the university of Cambridge, a court of record. Bray. tit. Record, seems to intimate that no court ecclesiastical is of record: yet we see that bishops certifying haggery, bigamy, excommunication, a marriage, divorce, or the like, are admitted to be admitted; see Lamb. lib. 8. c. 39. 41. 42. Lamb. Eiren. lib. 1. c. 13. Glanvill, lib. 7. c. 44. 45. Reg. Orig. f. 5. Britton, l. 5. trat. 5. c. 20. n. 5. Britton, c. 91, 93, 106, 107, n. 195. Doft. & Stud. l. 1. c. 5. And a settlement willed under seal of the ordinary is not trasferable. 36 H. 6. c. 31. Polint. Tit. Testament. 107. Fulcher’s Parliament, the reason of which opinion may be, because by the Civil or Canon law, no record is held to firm but that it may be checked by witnesses able to depose it to be untrue; whereas in our Common law, against a record of the King’s court, after the term wherein it is made, no witness can prevail. Britton, cap. 183. Ge. lib. 4. fol. 71. Hind’s cafe Lib. lib. fol. 37. note 21. We reckon three forms of records, win. a record judicial, as attainer, &c. A record minfiterial upon oath, as an office of inquisition found. And a record made by conveyance and consent, as a fine or deed inrolled, or the like. Ge. lib. f. 546. Osgood’s cafe.

Records of judicia of assize, gau-delivery, and Oyer and Terminer, being then called Exchequer, and kept in the Treasury, 9 Ed. 3. c. 1. 5. Search and exemplification to be made for all persons concerned, 46 Ed. 3.

The penalty of rasing or altering records or verdicts, 8 Eliz. c. 4. 5. Records of assize shall be delivered into the Treasury every other year, 11 H. 4. c. 3. Records of fines burnt in the Temple, to be supplied, 31 Car. 2. c. 3.

By Stat. 6 Hen. 6. c. 12. f. 3. it is enacted, That if any record, or parcel of the same, writ, return, panel, prospect, or warrant of attorney in the King’s court of Chancery, Exchequer, the one Bench or other, or in his treasury, be willingly stolen, taken away, withdrawn, or avoided by any clerk, or by other person, because whereof any judgment shall be reversed; and such theaker, taken away, withdrawn or avoided, their procurators, counsel, fellores and abetors thereof indited, and by procce thereupon made thereof duly convict by their own confession or by inquest to be taken of lawful men, whereas the one half shall be of the men of any court of the same courts, and the other half of others, shall be judged for felonies, and shall incur the pain of felony. And that the judges of the said court, the lesser or the greater, or others, have power to hear and determine such defaults before them, and thereof to make due punishment as afo is said.

Self. 4. Provided always, that if any such record, proceed, writ or warrant of attorney, panel or return, or parcel of
of the fame, be now or hereafter shall be exemplified in the King's Chancery under the Great Seal, and such exemplification (there of record intewled without any relating in the same place in the exemplification,) and for the inolluble inconvenience of another time for any actor signified or to be affidged in the said record, procures, writs, warrants of attorney, panel or return, in any letter, word, clause or matter of the same varying or contrary to the said exemplification and the inrollment, there shall be no judgment of the said record and proceeds reversed, nor ad

Recorciari, faitias, or Recorciari, faitias, is a writ directed to the sheriff, to remove a caufe depending in an inferior court, as court of Ancient demesne, hundred or county, to the King's Bench or Common Pleas. F. N. B. t. 32. Where, and in what cases this writ lies, and the time when it is to be applied for, is by a record to be had, because it commands the sheriff to whom it is directed to make a record of the proceedings by himself and others, and then to send up the cause. See the table of the Reg. Orig. verba Recorrentes. See also Certificari and Recorciari ad sectionem. Recorciari (Recorder) is he whom the mayor, or other officer, of the magistratate of any city or town corporate having jurisdiction, or a court of record within their precincts, by the king's grants, doth appoint to him for his better direction in matters of justice and proceedings according to law: And is therefore for the most part a man very well and experienced in the law. The ancient recorder of London is one of the justices of the Oyer and Terminer; and a justice of the quorum, for putting the laws in execution for preserving the peace and government of the city: And being the mouth of the said city, he learnedly delivers the sentences and judgments of the courts therein; and also certifies and records the city customes, 1art. Chas. 2. & 6. The recorder of London is chosen by the lord mayor and aldermen; and attends the business of the city on any warning by the lord mayor, &c.

Recovering, (Recovermun, from the Fr. recoverer, recoverer.) Signifies in a legal acceptation, an obtaining any thing by judgment or trial of law, as evictis done among the Civilians. And here results, That there is a true recovery, and a figned recovery. A true recovery is an actual or real recovery, of any thing, or the value thereof, by judgment; as if a man sued for any land, or other thing moveable or immoveable, and have a verdict or judgment for him. A signed recovery is (as the Civilians call it) Quodam fihlo juris, a certain form or course set forth in a certain order, and observed, for the purpose of recovering lands or tenements unto us: And the end and effect thereof is (according to Winch. Symbol. part 2. tit. Recoveries, f. 1.) to discontinue and destroy easements, tail, remainders and revenons, and to bar the interest thereof. And in this formality are required three persons, viz. the demandant, tenant and vouchser. The demandant is he that brings the writ of entry, and may be termed the recoverer. The tenant is he against whom the writ is brought, and may be termed the recoveree. The vouchser is he whom the tenant voucheseth, and calls to warranty for the land in demand. A recovery with double vouchser is, where the tenant voucheseth on the owner, or another, on the vouchser of the tenement. And a recovery with triple vouchser is, where three are vouched. But to explain this point a little more: A man that is desirous to cut off an easement in lands or tenements, to the end to fell, give or devise it, causeth a signed writ of entry for division in le sfit, to be brough in the lands of which he intends to cut off the interest, and in a signed count or declaration thereinupon made, pretends he was deficient by him, who by a signed fine or deed of bargain and sale is named and supposed to be the tenant of the land. This signed tenant, if it be a single recovery, is made to appear and vouch the title of the owner, or the former owner of the land, or the owner of the Common Pleas (for there only can such recoveries be suffered) who makes default. Whereupon the land is recovered by him that brought the writ, and a judgment is by such fiction of law entered, that the demandant shall recover, and have a strict of sfiten for the possession of the lands demanded, and that the tenant shall recover the value of the lands against the land of the vouchser. This signed recovery is also called a common recovery, because it is a recovery only of the land, and not that end for which it is appointed, viz. to cut off the easement above described. But a true recovery is as well of the value as of the thing: For example, if a man buy land of another with warranty, which land a third person afterwards by fair of law, recovereth against me, I have my remedy against him, or other, to recover my value, as is to recover to much money as was paid for it, or much other lands by way of exchange. E. N. B. fl. 134. Cestui.

A recovery in a large scale is a restitution to a former owner for solemn judgment; and judgments, whether obtained after a real defence made by the tenant to the writ, or a judgment obtained upon his default, did have the same efficacy and force to bind the right of the land in question; this was the notion of the Common law, and from hence men, taking an opportunity of making use of the decisions of the court to their own advantage, and to the prejudice of others, who though in some cases strangers to the action, yet were interested in the land for which it was brought. 2 Hil. 75. 429.

For whist these recoveries were governed by the first rules of the Common law, particular tenants, as tenant in dower, coudr, in tail after poftibility of issue extinct, and for life only; all those who had made lease of the tenements for the life of the lessee, being entitled to dower often took advantage of them, and by force of law, and suiting their purchasers to recover them, thereby defeated the right of the tenant in remainder or reversion, which were inconvenience so great, that it was thought necessary to provide against them by positive laws: as that Hly. 2. 2. 3. which makes provision for him in rearment, against the recoveries suffered either by the tenant in dower, by the courteous, or in tail after poftibility of issue extinct, or for life; and by the 4th chapter of this statute, the wife is feued as to her dower; and the flatus of Gloucester, c. 11. and Stat. 7 & 8 Hen. 6. have effecituf the right of termors, and enabled them to fail est such recoveries. See Co. Litt. 104. Kel. 199. F. N. I. 468. Plow. 57. Dr. & Stal. 45. &c.

But there is no express provision made by any statute to prefer the interest of the infeue in tail, or of him in reversion, against a recovery suffered by the donee, yet seems to have been for two hundred years after the making the flutes de danis, that they were proceeded by the courts at large in an affinitf course, and the persons interested, where such recovery was allowed to bar the infeue in tail or throfe in remainder or reversion, till the reigns of El. 4. and H. 7. though in some cases the donee in tail was allowed to charge the intail, and even to bar it. See 1 Rol. A4. 342. Co. Lit. 343. 10 Co. 37. Plow. 439. 2 Le. 335. Co. Lit. 374. 4 Le. 132. 133. 3 Sol. 31. 1 Clastaitet.

When these recoveries were established as a common conveyance, and the bell and fequest of barring the infeue in tail, and thofe in remainder or remainder, the tenant for life began to apply them once more to the purpose for which they were first made. Though the former statutes gave those who had the inheritance a greater advantage, yet the provision made by them being tedious and expensive it was thought proper to make the 32 H. 8. c. 31. which declares all such curious recoveries against the particular tenants to be void in respect to him in reversion or remainder; and though the judges very reasonably determined against this statute, yet the judges did not further proceed, but a forfeiture of the particular easement, because it was a manner of conveyance as much known at that time as a fine or foftemion, and therefore by parity of ratio ought to have the same effect and operation: yet the statute did not fully answer the end for which it was made. See Co. Litt. 356. and the 32 H. 8. c. 31. and 2 H. 7. c. 16. make it void.

For if A. had been tenant for life, and made a lease for years to B. and B. had made a foftemion in fee, the feelee had suffered a recovery, and voucheted the tenant for life, this was no void recovery within the statute, because A. the tenant for life was not feated at th
time of the recovery, for the feoffment of the tenant was a difficult to A. and him in reversion; and the flature makes recoveries of tenants for life in possessions only void against them to whom the reversion then belongs. 10 Co. 45. a. Co. Lit. 362.

Yet where tenant for life bargained and sold his land in fee, and the bargainee suffered a recovery, and vouched the bargainee, this was a void recovery, and a forfeiture within the 32 H. 8. for though the bargain and sale was of the inheritance, yet it passed only for estate for the life of the bargainor, which was the greatest estate he could have, and peradventure, the bargainee was not devested; and therefore, the bargainee being a legal tenant for life in possession, the recovery against him, with a voucher of the bargainee, was void within that act against him in reversion, whole reversion was not turned to a right in the former case. 11 Eliz. 1. Perelman v. Dellin. 1 Co. 15. R.-c.

But the former defect was cured by 14 Eliz. which declares all recoveries (had by agreement of the parties, or by covin) against tenant for life, of any lands whereof he is so forfeited, or against any other voucher over of him, to be void, as against the recoverers and their heirs.

These flatures made no provision for recoveries or re- mainders expellant on estates-tail; and therefore if there be tenant for life, remainder in tail, remainder in fee, and the tenant for life suffers a recovery, and vouches the tenant in fee, and the remainders in tail, and concurrence of the common vouches; this is so far from being a void recovery within the said flatures, that the recovery in fee is actually barred by it; for the intended recompence, which the remainder-man in tail is to have against the common vouches, is to go in succeffion, as the estate-tail would have done; and it cannot be a recovery within the said act, because the remainder in tail joined in, who at any time suffer such a recovery to destroy the remainder in fee. 10 Co. 59. b. 45. Fenning's case. Co. Lit. 362. a. 2 Co. 60. b. C. Eliz. 562. Wifeman v. Crew. Mar 690. C. Eliz. 570.

These common recoveries were no sooner allowed of by the judges to bar estates-tail, but men began to improve in the making of a common way of conveyance, and to declare uses upon them, as upon fees and foifeements. Hence it is, that the slature, which provide against any alienations or discontinuances of particular tenants, provide for the same time against their recoveries; thus 11 H. 7. c. 20. declares all recoveries, as well as other discontinuances by fee or foifeement of women tenants in tail, of the gift of their husbands, or their ancestors, to be void; so a recovery against husband and wife of the inheritance of the wife, without any voucher, is declared to the 32 H. 8. c. 28. Thus if the slature says, suffered or done by the husband; for this, like a foifeement by baron and feme in fullblace, is the 2e of the baron only; and so within the slature, but a common recovery suffered by a feme covert, where her husband joins with hers, is good to bar her and her heirs. Deat. and Stow. 54. Co. Lit. 526. a. & Co. 72. 1 Inst. 347. 2 Red. Ab. 205. 10 Co. 43.

1. Who may suffer a recovery; and of what things a recovery may be suffered, and by what names.

2. What estates and interests may be barred by a common recovery; and of fingle and double voucher.

3. Of erroneous and void recoveries, who may avoid them, and by what method.

1. Who may suffer a recovery; and of what things a recovery may be suffered, and by what names.

When recoveries were improved into a common way of conveyance, it was thought reasonable that those, whom the law had judged incapable to aet for their own interest, should not be bound by the judgment given in recoveries, though it was the solemn act of the court; for where the defendant gives way to the judgment, 'tis as much his voluntary act and conveyance, as if he had transferred the land by livery, or any other act in pari

and therefore if an infant suffers a recovery, he may re- serve it, as he may a fine by writ of error, during his minority; and this was formerly taken for law, as well where the infant appeared by guardian, as by attorney, or in person but now the diffolucion turns on this point, that if an infant in fact, or in law, has a recovery, he is a capable person, and he may reserve it by writ of error; but even in this case the writ of error must be brought during his minority, that his infancy may be tried by the inspection of the court, for his seat at full age it becomes obligatory and unavoidable; and in cases of necessity, the court has admitted the infant to appear by guardian, and to suffer a recovery, or come in as voucher; but this too is fel- dom allowed by the court; and upon emergencies, when it tends to the improvement of the infant's affairs, of when lands of equal value have been forfeited on him, and these recoveries have been allowed by the court; for the judges, the infant could not let them slide or shake them; besides, if such recoveries be to the prejudice of the infant, he has remedy for it against his guar- dian, and may reimburse himself out of his pocket, to whom the law had committed the care of him. 1 Blou. 235. 2 Red. Ab. 395. Co. Lit. 381. b. 10 Co. 43. 1 Rol. Abr. 732. 741. 1 Std. 321. 322. 1 Lev. 142. 2 Sound. 94. C. Eliz. 471. Hol. 169. Cro. Car. 307. 5 Med. 209. 11 Med. 43. & 2 Red. Ab. 395. cont. See 2 Salt. 657. Where J. S. being of the age of nineteen years, his father who was not in re- marks, had made a will, and had left all his goods to his footmen, and he petitioned the King for leave to suffer a recovery, who refered it to the judges of the Common Pleas, be- fore whom several precedents of recoveries suffered by infants on Privy seales were produced; but the judges ob- serving, that most of them were on the petitions of their fathers on their accounts, and an equal recompence given, and that there was no such consideration in this case, refused; but for this case the above authorities, and 1 Vern. 451.

If an infant suffers a recovery, and appears by attor- ney, it seems he may reserve it after his full age; be- cause here it may be discovered, whether he was with- in age when the recovery was suffered, because it may be tried per pari, whether the warrant of attorney was made by him when he was an infant. Sit. 321. 1 Lev. 142. 11. 

A recovery, as well as a fine by a feme covert, is good to bar him, because the præcept in the recoveries is, that the covin shall suffer the writ of covin in the feme to bring her into court, where the examination of the judges destroys the presumption of law, that this is done by the coercion of her husband, for then 'tis supposed they would have re- fused her. 10 Co. 43. a. 3 Red. Ab. 395. Recoveries suffered on a covenant made by the heir, or by common assurances to establish men in their purchases, are very much favoured by the judges, and not compared to judgments in other real actions or adversary suits. 2 Inst. 353. Pap. 22. 23. 2 Vent. 32.

So if a man be feiled of a reputed manor, which really is no manor, and he suffers a common recovery of this by the name of a manor, this is a good recovery of the lands which constituted the reputed manor; though strictly speaking there is no manor recovered, because the law supports this, as all other conveyances, according to the intention of the parties; for it would be feve to vacate this conveyance, when the purchase was promised by the agent for the owner under such a denotation. 2 Red. Ab. 396. 6 Co. 62. 2 Red. Rep. 57. 2 Vent. 32. 32. See C. Eliz. 524. 727. & 1 Keb. 591. 691. cont.

So if a recovery be suffered of a manor with its ap- partures, as those which have been recorded parcel of the manor shall pass; for 'tis but equitable, quaet voluntas Dominii volenti sem suum in ulum transferre rata habebatur; and though the recovery does not mention the lands reputed parcel of the manor, but only the manor itself, yet this was supplied by the indenture which was of the manor, and not the indenture of the lands therefore occupied together but two years. 1 Std. 190. 1 Lev. 37. 1 Keb. 591. 691. 2 Med. 235. S. C. between Tynn and 7 H. 

Tynn
In a writ of error to reverse a common recovery, the tenant to the praecipe was made by a fine, the recovery was suffered, and the fine was reversed; yet it was held only to be a good tenant to the praecipe at the time.

If a manor be given to a man and a woman, and the heirs of the body of the man begot on the woman, and they intermarry, and then the husband suffers a recovery of the whole manor; this is good for a moiety, because the husband made before marriage, they had each an undivided moiety, which, if eaten over, the recovery can operate but for a moiety, because the husband only was tenant to the praecipe, and consequently the deman-1470tant only could recover his interest in the manor, which was but a moiety.

If lands are given to a man and his wife, and the heirs of the body of the husband in his lifetime, in his third, and not in the will; and bargained, and sold the land in the parish of Ribton, with covenant to levy a fine, and suffer a recovery to the uses in the deed; but the fine and recovery were only of the lands in Ribton; the question was, whether this recovery would survive for the said land in the parish of Ribton; and though it was objected, that where a place was named in the record, and no more said, 'tis always intended a will; and consequently, that in this case, the fine and recovery being of lands in Ribton, shall pass only the lands in the will of Ribton; and that it was further urged that it was dangerous to extend the recovery to the uses words of the record, because the deed declares the intention of the parties to pass the lands in the parish, insomuch as by such construction no man could tell what was conveyed by fines and recoveries, but must for greater certainty have recourse to a pocket deed; yet the court, in favour of common recoveries, extended this recovery to the lands in the parish of Ribton; and the rather in this case, because the verdict found, that he that suffered the recovery had no lands in the will, and consequently that the recovery must be void, if not extended to the parish; and though parishes are not so ancient as wills, and therefore till lately were never inserted in writs, yet not the fine, and the law takes notice of them. 2 Priz. 31, 32. Sir John Ousow's case.

1. 1 Mod. 250, and 2 Mod. 233. S. C. But for this see Hutt. 105. Godh. Cro. Car. 269. 2 Rol. Abr. 20. Cro. Jot. 574. 120. 1 Mod. 206. 2 Mod. 47. 1 Foy. 143, 170. 1 Mod. 78. 2 Ritz. 802, 821, 848. Owen 56, and 2 Mod. 236. Stent v. Brown, which seems to be reconcilable with this diversity, that in those cases there were lands upon which the fine might operate, viz. the lands in the street, without taking in the parish of Street to carry the lands in Walton, a will of that parish; but here if those in the parish should not pass, there was no other to pass.

2. What estates and interests may be barred by a common recovery, and of fine and double voucher.

In respect to eftates-tail, and the barring of them by recovery, what is principally to be regarded is, that there must be a legal tenant in the estate or tail, and that that estate or tail be before the time of the writ purchased, or at the return; for since eftates-tail are only barred on account of the intended recumph which is to follow the defendant of the tail, where there happens to be no tenant to the praecipe, the demandant can really recover nothing; and consequently the supposed tenant hath no recumph in value against the voucher, for that is only given against the vouches in consideration of what the tenant loft. Hdb. 262.

As if there be tenant for life, the remainder in tail, the remainder in fee, and the tenant for life with the remainder in tail suffer a recovery, with voucher over, this shall not bar the remainder in tail, nor the remainder in fee, because the remainder-man in tail was not tenant to the praecipe, and consequently could not have the intended recumph, because that was given in lieu of the estate recovered, which was no greater than the estate for the only being legal tenant to the praecipe. 1 Rol. Abr. 395. Dyer 352. Cot. Eliz. 260. Moor 255, 256.

In a writ of error to reverse a common recovery, the tenant to the praecipe was made by a fine, the recovery was suffered, and the fine was reversed; yet it was held that there was a good tenant to the praecipe at the time.

If a man or woman have in their hands, and the heirs of the body of the man begot on the woman, and they intermarry, and then the husband suffers a recovery of the whole manor; this is good for a moiety, because the husband made before marriage, they had each an undivided moiety, which, if eaten over, the recovery can operate but for a moiety, because the husband only was tenant to the praecipe, and consequently the demandant only could recover his interest in the manor, which was but a moiety. 1 Abor 95. Brabrook's case.

If lands are given to a man and a woman, and the heirs of the body of the man in his lifetime, in his third, and not in the will; and bargained, and sold the land in the parish of Ribton, with covenant to levy a fine, and suffer a recovery to the uses in the deed; but the fine and recovery were only of the lands in Ribton; the question was, whether this recovery would survive for the said land in the parish of Ribton; and though it was objected, that where a place was named in the record, and no more said, 'tis always intended a will; and consequently, that in this case, the fine and recovery being of lands in Ribton, shall pass only the lands in the will of Ribton; and that it was further urged that it was dangerous to extend the recovery to the uses words of the record, because the deed declares the intention of the parties to pass the lands in the parish, insomuch as by such construction no man could tell what was conveyed by fines and recoveries, but must for greater certainty have recourse to a pocket deed; yet the court, in favour of common recoveries, extended this recovery to the lands in the parish of Ribton; and the rather in this case, because the verdict found, that he that suffered the recovery had no lands in the will, and consequently that the recovery must be void, if not extended to the parish; and though parishes are not so ancient as wills, and therefore till lately were never inserted in writs, yet not the fine, and the law takes notice of them. 2 Priz. 31, 32. Sir John Ousow's case.

1. 1 Mod. 250, and 2 Mod. 233. S. C. But for this see Hutt. 105. Godh. Cro. Car. 269. 2 Rol. Abr. 20. Cro. Jot. 574. 120. 1 Mod. 206. 2 Mod. 47. 1 Foy. 143, 170. 1 Mod. 78. 2 Ritz. 802, 821, 848. Owen 56, and 2 Mod. 236. Stent v. Brown, which seems to be reconcilable with this diversity, that in those cases there were lands upon which the fine might operate, viz. the lands in the street, without taking in the parish of Street to carry the lands in Walton, a will of that parish; but here if those in the parish should not pass, there was no other to pass.

2. What estates and interests may be barred by a common recovery, and of fine and double voucher.

In respect to eftates-tail, and the barring of them by recovery, what is principally to be regarded is, that there must be a legal tenant in the estate or tail, and that that estate or tail be before the time of the writ purchased, or at the return; for since eftates-tail are only barred on account of the intended recumph which is to follow the defendant of the tail, where there happens to be no tenant to the praecipe, the demandant can really recover nothing; and consequently the supposed tenant hath no recumph in value against the voucher, for that is only given against the vouches in consideration of what the tenant loft. Hdb. 262.

As if there be tenant for life, the remainder in tail, the remainder in fee, and the tenant for life with the remainder in tail suffer a recovery, with voucher over,
make a good tenant of the whole; but the court held her wife. 4thly, It was held, that the estate-tail to 1, and E. being determined, the remainder to D. in tail vile general, and all the other remainders depending thereon were barred absolutely by this recovery; for D. might have recovered the remainder of all the estates he had or had, and consequently a comes in representation of the remainder to himself in tail male general, and then the recouperation in value goes to that, and also to all the other remainders depending thereupon, and be confecution all are barred by that. But this is not the case. 5thly, that this estate-tail to 2, because he was actually feised of that at the time of the præcipe brought against him; for his diflief did not devest his own estate, but only gave him a defeasible estate for life, which was immediately merged in his remainder, because the estate for life and his inheritance could not subfift together; at the time in 3, 395. After this, we fee how estate-tail are barred by recoveries, and the uses of the fingle and double voucher; and in this respect the operation of a recovery is correspondent to that of a fine, for they are but different ways of transferring estate-tail for the fecurity of purchasers; but the operation of a fine differs from a recovery in refpefl to strangers who have recoveries or remainders expedient on estate-tail; for a fine does not bar them, unless they omit to make their claim within five years after their revocation or remainder is to execute; but a recovery reaches them immediately, and at the same time bars the estate-tail and remainder on account of a fine for real or imaginary recovery. Co. Lit. 372. a. 2 Rol. Ab. 396. Mar. 156. Bro. tit. Recovery 29, 55.

As and a common recovery suffered by tenant in tail bars all recoveries and remainders expedient, fo it avoids all charges, leaves and incumbrances made by thole in reversion or remainder, and the recovery shall free the land from any fuch charge for ever; as where he in remainder upon an estate-tail granted a rent-charge, and the tenant in tail suffered a recovery; and it was adjudged, that the grantee could not distrain the recoveror; for since the rent was only at first good, because of the poftibility of the grantor's remainder coming in position, with that poftibility ceafs by the recovery of tenant in tail, fuch grant must then become void. Mor 158. Co. Eit. 718. 1 Co. 63. Capell's cafe. 2 Rol. Ab. 396. Mor 154. 4 Lem. 150. &c. Poph. 5, 6.

3. Of errores and void recoveries, who may avoid them, and by what method.

It is already observed, that a recovery suffered by an infant in perfon fhall not bind him; but though he may avoid it, yet it can't be done by any entry in pais, but by writ of error. But if this error be not made during his minority; for the judgment of the court being on record must be fet aside by an act of equal notoriety; but an infant may avoid a recovery by writ of error, as well where he comes in as vouchee, as where he is tenant to the præcipe; for tho' frivolly speaking the recovery is not against him, where he is not tenant to the præcipe, yet for the greater security of the purchaser, and to strengthen the recovery by the use of the double voucher, the perfon, who really has the right to the land in demand, comes in as vouchee, and then by vouching over the common vouchee, has one recompence for all his titles; and consequently if he be the perfon that really loses the land, he ought in reason to reverse the recovery, as well where becomes in as vouchee, as where he is fefe of the land and tenant to the præcipe. 1 Rol. Ab. 742. 1 Lem. 142. 1 Rol. Ab. 731.

If tenant in tail within age come in as vouchee by attorney in a common recovery, he in reversion or remainder, must sign this form for the futurity of the recovery; and where a man's interest is bound by another's act, 'tis but reasonable he should be allowed to free himself from the mischief of it by taking advantage of any error in it. 1 Rol. Ab. 755. 756.

If A. be tenant in tail, the remainder to B. and A. suffers an erroneous recovery, and the common vouchee relieves to the recoveror; yet if A. dies without issue, B. may, notwithstanding the relafe, reverse it by writ of error,
error, for the common vouchee is only called in for form; and as he has really no interest in or title to the land; so really neither does he make any recompense to the person that holds the land; and therefore it is only a case as an unreasonable way of the imperfect recompense so far as to suppose him a real sufferer, and thereby give him the privilege of setting aside a conveyance which he is in no way affected by.  "C. Eliz. 2. 3 Lord Norris v. Marquis of Winchelsea."

In a writ of error to reverse a recovery suffered by an infant who appeared by guardian, the error assigned was in the entry of his admission by guardian, viz. Counsel, eft per curiam hic quod A. B. sequatur pro J. S. Armig. quis infra attest exspect ut guardianus praedictus. J. S. Whereas as it was objected, that since the infant was tenant to the writ, it ought not to have been entered upon the general register, it must be defended for the infant; but this exception was disallowed, because the words ad sequendum, for the infant signify the fame with ad deferdendam, for the infant; for ad sequendum, is to follow and attend the buffets and suit of the infant; and the guardian being as- signed to do that, much likewise have been assigned to take care of, or to take upon him the defence of the infant's suit. 2 Sound. 94. 95. 1 Mod. 48. Hylkett v. Lee.

In a common recovery the writ of error bears date 1 Martii, in Eliz. ret. de Venus in qua parte fepotam quadragemini proxim futurum, the first day of March being that the first day in Lent, the recovery fell in the usual form of a writ of error; and in this case the error assigned was, that the words proxim futurum should be referred to Quadragemini, and then the writ of error was not returned till Monday in the fourth Week of Lent, 8 Eliz. which was the time the tenant was to appear; and consequently this recovery must be void, because here was judgment upon a voucher, and a recovery in value, before the writ was returned, before which the court has no power to proceed. But it was answered and resolved that since proxim futurum were not written at large, they may be indifferently applied either to die Venus, by supposing them to stand for proximo futuro, or to guard- ian, and that the same may be allowed to the party with the writ of error. But this the error assigned was, that the words proxim futurum should be referred to Quadragemini, and whereof the words abbreviated may be indifferently referred, 'tis but reasonable to give them such a relation, as will best support the recovery, which is but a voluntary conveyance, ut res magis valiat quam peraret; and if the words had been at large proxima futura, then they must necessarily be referred to quadragemini, and then the objection had been good, and the recovery for that reason must have been void.

In error to reverse a recovery, the errors assigned were, 1. That the writ of entry was brought of an advowson of a rectorcy, and allo of a rent influing out of the fame rectorcy, the petition, and juramento, and the writ of error to reverse this rectorcy, and allo of the thing vicius; but this was disallowed, because the advowson and rectorcy are different things; for he that has the advowson has only the right of presentation, but he that has the rectorcy has the profits of the church, out of which the rent influes; and consequently there can be no his petition in this cafe, because by the demand of the advowson of the rectorcy, and of the rent influing out of the rectorcy, the demandant recovers more than by a demand of the rectorcy only; another error assigned was in the demand of a rent or pension of four marks influing out of the rectorcy, which is so uncertain a demand, a pension being a different thing from a rent, and recoverable therefore in the Spiritual court; but this too was disallowed; because it is plain there is but one sum of four marks demanded, and the pension or rent must be synonymous here, because they are demanded as influing out of the rectorcy; and therefore the pension cannot be in nature of an annuity, which character is because it is capably to influe out of the rectorcy. Poph. 23. 5 Co. 41. 6.

In a writ of error to reverse a common recovery, the error inflicted on was, that the warrant of attorney of the vouchee bore date before the Summanuas ad warrantiam, issued, yet the judgment was affirmed, because the vouchee made no alteration before the Summanuas ad war- rantiam, and make his attorney, and therefore to support the common recovery, it shall be presumed the vouchee was present in court and appointed his attorney, and so the de minimus for the warrant and the Summanuas ad warrantiam, void. 1 Stid. 213. 1 Lev. 130. Raym. 70. 3 C. Wyll v. Ralphs.

In a suit of impot the plaintiff intitiles himself to an ad- vowson by a recovery suffered by tenant in tail, in pleading which recovery he alleges two to be tenant to the praecipe, but doth not how they came to be so, or what conveyance was made to them, by which it may appear that they were tenants to the praecipe; and after search of precedents as to the form of pleading for such recoveries, the court inclined that it was not well pleaded, but delivered no judgment. 2 Mod. 70. Wakeman v. Blackwell. See Clarke's, &c. &c. &c. Title recovery.

Recoupe, (From the French Recoupe) Signifies the keeping back and stopping of something which is due in law we use it for to defalk or difcount; as if a person hath a rent of ten pounds out of certain lands, and he defils the tenant of the land, in an affize brought by the defiler, if he recovers the land and damages, the defiler shall recoute the rent due in the damages: so of a rent-chargc influing out of land, paid by the faid tenant, to another, &c. he may recoupe the same. Terms of Law. Dyer 2. And an inkeeper may keep back and defain his guft's horfe, &c. till he pay for his entertainment: But that a man receives another's cattle to paftrage, it is faid may not do fe, unless it be agreed between them at the time the cattle were borrowed. Terms of Law. Dyer 2.

Receiv'd, (Fr.) Cowardly, fainted hearted, and was formerly a word very reproachful. Fleta, lib. 3.

Receiv'd, To cite a criminal to justice, or to accuse a criminal. 4o Hen. p. 655.

Reta pula Regis, The King's right to a prize, or taking of one but or pipe of wine before the ban, and another behind the maff, as a custom for every ship laden with wine. King Edu. 1. in a charter of many privi- leges to the barons of the Cinque-ports, discharged them of this duty. Cawell, edit. 1727.

Redeit, Claim of right, or appeal to law for reco- very.ms

Reductio, Reductio, right, legal dues—Si qui dei restitutiones per victum defuncti, emendet, i.e. if any one does violently detain the rights of God, (tithes and ob- lations) let him be fined or amerced, to make full fatif- Faction. Legea Hen. 1. cap. 6.

Redo, Requerire de recho, To cite one to justice. Leg. Hen. 1. 43.

Redo, Is a writ of right, which is of fo high a nature, that whereas other writs in real actions are only to recover the poiffession of the land or tenements in question, which have been loft by our ancestor or ourselves; this writ of right is for the recovery of any thing which none of our ancestors or we had, and also the possession of the thing, whereof the ancestor did not fold or sear; and whereby are pleaded and tried both their rights together, viz. as well of poiffession as of property: So that if a man once lofe his or her cause upon this writ, either by judg- ment, affile or battel, he is without all remedy, and shall be excluded per eemnionem rei judicatis. Bridton, lib. 5. tract. 1. cap. 1. & seq. It is divided into two kinds, 1. Redem patens, a writ of right patent, and Redem clausum, a writ of right clofe. This the Civilians call justicum petillum. The writ of right patent is so called, because it is fent open, and is in nature the highest writ of all others, lying always for him that hath fee-fimple in the lands or tenements fued for, and not for any other. And when it lieth for him that challengeeth fee-fimple, and in what cafes, fee F. N. B. fol. 1. 6. where he speakes of a special writ of right, according to the custom of London. This writ also is called Brov Magnatum of the Realm, and the Litigation of the Realm, Form. 2. fol. 37. 3. fol. 1. A writ of right clofe, is a writ directed to a lord of ancient demesne, and lieth for those who hold their lands and tenements by charter in fee-fimple, or in fee-tail, or for term of life, or in dower, if they be ejected out of such lands, &c. or diifolved. In this case a man or his heirs may sue out this writ of right clofe, di- rected to the lord of the ancient demesne, commanding 4
Receiv'd to do him right, &c. in his court. This is called treet parum de renta. Reg. Orig. fol. 9, and Briston, cap. 120, in fana, also F. N. B. fol. 15, &c. Yet once, that the writ of right may be extended in use than the original intention; for a writ of right of dower, which lies for the tenant in dower, and only for term of life, is patent, as appears by F. N. B. fol. 7. The like may be laid in divers other cases, of which fee the table of the Register Original, vol. 4, &c. This writ is properly the a Court between kinsmen that claim by one title from their ancestor. But how it may be thence removed, and brought either to the county or to the King's court, fee Futa, lib. 6, cap. 3, &c. Glandole seems to make every writ, whereby a man sues for any thing due unto him, a writ of right. See Ant. R. 29. See Nuti, Nat. Brev. Recto de abbatiation eccleliae, is a writ of right, lying on a man that hath right of adversus, and the parson of the church dying, a stranger presents his clerk to the church, and he not having brought his action of distrain, nor had he at his own request, within six months, but倘若 the stranger to usurp upon him. And this writ he may only have that claimeth the advowson to himself and to his heirs in fee. And as it lies for the whole advowson, so it lies also for the half, third or fourth part. Old Nat. Brev. fol. 24. Reg. Orig. fol. 29.

Recto de cattività terrae & hereditatis, Was a writ of right, and no cause being, dicing of him by the statute of 12 Car. 2, cap. 24, it is become usefeles as to lands held in capite, or by knights service, but not where there is judgment in fagace, or appointed by the last will and testament of the ancestor. The form of it, fee in F. N. B. fol. 135, and Reg. Orig, fol. 151.

Recto de dote, is a writ of right of dower, which lieth for a woman that hath received part of her dower, and purpose to demand the remainder in the same town, against the heir, or his guardian if he be a ward. Of this fee more in Old Nat. Brev. fol. 5, and Pitsberith, fol. 7. Reg. Orig. fol. 3, and the New Book of Entries, verb. Deni.

Recto de docto unde nihil habet, Is a writ of right, which lies in case where the husband having divers lands or tenements, hath affur'd no dower to his wife, and theo thereby is driven to sue for her thirds against the heir, or his guardian. Of this do, see in Old Nat. Brev. fol. 5.

Recto de rationabilis parte, Is a writ that lies always between priories of blood, as between in Guvilkind, or fitters, or other coparceners; as nephes or nieces, and for land in fee-simple. For example, If a man lease his land for term of life, and afterwards dies, leaving behind him, and the whole estate of life dies also, the one fitter entering upon all the land, and so decoy the other; the fitter so decoyed shall have this writ to recover past. F. N. B. fol. 9. Reg. Orig. fol. 3.

Recto quando Dominus reministe, Is a writ of right, which lies in case where lands or tenements are that are in the king's hand, are in some demand by a writ of right; for if the lord hold not court, or otherwise at the prayer of the demandant, or tenant, shall tend to the court of the King his writ, to put the cause thither for that time, (lying to him at other times the right of his sigillatory) then this writ lies out for the other party, and hath the name from the words contained, being the true occasion thereof: This writ is claus, and must be return'd before the justices of the Common Bank. Old Nat. Brev. fol. 16. Reg. Orig. fol. 4.

Recto for distraint, Is a writ that lies where a lord in the King's court of Common Pleas shows upon his own demur and demand by a writ of right, or upon which distraint he shall have this writ in case if the lord aver and prove, that the land is holden of him; shall recover the land for ever. Old Nat. Brev. fol. 150, which is grounded upon the statute of Wifum. 2, cap. 2.

Recto, (Lat.) Signifyes a governor; and regtor eccle- siae parabihii is he that hath the cure or charge of a parochial church, qui tantum jus in excelsa parabihii bakes, quantum possessae, in ecclesia collegiata: It hath been over-ruled, that regtor ecclesie parabihii, is he that hath a parsonage when there is a vicarage endowed; and he that hath a parsonage without a vicarage is called per- fons; but this distinction seems to be new and fable, Bradden certainly ues it otherwise, lib. 4, tract. 5, c. 1. Yet in these words, in ecclesiasticae parabihii commendatam capitatis officio, qui infituet lice fere officiis & ordinarius ut perfine; where it is plain, that regtor and perfona are confounded. Observe also these words there following. Item dici possint rectorres canuntii de re- clisii prae- tendant. Item dici possint rectorum vel quis ubicu ad- moti, prior & ali, qui habeant ecclesias ad proprias s. Cowell, edid. 1727. See Antic.

Rectura, (Registroria) Is taken for an intire parish church, with all its rights, glebes, tithes and other profits whatsoever. The word rectura was often used for the rector's manse, or parsonage house. See Paroch. Antig. p. 549.

Rectum (Commons rectum) A trial at law, or in common course of law. Siest ad rectum, to find trial. Cowell, edit. 1727.

Rectum, (Effe ad rectum in curia Domini,) The fame with fiate ad rectum. Leg. Hn. 1, cap. 43, 55.

Rectum rogat, To petition the judge to do right. Leg. Inc., 1, c. 13, 15.

Rectus in curia, Is verbatim, right in court, and signifies one that stands at the bar, and no man objects any thing against him. Smithis Republ. Angl. 1, 2, c. 3. We take it also, that when a man is outlawed, he is extra legem populi; so when he hath revered the outlawry, and can participate of the benefit of the law, he is reftus in curia. Cowell, edit. 1727.

Recevant, Is a person who refuses to go to church, and worship God, after the manner of the church of England as by law established. The penalty of 20 l. a month for nonconformity, 23 El. r. c. 5.

This act not to abridge ecclesiastical jurisdiction, 23 El. c. 1, 3, & 5.

A recevant conforming to be discharged, 23 El. c. 1, 3, & 5.

Fraudulent conveyances to avoid the penalties of recevancy made void, 29 El. c. 6.

Conventions of recevancy to be certified into the Ex- chequer, 23 El. c. 2, 3, & 4.

The crown may seize the goods and two-thirds of the lands of recevants, for non-payment of the 20 l. a month, 29 El. c. 6, & 7.

Recevants shall not depart five miles from their dwelling or birth, 33 El. c. 2.

To forbid such recevants, 35 El. c. 2, c. 5.

For want of ability to pay the penalty, they shall ab- jure, 35 El. c. 2, c. 8.

Jesuits and priests refusing to answer shall be committed, 35 El. c. 2, 3, & 11.

The manner of a recevant's submission, 33 Elia. c. 2, c. 15.

None shall go or send any other to a popish farminy, 1 Jac. 1, c. 4, & 5, 61 & 12 W. 3, c. 4, & 6.

Recevants conforming, shall receive the communion yearly, 3 Jac. 1, c. 4, & 9.

Convictions to be certified into the Exchequer, 3 Jac. 1, c. 4, & 9.

Serving in foreign state without oath felony, 3 Jac. 1, c. 4, & 18.

Bishops or two justices may render oath of allegiance, 3 Jac. 1, c. 4, & 18.

Where persons refusing the oaths inlact praemunire, 3 Jac. 1, c. 4, & 14, 41.

Withdrawing from office, from obedience or reconciling them to Rome, treason, 3 Jac. 1, c. 4, 22.

The penalty of 12d. for every default in not coming to church, 3 Jac. 1, c. 4, & 27.

The penalty of retaining recevants, 3 Jac. 1, c. 4, f. 32.
Recusants refrained from coming to the presence of the King or the Prince, 3 Jac. 1. c. 5. 30 Car. 2, f. 2.
To depart from London, 3 Jac. 1. c. 5. f. 3.
Difabled from practising law or physic, or bearing office, 3 Jac. 1. c. 5. f. 8.
Subject to the disabilities of an excommunication, 3 Jac. 1. c. 5. f. 11.
Penalty for not baptizing their children at church, 3 Jac. 1. c. 5. f. 14.
Disabilities of children sent beyond sea for education without licence, 3 Jac. 1. c. 5. f. 16.
Recusants difabled from prebend to a church, or granting an advowson, 3 Jac. 1. c. 5. f. 18. Extended to persons profecing the popish religion, 12 Ann. c. 14. 11 Geo. 2. c. 17. f. 5.
The pretentation to churches of recusants, given to the universities, 3 Jac. 1. cap. 5. f. 10. And of persons refusing the declaration, 1 W. & M. c. 26.
Recusants difabled from being executors, administrators or guardians, 3 Jac. 1. c. 5. f. 22.
Next of kin to have the custody of children as guardian in foecacy, 3 Jac. 1. c. 5. f. 23.
Penalty of importing popish books, 3 Jac. 1. cap. 5.
Recusants houses may be searched for relics, 3 Jac. 1. c. 5. f. 26.
Arms and ammunition of recusants to be seized, 3 Jac. 1. c. 5. f. 27.
Penalties on married women recusants, 7 Jac. 1. c. 6. f.
Penalties on going beyond sea, or sending children beyond sea for popish education, 3 Car. 1. c. 3.
Not to incur the penalties if they receive the sacrament, &c. fix months after their return, 3 Car. 1. c. 3. f. 24.
Penalties on persons not educated in the popish religion, sending their children to be educated, 25 Car. 2. c. 2. f. 8.
Persons in office to take the oaths and test, 25 Car. 2. c. 2. f. 11. 2.
Peers may take the oaths, &c. in parliament, 25 Car. 2. c. 2. f. 12.
Members of either house of parliament not making the declaration against popery, to be recusants convicled, 30 Car. 2. f. 2.
Recusants may come into the King's presence, by licence of six Privy counsellors, 30 Car. 2. b. 2. f. 12.
Defenders taking the oaths in Chancery to be dischargeable of popish oaths, 30 Car. 2. b. 2. f. 13.
Third refusal of the declaration against popery by any person, convicled of recusancy, 1 W. & M. c. 8. f. 9.
Recusants difabled to nominate to hospitals, 1 W. & M. c. 26.
Reputed papists refusing the oath, to remove ten miles from London, or be convicled of recusancy; except trademen registering their names, &c. 1 W. & M. c. 9.
Persons in office to take the test in six months, 16 Geo. 2. c. 30. f. 3.
Conviction of recusants excepted out of general pardon, 2 Geo. 2. c. 53. f. 56. See Papists.
Red, Is an old word, signifying advice, from the Sax. Redbiorn.
Redbiana, Is one who advised the death of another.
See Deblina.
Red book of the Exchequer, (Liber rubris Scotiae) A manuscript volume of several mifcellany treatises, in the keeping of the King's remembrancer in the office of Exchequer. It has some things (as the number of the hydes of land in several parts of our countries, &c,) relating to the times before the conquest. The ceremonies us'd at the coronation of queen Elizabeth, wife to Henry 3. are there at large. There is likewise an exact collection of the escheats under Henry 2. Rich. 1. and King Edw. compiled by Alexander of Stoweford, archdeacon of Saltfr, and prior of St Paul's, who died in the year 1526. 31 H. 3. See Nicholas's Hist. Library, part 3. p. 100.
Redbourn, Is used subfubtively for the claue in a

leafe, &c. whereby the rent is refered to the lefior. Cf. 1. 2. f. 72. Cromwell's cafe. Wood's Ifla'. 226. See Lefir.
Reckittarium. A rental, a book or roll, wherein the rents and services of a manor, or other estate, are set down. See Scalw, edit. 1727.
Reckittarius, A renter, a tenant. Lib. 1b.
Reclamation, (Reddittio) A surrendring, or refurreting; being a judicial confession and acknowledgment, that the land or thing in demand, belongs to the demandant, or at least not to the person fo surrendring. Statute 34 & 35. H. 8. cap. 215.
Redemption, (Redemtio) A ransom, or commutation, by the old Saxon laws, a man convicted of a crime, paid such a fine, according to his ability, or the estimation of his head, pro redemptione fui, or ad redemptionem. Cowlil. edit. 1727.
Redemption of mortgage. See Mortgage.
Redeavil, Bound or obliged to another for some benefit received. Lib. 1b.
Redefinus. (Redefinna) Is a difliffe made by him that once before was made and adjudged to have difflufed the fame man of his lands or tenements for which there lies a special writ, called a writ of redefinna. Old Nat. Bre. fol. 106. F. N. fol. 188. The punishment for redefinna, see in the statute 52. H. 3. cap. 8. It is also taken for the writ lying for a redefinna, Reg. Orig. 206, 207. See 18 Vin. Abr. 205-272.
Redmans or Raddmans. Domedays of. See Costefiras.
Redner, (Redner) The principal, a person, as the fender, Reg. E. E. fender vofl
dant, lib. 11 Car. f. ant in dominis & 6 Burgensii & 3 Redmanis, & 8 Fill. & 8 Bouret. These Redmen may be the fame with Redwhites, who by the tenure or custom of their lands, were to ride with or for the lord of the manor, about his bufines or affairs. Cowlil. edit. 1727.
Redbushes. Are those who buy bolen cloth, knowing it fuch, and change it into some other form or colour, that it may not be known. Britton. cap. 29. Crompton's Fyällt. fol. 193. & 3 Ifl. fol. 134.
Redbrick. (From the French, Renter, to enter again) Signifies the returning or retaking that poftiffion, which we had lately loft. For example, if I make a lease of land or tenement, I do therefore forego the poftiffion; and if I do condition with the leflee, that for non-payement of the rent at the day, it shall be lawful for me to re-enter; this is as much as if I conditioned to take again, the lands, &c. into my own hands, and to recover the poftiffion that I have given away, without the affiflance of judge, or other process. Cowlil. edit. 1727.
Redechange, Is the like sum of money payable by the drawer of a bill of exchange which is returned profecled, for the exchange of the sum mentioned in the bill back again to the place whence it was drawn. Lex. Mer. 398.
Redcurrent. Is a second extent made upon lands or tenements, upon complaint made that the former extent was partially performed. Bro. Tit. Extents. fol. 313.
Redefer, To take away, or rob. Leg. Hen. 1. c. 83.
Redextitio, (From Lat. Referir) A dinner or supper. Sometimes it is taken as a duty incumbent to poor, to give fupper and the proceedings, &c. Cowlil. edit. 1727.
Redetitiosa. (Redestititia) That place in monaftryes where the monks ufed to eat. So the halls in colleges and inns of court may properly be called refetitia, places wherein the scholars and students eat and refetium themselves. Cowlil. edit. 1727.
Redevolution. The reformation of law, is where a matter is refered by the court of Chancery to a matter, and by the courts at law to a prohotonary or fecondary, to examine and report to the court. 2 Lii. Atq. 432.
In Chancery by order of court, irregularities, exceptions, matters of account, &c. are refered to the examination of a matter of that court. In the common law R. mat-ters of account, &c. are referred to the court, or to some undue proceedings in a cause by either of the parties, are proper matters of reference under the fecondary, and for him in some
some ordinary cases to compose the differences between
them; and in others to make his report how the matters to
stand, that the court may settle the differences according
thereunto in due order. Particular, if a marked
in difference between the plaintiff and defendant be
referred to the fecondary, and one of the parties will
not attend at the time appointed, after notice thereof
given, to hear the busines referred; the other party may proceed in
the reference alone, and get the fecondary to make his
report without having the parties present. See Rep. 168.

See Rep. 272.

Referentary, (Referendariz,) Is the fame as the
muses of refquest are to the King among us; or
mores, as it is expressed, at the times of the charter of the
endorner of the monadony of St. Peter and Paul
in Canterbury, dated Anno Domini 605. where it is
indorsed, Ego Angmonus referendariz approbo. Cowell,
edit. 1727. See Spelman.

Refugium, A faxuary or privilege of the church. 
Cam. mon. iux libertate & refugio ecclefei Santi Petri de
Landevia, &c. Monufition, 3 tom. pag. 122.

Refullus aquar, High-water, or return of a feafram,
when it is dammed or flopt for the use of a mill. 
Man. Antig. 2 tom. 913.

Refunding, An attorney, lying ill of the fick-
ness of which he afterwards dies, takes back his clerk
and all the money he had received at any times, and by articles agrees with the father of B. to return 60l. of the money if he died within a
year. A. died within three weeks. The executor of
A. was decreed to pay back 100 guineas. Ver. 460.

A. was indebted to B. by mortages in 400l. principal
money, and died leaving J. S. executor. On a bill in Chancery, for payment of debts of A. out of lands
charged with the fame, the matter reported 400l. due
on the said mortgage, and the executor received the whole
400l. but afterwards it appeared that 353l. 13s. 4d. had
been paid to B. the teftator by A. in his life-time. And
the old fum of £353. he had given to the tenant, brought
a bill to be relieveed against this over-payement; the executor
defendant pleaded all the former proceedings, and alfo
that he, before any notice of the over-payement, as executor of
B. had paid away the 400l. in the debts of B. The
matter of the Rolls decreed the executor to repay the
surplus, and he to be at liberty to sue fuch creditors, as
his mistake he had paid, to refund; and this decree was
affirmed by Lord Chancellor Cowper, who compared it to
the cafe of a judgment obtained by the executor, and
after reversed in error, and to that of a decree which is
afterwards reversed by appeal; though he faid that in
the cafe of an appeal if the defendant had delayed the
appeal, and would fly fway by whifh the executor paid
away the money to the teftator's creditors, it would be
otherwise; for this would be drawing the executor into
it.

A. for 400l. purchafes B.'s intereft and poftibility in
such an efate to him and his heirs, and leaves to
have his 400l. back, but his bill was finifhed. Fin. Rep. 288.
Hill. 29 Car. 2. Maynard v. Mifby.

A. fells a place in the guard for 400l. to B. who
enjoyed it three years, and then is turned out, and fuggfed
in the bill, but was not relieved, to be by A.'s agreement
purchase, or to have a procuration ordered that what money had been received,
should be paid. 2 Chan. Caffes 82. Hill. 33 & 34 Car. 2.

Covent v. Hammond.

If an executor pays a debt on a fimple contract, there
shall be no refunding to a creditor of an higher nature. 
A. fents. 300. H. & C. 2 Car. 2.

A mortgagee received intereft on an old mortgage after the rate of 8l. per Cent. after the flatute for
reducing it to 6l. per Cent. decreed, and fo confirmed a
former decree, that the 8l. per Cent. paid should be re-
tained, and that the 6l. per Cent. Should not be dflcount-
ated or applieed to the payment of the principal, though
it had been fo paid for fifteen years after the making the

Refufal, Is where one hath by law a right and power
of having or doing something of advantage to him, and
he refufeth it. An executor may make an executorship;
but the refufal ought to be before the ordinary: If an
executor be summoned to accept or refufe the executor-
ship, and he doth not appear upon the summons and
prove the will, the court may grant administration, &c.
which shall be good in law till such executor hath proved
the will; but no man can be compelled to take him the executorship unless he hath intermeddled with the
effe. 1 Lem. 154. Cor. Elia. 858. There is a
refufal of a clerk prefered to a church, for illitterature, 
&c. And if a bishop once refuses a clerk for infuficien-
cy, he cannot accept of him afterward, if a new clerk
is prefered. 5 Rep. 58. 1 Cor. 42. See Benefic.

In adlion of trover and conversion, a demand of the
goods, and refufal to deliver them, must be proved. &c
10 Rep. 56.

Refusantia, (Refusation,) An acquittance, or acknow-
ledgment of renouncing all future claim. Cowell, editi.
1727.

Refugia episcopum, The temporal rights and leg-
ial priviages of a bishop. Brad. Auff. to Hist. of Eng-
land, p. 108.

Regales, The King's ferrants or officers. Wiflen-
ham, anno 1201.

Regali, (mentioned in fax. 1 Eliz. rep. 5.) Are
suburban and sargent, common and particular. The King by his
prerogative oufeth to have every whole call on shore,
or wrecked, in all places within this realm, (unles granted to
subjects by special words,) as a royal fijh. The King
himself shall have the head and body to make oil and
other things, and the Queen the tail to make whale-
bones for the royal outfit and enrichment of the
fishery. m. 25.

Durf. See Trait. de oure Regina, p. 127.

Regalia, (dicitur jura omnia ad sifium fectantium, faith
Spelman.) The royal rights of a King, which the
Civilian reckon to be fix. 1. Power of judicature. 2. Power
of life and death. 3. Power of war and peace. 4. Materi-
els goods, as vails, effrays, &c. 5. Allitterations. And 6.
Minting of money. See Holytale. Also the crown,
feeper with the crofs, feeper with the dove, St. Ed-
ward's staff, four feveral fwordes, the globe, the orb with
the crofs, and other fuch like things used at the corona-
ation of our Kings, are called regalia. See the relation of the
coronation of King Charles the Second in Baker's
Chronicle. And regalia is sometimes taken for the dig-
nity and prerogative of the King. Regalia is also taken for
those rights and priviages which the church enjoys
by the grants and other permissions of the Kings.
Although it is taken for the propriety of the church;
as Regalia Sancti Petri, &c. It fignifies the things and
hereafter mentioned were by Kings to the church,
viz. Copiam in manum nosfum baroniam & 
regia quae archeipofitus Eboram de nafiir tent. 
Pryn. ib. Angl. 2 tom. pag. 231. Those, which in the polle-
ion of the church, were subject to the fame services as all
other temporal inheritances; and after the death of the
bifhop they of right returned to the King, until he in-
herited another with them; which in the reign of Wil-
lam the Conqueror, and some of his immediate fucces-
sors,
for, was often neglected or delayed; and as often the bishops complained thereof. This appears in Ordinarius Vi- tolis, lib. 10, and in many other writers in those days. A registrator is an officer of the very tenuity, thereupon complained against Henry 2. for that Episcopatus vacantes & provincialia per eum commissa, die vocari voluit, et ecclesiepatio sibi applicanda in signum regedit. So in Malm- bury, lib. 1, de Gryl. Pontificum, p. 285.

Regalia fintext, is to do homage or feuity when he is invested with a re- ligion, etc. Regalia pro more sibi temporis semper principi: 7 Calend. October. Cantuarii affijlat. Malmbury, de Gryl. Pontificum, p. 210. de Asfjine. 

Regard, (Regardum and Rewardum, Fr. Regard, i. Aemptus, Rejipsus) Signifies generally any care or diligent respect, yet it hath also a special application, wherein it is only used in matters of the foref, and there two ways, one of them is to signify the regarder, the other for the comprendence of the ground belonging to that office. Cran. Jur. fol. 175., 199. Touching the former, see Manwood in his Peril.-laws, Part 1, p. 194., &c. 198. And touching the second signification, the compend of the regarder's charge is the whole foref, that is, the all ground which is parcel of the foref; for there may be woods within the limits of the foref, that are no parcel thereof, and those are without regard. Manwood, part 2. cap. 7. num. 4. anno 20 Cor. 2. c. 3.

Regardus, (Fr. feign, marking, vigilant) As a vili- 

Regardus, regardus Registrius, is an officer of the foref. Cump. Faw. 

Regardus, is an officer of the foref, appointed to superflive all other offi- 

Regardus intemplato, is a writ issued from the King to the judges not to proceed in a cause which may prejudice the King, until he is advised. King James I. granted the office of superflivato in C. B. to one Mitcheil, and thereupon Brownell, Chief prothonotary, brought an af- 

Regio inconfulto, is a writ issued from the King to the judges not to proceed in a cause which may prejudice the King, until he is advised. King James I. granted the office of superflivato in C. B. to one Mitcheil, and thereupon Brownell, Chief prothonotary, brought an af- 

Regio attentata, is a writ whereby the King gives his royal assent to the election of a bishop or abbot. Reg. Orig. fol. 294. 

Registrator, (Registratorius) The writer and keeper of a register; in Lat. registrarium. Registrator is also the name of that officer, who supervised and took forms of the writs used at the Common law, called the Register of writs, or of the Chancery: Of which thus Spelman, Co- 

due dictur quo trivij, regimur, minor actionis quum judi- 

cialia formularum infebrantur; hujus exitus memin-
the register deceased, together with the instrs for the said register, shall appoint a person to execute the office, for whose devisor the security shall be answerable.

Sect. 7. All memorials shall be in writing in vellum or parchment, and directed to the Register; and in case of deeds and conveyances shall be under the hand and seal of the grantor or grantee, their guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed; which witnesses shall sign on oath before the Register prove the signing and sealing of the memorial, and the execution of the deed mentioned in such memorial; and in case of wills, the witnesses shall be under the hand and seal of the devisors, his guardians or trustees, attested by two witnesses, one whereof shall prove the signing and sealing of such memorial.

Sect. 8. Every memorial of any deed or will shall contain the day of the month and year when such deed or will bears date, and the names and additions of all the parties to such deed, and of the devisors of such will, and of all the witnesses and the places of their abode, and shall mention the lands and hereditaments contained in such deed or will, and the names of all the parishes, townships, hamlets, precincts or extraparochial places, where such lands are, in such manner as the same are mentioned in the register of the aforesaid deeds and wills, or of the same, of which such memorial is to be registered, shall be produced to the Register at the time of entering such memorial, who shall insert a certificate on such deed and will, or prove thereof, and mention the day, hour and time, on which such memorial is entered into the register, with the names of the parties and number the same is entered; and the Register shall sign the certificate so indorsed, which shall be allowed as evidence of such registries in all courts of record; and every page of such Registry-books, and every memorial that shall be entered, shall be numbered, and the day of the month, and the year and hour, or time of the day, shall be entered in the margins of the Register-books, and of the memorial; and such Register shall keep an alphabetical catalogue of all parishes, extraparochial places, and townships, within the Well-riding, with reference to the number of every memorial that concerns lands in such parish, and of the names of the parties; and such Register shall duly file every such memorial in order, as the same is brought to the office, and enter the memorials in the order that they shall come to his hand.

Sect. 9. Such Register, before he enter upon the office, shall be sworn, before the justices of peace, or three of them, that shall be present at his election, in these words:

Y\u2019ou shall truly and faithfully perform and execute the office and duty that is directed and required by act of parliament, in registering memorials of deeds, conveyances and wills, within the Well-riding of the county of York, so long as you shall continue in the said office; and that you have not given nor promised, directly or indirectly, nor authorized any person to give or promise any money, grateful or reward whatsoever, for procuring, or obtaining the said office for you: So help you God.

Sect. 10. When the Register shall appoint any deputy, such deputy shall take the oath before two justices of peace; and every Register at the time of his being sworn shall enter into a recognizance with two sureties, to be approved of by five justices of peace present at his election, by writing to be registered at the next quarter-sessions, of the penalty of two hundred Pounds to his Majesty, to be taken and had by him in case of his being incapable of his duties in the execution of his office; the same to be transmitted by the justices within one month into the office of her Majesty's Remembrancer of the Exchequer.

Sect. 11. When any Register shall die or forebear, and his register shall be required, and the register of the devior and his misbehaviour appear to have been committed by such Register, the recognizance shall become void.

Vol. II. No. 120.
cally the registry of the memorial within six months after their attainment of such will, or of probate thereof, or record thereof, shall be sufficient.

Sect. 22. No member of parliament shall be capable of being chosen Regifter, or of executing the office, nor shall any Regifter or his deputy be capable of being chosen a member.

Sect. 23. This act shall be a publick act.

To every cafe between purchasers of lands in Yorkshire, where the second purchaser having notice of the first purchase, but that it was not registered, went on and purchased the same estate, and got his purchase registered, yet it was decreed, that having notice of the first purchase, tho' it was not registered, bound him, and that for certifying that such register was a fraud; the design of such acts being only to give parties notice, who might otherwise without such registry, be in danger of being imposed on by a prior purchase or mortgage, which they are in no danger of when they have notice thereof in any manner, tho' not by the registry. Decreed by my Lord Chancellor King.

Sect. 5. 18. 1. All bargains and fales of lands within the said West-riding, inrolled before the Regifter in the publick office at Wakefield, shall be effectual, according to the act 27 H. 8. 16. and the Regifter or his deputy, (together with one justice of peace) shall cause to be entered the acknowledgment of the bargainers; and shall enroll such bargains and sales; and indorse a certificate on such bargains and sales, of the times of inrolling, and sign the same; and the rolls thereof shall keep in the publick office upon record according to the memorials of deeds.

Sect. 2. 3. Deds. of bargains and sales enrolled, and copies of the enrollments thereof, shall be allowed in all courts as sufficient evidence, as bargains and sales enrolled in the courts at Westminster.

Sect. 3. Such enrollment of such deed in the Regifter-office shall be deemed the entering of a memorial thereof.

Sect. 4. No judgment, fiatute or recoginace (other than fuch as shall be entered into in the name and upon the proper account of her Majesty) shall affect any land in the West-riding, but only from the time that a memorial of such judgment, &c. shall be entered at the Regifter-office, expressing, in case of such judgment, the names of the plaintiffs, and the names and additions thereto, the name of the Regifter, and the time of enrollment, and in case of statutes and recognizances, expressing the date of such statute or recognizance, the names and additions of the cognizors and cognizors, and for what sums, and before whom the fame were acknowledged; and the party shall produce and leave with the Regifter the acknowledgment of such judgment, or of such recognizance, signed by the proper officer, and together with an affidavit sworn before one of the judges at Westminster, or a mayor in Chancery, that such memorial was duly signed; which memorial such officer is required to give such plaintiffs or conuenees, or their executors or administrators or attorneys, they paying 11.

Sect. 5. The Regifter shall make an entry, and if required give a certificate under his hand, testified by two witnesses, of such memorial of any judgment, statute or recognizance, and therein mention the day on which such memorial is registered, expressing in what book, page and number.

Sect. 6. The recognizance entered into by the Regifter for the faithful performance of his duty shall stand a security, as well for the due enrollment and safe keeping of the enrollments of all bargains and sales enrolled before the Regifter, as for the faithful performance of his duty in the execution of the office of Regifter.

Sect. 7. The Regifter shall be allowed for inrolling every such bargain and sale enrolled, and for certificates, copies and searches, like fees as for the entering memorials of deeds and wills, &c.

Sect. 8. If any person shall forge or counterfeit any entry of the acknowledgment of any bargainer in such bargain and sale, or any such memorial, certificate or indenture, as herein mentioned, and be thereof convicted, such person shall incur such penalties as in an act 3 5 Ann. cap. 14. are imposed for forging or publishing false and false seals, whereby such bonds are defrauded or any person may be moleded; and if any person shall for such himself before the Regifter, or before any judge or master in Chancery in the cases herein mentioned, and be thereof convicted, such person shall incur the same penalties, as if the oath had been made in any of the courts at Westminster.

Sect. 9. All certificates required by this act, or by the act 2 Ann. cap. 4. to be given by the Regifter in case of searches, shall be signed by the Regifter or his deputy, in the presence of two persons, who shall set their names as witnesses.

In cases of mortgage, judgments, statutes and recognizances; if a certificate shall be bought to the Regifter, signed by the mortgagees and mortgagees, plaintiffs and defendants, cognizors and cognizors respectively, their executors, administrators and affiants, and attested by two witnesses, whereby it shall appear, that all monies due have been paid in discharge thereof; which witnesses shall sign on oath before the said Regifter prove such monies to be satisfied, and that they found such certificate signed; the Regifter shall make an entry in the margins of the register-books, against the enrollment of such mortgage, or registry of the memorial thereof, and against the registry of such judgment, statute or recognizance, or mortgage, &c. was satisfied, and shall file such certificate upon record in the books of the said register-office.

Sect. 11. If any judgment, statute or recognition, be registered within thirty days after the acknowledgment or signing thereof, all the lands that the defendant or cognizor had at the time of such acknowledgment or signing, shall be bound.

Sect. 12. This act shall be a publick act.

Sect. 6. Ann. c. 32. § 1. A memorial of all conveyances, which after the 29th of September 1778. shall be made, and all wills where the devisor shall die after the said 29th of September, concerning, and whereby any lands in the East-riding of the county of York, or in the town and county of Kingston upon Hull, may be affected, may be registered; and every such deed shall be adjudged fraudulent against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial be registered, before the registering the memorial of the deed under which such subsequent purchaser or mortgagee shall claim title; and such devise by will shall be adjudged fraudulent against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such shall be registered as is herein directed.

Sect. 2. One publick office for registering (at the publick charge of the East-riding, to be raised by the judges of peace at their quarter-seessions, in such manner as they may think fit), for the registries of the rents and monies for the repairs of county bridges) shall be established at Beverley.

The act contains other directions to the same effect, as the acts 2 Ann. cap. 4. and 5 Ann. cap. 18. with the following additions.

Sect. 30. In all deeds of bargain and sale enrolled in pursuance of this act, whereby any effect of inheritance in fee-fEmfe is limited to the bargainee, the words grant, bargain and sell, shall amount to, and be construed to be, express covenants to the bargainee, his heirs and assigns, from the bargainer, for himself, his heirs, executors and administrators, that the bargainer, notwithstanding any act done by him, was at the time of the making of the deed, of the persons thereby granted, bargained and sold, of an indefeasible estate in fee-fEmfe, free from all incumbrances (rents and services due to the lord of the fee only excepted) and for quiet enjoyment thereof against the bargainer, his heirs and assigns, and all claiming under him, and also further assurance thereof to be made by the bargainer, his heirs and assigns, and all claiming under him; unless the same shall be restrained by express words contained in such deed, and the bargainee, his heirs, executors, administrators and assigns, may in any action assumpsion thereupon, or they might do in such cases such covenants were expressly entered.
Sect. 31. Every leaf of the register-books and retard-
ment-books shall be signed by two justices of peace ap-
pointed by the parties at their quarter sessions, and an
entry shall be made from time to time by the clerk of the
peace of the said riding in the order-book of the
feffions, and signed by the justices that shall sign
he register-books and retardment-books; and a like en-
try shall be made upon record and signed, of the num-
ber of the books, as also that all motions, at all such pages
of them contain, in the Register office.

Sect. 32. All the clauses in this act concerning the
East-riding, and the town of Kingston upon Hull, and
not contained in the acts 2 Ann. cap. 4. and 5 Ann. c. 18.
shall extend unto all lands within the West-riding (the mort- 
chage or purchase whereof shall be entered in the
margins) as if in the said acts. 2 Ann. c. 4. and 5 Ann. c. 18.

Stat. 7 Ann. cap. 20. sect. 1. A memorial of all con-
veyances, which after the 20th of September 1799, shall
be made, and of all wills where the devisee shall die after
the said day, concerning any lands in the county of Mid-
dlesex, may be registered; and every such conveyance
shall be adjudged fraudulent against any subsequent pur-
chaser or mortgagee for valuable consideration, unless
such memorial thereof be registered before the registri-
ing of the memorial of the deed under which such sub-
sequent purchaser or mortgagee shall claim; and every such
device by will shall be adjudged fraudulent against any
subsequent purchaser or mortgagee for valuable consid-
eration, unless a memorial of such will be registered.

Sect. 2. One public office for registering such memo-
rials shall be erected in manner following, viz. The clerk
of incumbrance in Chancery for Middlesex, the Chief clerk
in the Inns of Chancery, the clerk of the in:
ventaries in the Common Pleas, and the Queen's re-
markers or his deputy in the Exchequer shall be the Re-
gister or masters of the office, and shall appoint one or
more persons, for whom they shall be accountable, to be
their deputies; which Register shall perform all things
intended by this act in some office near the Inns of Court
or Chancery; and the full Register shall present such
deputies to the Lord Chancellor, the Chief justice of the
Queen's Bench, the Chief Justice of the Common Pleas,
and the Chief Baron of the Exchequer, to be by three of
them approved of before such deputies shall enter upon
the execution of the office; and such deputies may be
displaced by the Lord Chancellor, the Chief justices,
and Chief Baron, or any of them, by writing; and the
Lord Chancellor, the two Chief justices and
Chief Baron, or any of them, shall have power to
make rules and orders for the government of the said
office.

Sect. 3. Every such Register, before he enter upon
the execution of the office, shall be sworn before the Lord
Chancellor, the Chief justices and Chief Baron, or one of
them, as in 2 Ann. cap. 4.

Sect. 4. If such person appointed Register shall be con-
victed of any neglect, misdemeanor or fraudulent prac-
tice, in the office, he shall be liable to pay treble dam-
ages, with full costs to every injured person.

The five following sects are to the same effect as sects.
7, 8, 17, 20, 21, of the said act 2 Ann. c. 4.

Sect. 10. In case of concealment or suppression of any
will or devise, purchasers shall not be disturbed, unless
the will is actually registered within five years after the
death of the devisee.

The two following sects are to the same effect as sects.
12, 13, of the said act 2 Ann. c. 4.

Sect. 13. Each of the Registers or masters, at the time
of his being sworn into the office, shall enter into a re-
cognition with fourteen (to be approved of by the Lord
Chancellor, to be by the Lord Chancellor, or by any
one of them) of the penalty of 3000l. unto her Majesty,
for being taken by one of the Chief justices; conditioned for
his true and faithful performance of his duty in his office,
in all things directed by this act; the same to be tran-
smitted by such Chief justice within one month after
the date, into the office of her Majesty's remembrancer of
the Exchequer.

Sect. 14. The damages to be forfeited by any such Re-
gister, for any neglected, misdemeanor or fraudulent prac-
tice, or any other breach of this act, shall be recovered in her Majesty's courts at
Exchequer, and

The following fection is to the same effect as sect. 19. of
the said act 2 Ann. c. 4.

Sect. 16. In case of mortgages, if a certificate shall be
brought to the Registers, signed by the mortgagee, &c.
that all mortgages, at all such pages of them contain, that
the Registers shall make an entry in the margins of the
register-books, that such mortgage was satisfied, as
in sect. 10. of the said act 5 Ann. c. 18.

Sect. 17. This act shall not extend to any copyhold
fefts, or to any leases at rack rent, or to any lease not
exceeding twenty years, where the actual purchase went
along with the lease, to be entered in the Office of Sur-
rectorship, the inns of court, or inns of Chancery.
The effect of this act is to the same effect as sect. 4. 5.
of the said act 5 Ann. c. 18, and sect. 22, 21. of the said act
2 Ann. c. 4.

Stat. 8 Geo. 2. cap. 6. sect. 1. A memorial of all de-
eds and conveyances, which after the 20th of September
1796, shall be made, and of all wills where the devisee
shall die after the said day, and of all judgments, fi-
tures and recognizances (other than such as shall be en-
tered into in the name and upon the account of his Ma-
jesly) which shall be obtained or entered into after the
said day, whereby any lands in the North-riding of Tra-
hlove may be affected, may be registered; and every such
deed or conveyance, judgment, &c. shall be adjudged
fraudulent against any subsequent purchaser or mort-
gagee, plaintiff or cognizant, upon valuable consideration,
unless such memorial thereof be registered, before the reg-
isterring of the memorial of the deed or conveyances,
and the judgment, &c. under which such subsequent purchaser or
mortgagee, plaintiff or cognizant, shall claim; and every such devise by will shall be adjudged void against a
subsequent purchaser or mortgagee, plaintiff or cognizant,
upon valuable consideration, unless a memorial of such
will be registered.

Sect. 2. One public office for registering such memo-
rials, shall be established at such market town, as the
justices of the peace shall adjudge to be the nearest to
the center of the north-riding, to be managed as in sect. 2.
of the said act of 2 Ann.

The following twelve sects are to the same effect as sects.
2. 3. of the said act of 6 Ann. and sects. 3. 5. 8. 10.
15. 7. 8. 18. 17. 20. 21. of the said act of 2 Ann. c. 4.

Sect. 17. In case of concealment of any will, no pur-
chaser for valuable consideration, nor any plaintiff in
any judgment, or cognizant of any forfeiture or rec-
ognizance, shall be defeated by any title devised by such will,
unless the will is actually registered within five years af-
aft the death of the devisee.

The following two sects are to the same effect as sects.
4. 6. of the said act of 5 Ann. c. 18.

Sect. 21. Bargains and sales of lands within the
North-riding, which shall be inrolled by the Register,
shall be as effectual as if the same had been inrolled ac-

Sect. 22. Any person claiming title to any heredi-
ments in the North-riding, may register at full length in the
said office, any deeds, wills or conveyances, under
which such title shall be claimed; and which shall be
made, and in the case of wills, where the devicer shall
die, after the last month of September 1796; and the said
Register is authorized to inroll such deeds, wills and con-
veyances; and the Register shall in the margin of such in-
rolment mention the time of inrollment, and shall in-
dorse and sign a certificate on such deed or will, and shall
keep all the books, wherein such inrolments shall be
made, in the said office, there to remain upon record;
and all copies of such inrolments, signed by the Register,
and
and attested by two witnesses, shall be good evidence of such deeds, wills or conveyances, destroyed by fire or otherwise accident.

Sec. 23. At the time any deed or will shall be brought to be inrolled, one of the witneffes shall make oath or affirmation before the Register, that such deed was duly executed by the grantor, or that such will was signified and published by the devifor.

Sec. 24. Such deed and wills, as shall be made and executed in any place not within forty miles of the office, may be entred at length, in cafe an affidavit or affirmation, made before one of the judges, or a Master in Chancery, be brought with such deed or will, where in one of the witneffes shall swear or affirm, that he lafe the fad deeds executed, or fuch will signified and published.

Sec. 25. Such inrolment of fuch deeds and wills shall be deemed to be the entry of a memoria thereof, pursuant to this act.

Sec. 25. Such Register shall be allowed for the entry of every memorial 1: but if such memorial exceed two hundred words, then after the rate of 4d. an hundred words for all the words in fuch memorial, over and above the fad two hundred words; and the like fees for every bar-fain and fale inrolled, and the deeds and wills registered at length; and for every search 1s.

The fee following fections are to the fame effect as fect. 12, 14, 15, 19, of the fad act of 2 Ann, and fect. 10, 11, 20, of the act of 6 Ann c. 18.

Sec. 33. If any judgment, fature or recognizance, be registered within twenty days after the acknowledgment or signification thereof, it shall be as available as if fuch memorial had been entered on the day of the signification or acknowledgment.

The refufe of this act is to the fame effect as fect. 16, 22, 23, of the fad act of 2 Ann, and fect. 20, 31, of the fad act of 6 Ann c. 35.

Stat. 35 Geo. 2. cap. 4. feet. 1. The deputy or fecretary of the chief clerk to inrol pleas in the King's Bench, called the Master of the King's Bench Office, shall be one of the Registrars of the office for the things contained in the 7 Ann. cap. 20. instead of the chief clerk to inrol pleas in the King's Bench, with the like powers as by the fad act are given to fuch chief clerk; and the chief clerk shall be difcharged from being one of the Registrars for inrolling fuch deeds, &c. for the county of Middlefex as are mentioned in the fad act, and the ability which fuch chief clerk as one of the fad Registrars would have been subject to.

Sec. 2. Such secondary, called the Master of the King's Bench Office, fhall before he enters upon the fad office of one of fuch Registrars, take the oath prefcribed by the fad act, and enter into fuch recognizance, as therein mentioned, in fuch pleas for the better beha-viour as of any of the fad Registrars are subject to.

Sec. 3. This act shall be a publick act.

Regnum profefl. (mentioned in flat. 12 Car. 2. c. 17.) Henry VIII. founded five lecrures in each university, viz. Of Divinity, Hiftory, Greek, Law and Phy-fick; the readers of which lecrures are called in the university, Regulares profeflores.

Regnum ecclefiaticum. In some countries formerly, the clergy held there was a double supreme power, or two kingdoms in every kingdom; the one a Regnum ecclciasticum, absolute and independent upon any but the pope over ecclefiasticall men and caues, exempt from the fenate, the fenate, or the King, of the King, or the civil magistrate, which had fubordination and subfe&ion to the ecclefiasticall kingdom; but these usurpations and abufedities, were exterminated here by King Henry VIII. 2 Hale's Hist. P. C. 324.

Regum, (Regratarius, Fr. regrateur) Signifies him that buys or deals in, or venders, on purpose to enhance the prices; formerly called such, when bought by great, and sold by retai-l, came under that notion. 27 E. 3. flat. 1. cap. 3. But now that name denotes him that buys and sells any wares or vulators in the fame market or fair, or within five miles thereof, whereof fee the flat. 5 E. 6. c. 14. 5 Eliz. 12. and 15 Eliz. 25. In the Civil law fuch is called Dardanus, a Dardano quodam buies feclari au- thors, faith Spooner. Herebefore both the ingraft and right of the house comprehended under the word fuiterfil, 3 Inf. 195. and as fuch fhall be punished. See flate 45.

Regula, The book of rules or orders, or statutes in a religious convent: Sometimes for the martyrology or obituary.

Regulat, (Regulare) Are such as profess to live un- der some certain rule; as monks or canons regular, who ought always to be under some rule of obedience.

Regulus, Subregulus. Are words often mentioned in the councils of the English Saxons: The firft signifies the other vicitome. But in many places they fignify a fubjurffionary; as in the old book in the archives of Worcester cathedral. Cowell, edit. 1729. See Subregulus.

Regulatio facris feifinam, quando vicicemos litteris feifinnam de maior parte quam debetur, is a writ judicial, Reg. fals. fol. 13. 51. There is another writ of this name and nature, s. 54.

Rehabilitatio. (habilitationis, mentioned in flat. 25 H. 8. cap. 21.) Is one of thofe exiftions mentioned in that fature to be claimed by the pope herefovere in Eng- land, and feems to signify a bull or breve, for reinoaking a fpiritual perfon to exercife his function, who was formerly disabled; or a refuming to former ability. Cowell, ed. 1727. See flate 25.

Rehabilitation of the former fad act, (hall be) where the defendant in any action makes an answer to the plaintiff's replication, or takes an exception or answer thereto, and it ought to be a fufficient answer to the replication, and follow in force the matter of the bar pleaded, 2 Litt. Atr. 435. The defendant is not to rejoin upon fuch words as are contained in the declaration or replication; and if the defendant do in his rejoinder depart from his plea pleaded in bar, the rejoinder is not good, because this is uncertain, and to fay and unfay, which the law doth not allow. Mich. 22 Car. B. R. It is obferved, that in many cafes, if the plaintiff in his replication, alleges a new matter, the defendant may there make a new an- fwer in the rejoinder, though if the defendant pleads a general plea, he fhall not commonly make that good af- terwards, by a particular thing in his rejoinder, 5 H. 7. 16. Regm. 22. Where a replication is pleaded which is iffuable, the clerk of the papers when he makes up the paper-book, both of course make up the rejoinder, which is in bar, and if the replication be iffuable, he hath the making up of the fur-rejoinder to and the iffe thereupon, 2 Litt. 433. See Departur.

Relation, (Relatia) Is a fiction of law, to make a nullity of a thing from the beginning (for a certain in- tent) which in truth had effence; and rather for necessi- ty, ut res magis valenti quam perdit. Co. lib. 3. c. 28. But more properly, it is a fiction of law, in which it is, where, in confideration of law two times, or other things are confidered as if they were all one; and by this the thing subfequent is faid to take its effect by re- latio in the time proceeding. As if A. deliver a writing to B. to be delivered to C. as the deed of A. when C. hath paid a fom of money. Now when the money is paid, and the writing delivered; this shall be taken the deed of A. at the time when it was firft delivered. So bills of parliament, to which the King affents on the laft day of parliament, flall relate and be of force from the firft day of the beginning of the parliament; and this is of divers other like things. Cowell, edit. 1727.

A confiftent, a man who fruck another, and after suffered him to go; and afterwards the party fruck, died of the blow. This efface is not for cyon, and yet it fhall have relation to the ftriking, in refpect of him who ftruck; ex prima confa cuitur attis but shall not have fuch relation in refpect of the confiftent who fuffered the effect, 2 Reg. 8. 22. 26. 7 Eliz. 25.

When an erroneous judgment is reversed by writ of error, as to the meane profites the fame fhall have rela- tion, by construction of law, to the fame of the firft judgment given; and that is to favour juflice, and ad- vance the right of him that bad wrong by the erroneous judgment. 13 Reg. 21. in Mervou’s cafe.
REL

But if any stranger has done a trespass in the mean time, and it be proved, after the recovery of the record, shall have an action of trespass against the trefpayers; and if the defendant pleads, that there is no such record, the plaintiff shall have the special matter, and maintain his action; so that unto the trefpayers, who are wrong-doers, the law shall not make any comparison: by Hen. 8. & 9. 12 & 13. this is the reason for then by the law, by a fiction and construction, should do wrong to him that recovered by the first judgment; for as the law chargeth the recoverer with all the mene profits, so it gives him remedy, notwithstanding the recovery, against all trefpayers in the intrey; for otherwise it would, by construction of relation, discharge trefpase, and charge him that recovered with the whole. And so he that reverses the judgment shall have an action for all the mene profits against the recoverer, and the recoverer shall have action of trespass against the trefpator. 13 Rep. 21, 22.

In Ninian Mawin's case. Relation shall in no case conclude the King. Arg. Part. Cates 74. in the case of The king shall not be over-reached by relation; as in the case of money of an outlaw paid into the Exchequer when the outlawry is reveted; now by relation the money was the property of the party all the time, but fund relation does not over-reach the prerogative of the King. Per Hals. Skin. 615. Alb. 7 4. B. R. in the Bankers case. If a gift is made to the King by deed introlled, and before involvement he grants away the land, the grant is void; yet the involvement by relation makes the land to pass to the King from the beginning. Arg. God's 276. cit. 3 Rep. Butler v. Baker. 11 Tis in a general rule, that relation shall not do wrong to strangers. Per Venr. J. 2 Vent. 260. Trin. 2 4. M. C. B. in the case of Thompson v. Laub. See 18 Fin. Abs. 285—292.

Relato, (Lat.) A rebecur, or teller; also applied to an information. Stat. 9 Ann. c. 20. See dictum warranto. Releas. (Relaxatio.) Is an instrument whereby ef-tates, rights, titles, entries, actions and other things, are sometimes extinguished, sometimes transferred, sometimes abrogated, sometimes enlarged. Wiff. Symbol. part 1 lib. 2. sect. 509. And there is a release in fact, and a release in law. Perkin's Grants 71. & 289. A release in fact, is that which the very words expressly declare. A re-lease in law, is that which does accrue by way of con-sequence or intendment of law; an example whereof you have in Perkin's abo supra. How these are available and how they are to be understood at large, lib. 3. cap. B. Cowell. A release is the giving or discharging of a right of action which a man hath or may claim against another, or which he has; or it is the conveyance of a man's interest or right which he hath to a thing to another who has possession thereof, or some estate therein. 4 Bac. Abr. 203.

Relations are distinguished into express releases in deed, and those arising by operation of law; and are made of lands and tenements, goods and chattels, or of actions real, personal and mixt. Co. Lit. 264. a. There are to be adapted to the nature of the case, and the purpose for which the release is intended; so that if in the sale of a piece of land, or dispossession of goods, and reale all actions, he may notwithstanding land into his hands, or reale his goods, the right and property being still in him, though he has devolved himself of his remedy. 1 Hil. 165. 4 Co. 135. So where a man has given means to come to his right, he may release those, and yet take advantage of the other; but if a man has not any means to come to his right but by way of action, there by a release of all actions his right by judgment of law is gone, because by his own act he has barred himself of all means to come at it. 8 Co. 152. a. Hence releases were confirmed with much nicety and great trifcheifs, and being considered as the deed or grant of the party, were according to the rule of law taken strongest against the releasor; they now receive such interpretation as these grants and agreements do, and are favoured by the judges as tending to repose and quietness. Dyer 55. Plowd. 289. Hell. 15. 8 Co. 148.

Hence it hath been established as a general rule in the construction of releases, that where there are general words only in a release they shall be taken most strongly against the releasor, and not as a particular recital in a deed, and then general words follow, the general words shall be qualified by the special words. 1 Mid. 99. 1 Ld. Raym. 235.

1. Of the words and ceremony required in a release; and for a covenant, agreement or a disafforestation by will may operate as a release.

2. What shall be released by a release of all claims and demands.

3. What shall be released by a release of all actions and suits.

4. How for a possibility or contingent interest may be released.

1. Of the words and ceremony required in a release; and how for a covenant, agreement or a disafforestation by will may operate as a release.

Littleton tells us, that the proper words of a release are remissfil, release & quietum clannifies, which have all the fame significiication. Louti Coke abos. Renunciare, acquies- ter; and says, that there are other words which will amount to a release; as if the liber, & liberti, or the life, for life, that he shall be discharged of the rent; this is a good release. Litt. f. 445. Co. Lit. 264. Plowd. 140. So it hath been held, that a pardon by act of parliament of all debts and judgments amounts to a release of the debt, the word pardon including a release. 1 Sid. 261.

An express release must regularly be in writing and by deed, according to the common rule, esem modo oritur, esem modo diffidetur; so that a duty arising by record must be discharged by matter of as high a nature; so of a bond or other deed. Co. Lit. 264. 4. 1 Rol. Rep. 43. 2 Leon. 76, 213. 2 Rol. Abr. 408. 2 Sand. 48. Mar. 57. pl. 787. But a promiss by words may before breach be discharge or released. 1 Sid. 177. 2 Sid. 78. Cro. Jac. 2483. 620.

As where in affaffity the plaintiff declared, that the defendant for valuable consideration affirmed to go a certain voyage in such a ship before August following, and alleged a breach in the non-performance; to which the defendant pleaded, that before any breach, the plaintiff the fourth of April at such a place extenuavit ram of the said promiss; and on demurring the plea was held suffisi, without failing how he discharged him, or that such discharge was in writing. Cus. Carr. 385. Langdon v. Stokes.

But where in affassity for 5 l. upon exchange of a horse, to be paid upon requcst, the defendant pleaded, that before the action brought the plaintiff did exonerate him of this agreement; and this plea was refused to be il] for though a parol agreement may be discharged by parol before cause of action accrued, yet after that it cannot be discharged but by deed; and here the cause of action did accrue at least upon requcst, and therefore he should have pleaded the exoneration before the request. 1 Mid. 262. 2 Med. 250. S. C. Edward v. Heath.

In trefpas for riding the plaintiff's horse, the defend-ant pleaded that such a day the plaintiff extenuavit him of the trefpafs; and this was held an ill plea, in not futhing how the discharge was in writing. 1 Sid. 293. Wiflins v. Parke.

A release of a right in chattels cannot be without deed. 1 Leon. 285. Per Anderson. Ch. J.

A covenant perpetual, as that the covenantor will not sue without limitation of time, is a defeasance or absolute release; and this construction has been made to avoid 7 l. circuity
ed in debt being the cause of an action of covenant would lie. 

So if the obligation and grants to and with the obligor, that during 99 years he would not put the bond in suit; this is only a covenant which on a covenant will lie, but it cannot be pleaded in bar of the bond. 

If two are jointly and severally bound, a release to one discharges the other. 

A. co-owners with B. to pay him 300l. for the wife of the wife of A. only for her life; in covenant brought on this, and breach alleged that there was so much of the 300l. arrear, defendant pleads that there was another indenture between him and the plaintiff since the date or delivery of the deed of covenant declared on, reciting the said covenant and agreement, and for the payment of the rent money: now the time wherein it was covenanted and agreed, that so long as A. and his wife did cohabit, the payment of the 300l. should cease; and avers, that they did cohabit for the time the said arrear became due, and pleads this in bar of the first agreement; and though in this case there could not have been any great mischief in confounding the deed pleaded a defeasance or release, there being no other parties to the deed; yet as this was a sum in gros, and the covenant temporary and not perpetual, it was adjudged no bar. 

It seems agreed, that a will, though sealed and delivered, cannot amount to a release, because it is amputatory and revocable during the testator's life; and by reason of the executry's content requisite to every dispositional of a personal thing by will, and the injury that might accrue to the testator's creditors, were a will allowed to operate as a release. 

And therefore where in debt upon an obligation, by the representative of a testator, the defendant pleaded that the testator by his last will in writing related to the defendant; this was adjudged ill, and that no advantage could be taken hereof by plea. 

But it hath been held in equity, that though a will cannot enure to a release, yet provided it were express and be to the intention of the testator, that the property should be discharged, the will would operate accordingly; and Lord Corgar said, that in such case it would be plainly an absolute discharge of the debt though the testator had survived the legatee. 

If A. being possessed of goods loses them, and they come to the hands of B. who being in possession, A. by deed releases to B. all actions and demands personal which at any time before habuit vel habere potest against B. for any caute, matter or thing whatsoever; this shall be a bar to the property of the goods, so that B. has the absolute right of thing by this release. 

By a release of all demands, all actions real, personal and mixed, and all actions of appeal, are extinct. 

A release of all demands extends to inheritances, and takes away rights of entry, feises, &c. 

But if the King releaseth all demands, yet as to lands, the inheritance shall not be included. 

By a release of all demands, all actions real, personal and mixed, and all actions of appeal, are extinct. 

A release of all demands extends to inheritances, and takes away rights of entry, feises, &c. 

A release of all demands extends to inheritances, and takes away rights of entry, feises, &c. 

By a release of all demands, all actions real, personal and mixed, and all actions of appeal, are extinct. 

A release of all demands extends to inheritances, and takes away rights of entry, feises, &c. 

By a release of all demands, all actions real, personal and mixed, and all actions of appeal, are extinct. 

A release of all demands extends to inheritances, and takes away rights of entry, feises, &c. 

If B. a merchant is released by C. for non-performance of an award made for the payment of money at a day to come, there is no present debt nor any duty before the day of payment is come, and therefore it cannot be discharged.
before the day by a release of all actions and demands. 36 Car. 2d. 249

So if a man devolves a legacy to 2d. 'S. at the age of 23, tho' the legatee, after he attains the age of 21, and before the day of payment, may release it, yet by the word 'demand' it is not released, but there must be special words for the purpose. 10 Co. 51, in Lampert's case.

A release of all demands does not discharge a covenant not broken at the time; as where a leffer, on payment of 60l. to him by the leffe due on a judgment, released to him all demands; and it was adjudged that this did not release a covenant for repairs then broken; but a release of all covenants would have released the covenant. Howse v. Field, 2 Lev. 173. 2 Rob. Abr. 407. Nay 129. For the difference when broken or not, see Dryer 217. Lit. Rep. 50. 8 313 3. 2a. 60. 10 Co. 51. 5 Co. 71. 14 Lev. 173.

If there be leffe for years grants over by indenture all his estate, reserving a rent during the term, and afterwards releases to the assignee all demands; this shall discharge the rent, for he had the freedom of the rent in the time. Wotton v. Bis, 2 Rob. Abr. 408. 2 Lev. 456. Bridg. 123. 2 Rob. Rep. 20. Poth. 156.

If he have a rent charge in fee releases the tenant of the land all demands from the beginning of the year. If he release a covenant, this shall discharge all the rent, as well as to come as when paid. 20 Aff. pl. 5. 2 Rob. Abr. 408.

It is laid by Littleton and Lord Coke, that by a release of all demands a rent-service shall be released; but this it is laid is to be intended of a rent-service in grosis as a feu-dvrie. Lit. J. 510. Co. Litt. 291. And therefore in the case of Han v. Hanfen, where in covenant brought on a covenant in a lease for years to pay the rent reserved, the defendant pleaded release by the plaintiff of all demands at a day before the rent in question became due; the plaintiff replied that the release was in formal words not perfect. And in the covenant the tenant and lessee bound themselves to maintain the covenant and to pay the rent when due, and if it were broken, to do all that was necessary to renew it. To this it was adjudged by Fyler, Mallett and Windham, that the rent was discharged by this release, as it became due by the perception of the profits, and was not like to a rent-charge, or a rent parcel of a feu-dvrie; and they held, that this rent being incident to the reversion, and part thereof, was no more released hereby than the reversion itself was; and that this conformation should the rather prevail, as it was not the intention of the party to release this rent; But Twifden contra, he said, that in releases and deeds where words are heaped up, the party that grants the advanatage may take the strongest words and the fairest form of it, and that is the reason they are put in; and as to the intent, that must be gathered from the words; and men must take care what words they use, sporti politiam obidire legisnot leges politicæ; and he said, he could fee no difference between this rent and a rent in fee, both are rent-services, and neither de-

mandable before they become due, otherwise than as in 40 Ed. 3, 47. it is laid, there is a continual demand between lord and tenant; and in this case there is a tenure between the leffe and him in reversion; and the reason why the reversion is not touched by this release is, because it can work only by way of extinguishment, and not by way of putting an intercal; but it was adjudged at futura. 1 Lev. 179, 120. 1 Seld. 141. 1 Inst. 499, 510. Han v. Hanfen.

The plaintiff declared upon a lease for years, reddatum 301. at Lady-day and Michaelmas, and assigns for a breach non-payment of a year's rent due and ending at Lady-day 1689. the defendant pleaded a release dated the 18th day of all demands, and upon a second judgment was given for the plaintiff; for the growing rent not due, which is incident to the reversion, is not discharged, though the first half-year's rent, which was a duty demandable, was released; but here the release being pleaded as a bar to all, which it is not, the plea is naught, and judgment must be given for the plaintiff. 2 Salt. 578. Stephens v. Susan.

3. What shall be released by a release of all actions and suits.

A release of all actions discharges a bond to pay money on a day to come; for it is Debitum in praesenti, quamvis sit 4ovandum in futuro; and it is a thing merely in action, and the right of action in him that releases, though no action will lie when the release is made. Co. Lit. 292.

But a release of actions does not discharge a rent before the day of payment, for it is neither debitum nor 4ovandum at the time of the release; nor is it merely a thing in action, for it is grantable over. Co. Lit. 292.

So if a man has an annuity for a term of years, for life or for life, and he be before it be behind releases all actions; this shall not release the annuity, for it is not merely in action, because it may be granted over. Co. Lit. 292. 1 Bald. 178. Co. Abr. 897. Mor. 113. But the release shall release the arrearages incurred before. 39 H. 6. 43. 2 Rob. Abr. 404.

If one releases summa querela uatis lupus, this is as large as a release of all actions, and releases all causes of action, tho' no action be then depending. Co. Lit. 292.

By a release of all manner of actions, all actions as well criminal as real, personal and mixed, are released. Co. Lit. 287.

A release of actions real is a good bar in actions mixed, as an affife, for fines, contracts, debts, Pennsylvania, warbles, quiets, impound, annuity; and fo is a release of actions personal. Co. Lit. 284. But not after the grantee has made his election. 1 Fon. 215.

In an appeal of robbery or felony, a release of all actions personal will not bar, because an appeal, in which the appelee is to have judgment of death, is higher than a personal action; but a release of all manner of actions, or of all actions criminal, or of all actions mortal, or of all actions concerning the pleas of the crown, or of all appeals, or of all demands, will be a good bar of any such appeal. Co. Lit. 287. 2 Henok. F. C. 190. And in an appeal of malice a release of all actions personal may be pleaded, because damages only recovered. Co. Lit. 288.

A release of all actions is regularly no bar to an execution, for execution is no action, but begins when the action ends. Co. Lit. 289. 8. 213.

Also a release of all actions does not regularly release a writ of error, for it is no action, but a commissio to the justices to examine the record; but if therein the plaintiff may recover, or be referred to any thing, it may be released by the name of action. 2 Lev. 40. Trib. 209. Co. Lit. 288.

But a release of all actions is a good bar to a fire feas, though it be a judicial writ, for the defendant may plead to it, and it is in nature of a new original given by the statute. Co. Lit. 290. Comb. 455.

So in replevin a release of all actions is a good bar, for the avenant is defendant, though in some respects he is plaintiff. 2 Rob. Rep. 75.
By a release of all fuifs a man is barred of a writ of e القوات. Lateb 110.
So by a release of all suifs a man is barred of execution, because it cannot be had without application to the court, and prayer of the party, which is his fuif. Co. Lit. 143. 4
If a diff., releaseth to the diff. all actions; this is no releaseth of his right of entry, for when a man has several means to come at his right, he may releaseth one of them, and yet take benefit of the other. Co. Lit. 23. 6.
If a man by wrong takes away my goods; if I releaseth to him all actions personal, yet by law I may take the goods out of his poss.ion. Co. Lit. 286. St. Tr. 57.
If a man releaseth all actions, by this he shall releaseth as well actions which he has as executor, as though in his own right. 2 R. Rol. 167. 7. C. Cited by Penet, and said by him to be clearly so, unless there was an action of his own for the release to work upon.
If a man releaseth all quarels; a man's deed being taken most strongly against himself, it is as beneficial as all actions, for by it all actions real, personal and mixed, are releaseth. Co. Lit. 292. 4.

4. How far a possibility or contingent interest may be releaseth.
It is a general rule in our books that a mere poss.ibility cannot be releaseth, and the reason hereof is, that a releaseth supposeth a right in being, and it was thought to countenance maintenance to transfer choises in action, possibilities and contingent interests. Co. Lit. 48. a. Cro. Eliz. 552.

Hence it is held, that an heir at law cannot releaseth to his father's d. in the life-time of the father, for the heirship of the heir is a contingent thing, for he may die in the life-time of the father, or the father may alienate the lands. Lit. 109. 446. Co. Lit. 265. a. 10 Co. 55. Bridg. 76. S. P.

If the conushee of a fleasu releaseth to the consor his all his right to the land, yet he may afterwards for execution, for he has no right to the land, but only a poss.ibility. 1 And. 133. Co. Lit. 265. 2 Rol. Abr. 405. Cro. Eliz. 552.

So if a creditor releaseth to his debtor all the right and title which he hath to his lands, and afterwards gets judgment, the execution may be filed against the bail, for at the time of the releaseth there was only a poss.ibility of the bail becoming chargeable. 5 Co. 70. Hot's cafe. Co. Lit. 265. Mor. 469. Cro. Eliz. 579. Hot. 17, and see the cafe of Harrisson v. Huxley, Mor. 852.

So if A. recovers in trepass against B. in B. R. and B. brings a writ of e, pending which A. releaseth to B. all executions, and after the judgment is affirmed, and new damages given to A. for the delay upon the statute of 3 H. 7, this releaseth shall not bar A. to have execution of those damages, because he had not any right to have execution, nor to any duty at the time the releaseth was made. 2 Rol. Abr. 404. Cro. Jac. 337. 1 Rol. Rep. 41. Child v. Durant.

A lease to the husband and wife for life, the remainder to the survivor of them for twenty-one years; the husband grants it over, and though he farried, yet the grant was held void because it was contingent. Poph. 5. 10 Co. 51. Hot. 17, Roy. 148.

If the presentation to a church be granted to A. and B. and living the incumbent, A. releaseth all his e., title and interest to B. this releaseth is void, being of a chose in action; soe had the releaseth been made after the avoidance, at which time the interest would have been vested in A. Cro. Eliz. 123. 600. Owes 85. 1

Leom. 167. 3 Leom. 256. and Dyer 244. 10 Co. 48. like point.
From the reasons herein it was held, that if at Common law a woman before marriage had accepted of a child, and female action of dower, this she could not have bound her, because at the time she had no right to dower. 4 Co. 1. Tnom's cafe.
A city orphan cannot at law releaseth her orphanage part to her father, for he hath no right in her during the life of her father; but it hath been held in equity, that a woman's child, by a valid consideration, may use the marriage of a daughter, and a portion given her by the father, such releaseth may operate as an agreement to waive the orphanage, and hath accordingly been so declared in equity. 1 Peer Will. 638. 2 Peer Will. 527. Prev. Chan. 545.

One poss. of a term for years to A. for life, remainder to B. B. may releaseth his right to A. and such releaseth shall extinguish his interes., though it was objected, that B. had only a poss.ibility at the time of the releaseth made. 10 Co. 47. Lampe's cafe.
But it was held in the above-mentioned cafe of Lampe, and hath in like manner been held in other cases, that B. could not affin his interest to a frauds, in the life-time of A. the same being only a chose in action, and a mere poss.ibility, insuch as an eflate for life is in supposition of law a larger eflate than for any number of years. 10 Co. 47. 4 Co. 66. 1 Sid. 188. Rol. 129.
But later resolutions, especially those which have been in courts of equity, have made a great alteration in this doctrine. 2 Per. 593.

As in the cafe of Calne v. More, where one poss. of a term devineth it to A. for life, remainder to B. and made executor; B. devineth this remainder to C. and died in the life-time of A. and in order to defeat C. of his interes., A. assigned his term to a third person. And it was decreed by Lord Chancellor Eyre, that A. the executor and devineth, for life was a truth for B. and thould not be at liberty to defrey this remainder, but that the executor should prefereth the leaf, so it might go according to the will, with the performance whereby the executor was intuited. Mor 866.

So in the cafe of Careing v. Bickerstaff, where the truth of a term was devineth to A. for life, remainder to B. It was agreed by all, that B. might affin his interest to the truth, which flould that a term in remainder must be transferred over by deed. 1 Chan. 44.

One poss. of a term for years devineth it to A. for life, remainder to B. B. in the life-time of A. devineth his remainder to J. S. who devineth it over; and the question was, Whether A. (the devineth for life) being dead, the devineth of J. S. should have the term, or whether it should go to the administrator de bonis non; and it was decreed for the devineth of J. S. and the administrator de bonis non of B. was directed to affin his term to him. 1 Peer Will. 572. Hind v. Ipel.

And in the case of Theobald v. Duffay in the house of Lords, March 1729-30; it was (inter alia) determined that a poss.ibility of a term is assignable for a good consideration.
It is laid down in Hot's cafe, that a duty uncertain at first, which upon a condition precedent is to be made certain afterwards, is but a poss.ibility, which cannot be releaseth. 5 Co. 705. 2 Med. 281.

As a nominer waiting on a rent which cannot be releaseth till the rent is behind, as the non-payment of the rent makes the nominer passus a duty. Telv. 215 Bruns. 116. Bridges v. Easau.

So if a man covenneth to pay 10 l. on the birth of a child, the covennator cannot be releaseth of the 10 l. in refting e on contingency where the child will come to be born. Telv. 152. Neilw v. Stefield.

So if an award be, that upon the plaintiff's delivering the defendant by a certain day a load of hay, the defendant shall pay him 10 l. in this cafe the 10 l. cannot be releaseth before the day, for it rests merely in possession and contingency, whether the money shall ever be paid.
for it becomes a duty on the delivery of the bay only, and not before. Teob. 219.

In debt upon a bond against the defendant as admini-
istrator, &c. the defendant pleded a release, whereby the plaintiff, reciting there were several controversies be-
tween the defendant and him about a legacy and the
right, title, interest and demand of, in and to the per-
nal estate of the intereat; and on demurrer this was
held to be no plea; and a difference was taken by Ch.
J. Hels, between a release of all demands to the per-
on of the obligor or administrator, and a release of all de-
mands as to the personal effects of the obligor; for admi-
istrator; that the last will not discharge the bond as
the other may, because the bond does not give any right or
demand upon the personal estate, &c. until judgment and
execution filed. Saft. 575. 3 Ed. Remy. 758. Topham
v. Tylers.

RELIEF, a promise B. in consideration that he will fall to
his certain merchandize at such a price, that if his
bond to pay the same,staft. 4 Bst. Abr. and
3 U. S. 267.

Religion (Religion) is virtuous, as founded on rever-
ence of God, and expectation of future rewaris and
punishment, a systen of Divine faith and worship as
the only means to salvation. Thus as we ascend towards the Divine nature, where we are enabled and
inclined to serve and worship him after such a manner as
we conceive most acceptable to him, is called religion.
Wilkins. All blasphemies against God, as denying his
being or providence, all profane scoffing at the Holy
Scriptures, or expounding any part thereof to contempt or
ridicule, all impurities in religion, as falsely pretending to
extraordinary-commisions from God, and terrifying or
abusing the people with false denunciations of judg-
ments, &c. All open lewdness grossly scandalous, such as
was that of those persons who exposed themselves
in the streets to the people in a balcony in Covent-garden, with
most abominable courtesies and insolences of this nature,
because they tend to subvert all religion or morality,
which are the foundation of government, are punishable
by the temporal judges with fine and imprisonment, and
also such corporal infamous punishment as to the court
in direction bull seem meet, according to the heinous-
ness of the crime. 1 Hawk. P. C. 5, 7. Scandalous
words in derogation of the establisned religion are in-
dicable, as tending to a breach of the peace, 1 Haw.
P. C. 7.

The fix articles of religion establislied, 31 Hen. 8.
2 Hen. 8. c. 5. Connisons to be granted con-
cerning religion, 3 Hen. 8. c. 9. To the King and the clergy in matters of faith, 32 Hen. 8.
c. 26. 34 & 35 Hen. 8. c. 1. Repeal of the former acts relating to religion, 1 Ed. 6. c. 12. sect. 3. Images in churches, 34 & 35 Ed. 6. c. 10. Repeal of the several acts of Ed. 6. 17 Ed. 6. c. 12. 2. Proclaiming the articles, 13 Ed. 11. c. 25. Articles to be submited by protestant dissenting teachers, 1 Will. & M. c. 18. sect. 8. 10. Profession of Christian belief to be subscribed by Quakers, 1 Will. & M. c. 18. sect. 13. 17 Ed. 10. See Blasphemy, Viresco, Sacraments,
mills, Papists, Quakers, Recusant, Seruat and
Jesuits.

Religious houses, (Religious demus,) Are houses fet
apart for pious uses, such as are monasteries, churches,
hospitals and all other places where charity is extended to
the relief of the poor and orphans, or for the use or exer-
cise of religion. See Nisitit Mafclon, A short History of the Religious Houses in England and Wales, by Thomas Tanner, Octavo, who in an alphabetical order,
countries, has accurately according a full account of the
founders, the time of foundation, the titular fants, the
order, the value and the dissolution, with reference to
printed authors, and manuscripts that preserve any me-
juiments relating to the foundings, the described and judici-
mous Preface of the institution of religious orders, &c.
Cowell, edit. 1727. See Monasteries.

Religious men, (Religious,) Are such as enter into a
monastery or convent, there to live devoutly. In
ancient deeds of sale of land, we often find the vendor re-
Ly"
RE

REM

tained from giving or alienating it virti religiosis vel judaici, to the end the land might not fall into Moravian, Cowell, ed. 1727. See judgment. Relief. Reliquiamento, is a forsaking, abandoning or giving over, which is said to be the effect, that a person may relinquish an ill demand in a declaration, &c. and have, judgment of that which is well demanded. 175. In aile the count was of a meffuage, and four acres of land in B. and the jury having a view only of the land, the demandant relinquished his plaint to the houle. Dyer 66. But if when the demandant's case is determined, his third flings and four-pence rent, no part of that rent could be relinquished, because a rent is an intire thing. Ibid. 61. In a writ of annuity where the jury found the arrears, but did not aflee damages or costs, which could never be supplied by a writ of inquiry; the plaintiff was entitled to recovery for the damages and legal damage, and had judgment for the arrears. 11 Rep. 59. Reliques, (Reliquiae,) Are some remants of fants that are dead, preferred by some living with great veneration, as sacred memorials of them; forbidden to be used or brought into England by several statutes, and judiciles of peace are impowered to search houses for popish books and reliques, which when found are to be defaced and burnt, &c. 3 Jac. 1. c. 26. Remainder, (Remanentia) Is an estate limited in lands, tenements or rents, to be enjoyed after the expiration of another particular estate. For example, A man may let one to term of his life, and then be succeeded to another. Lit. cap. Attornment. And this remainder may be either for a certain term, or in fee simple, or fee tails, as appears by Brke, tit. Dene and Remainder, fol. 245, and Glanville, lib. 7. cap. 1. The difference between a remainder and revocacion, according to Speelman, is this, That by a revocacion after the remanent term, the estate remains to the donor, or his heirs, as the propriety fountain; whereas by remainder it goes to some third person, or a stranger. Cowell, ed. 1727. Remainder is described to be a remnant of an estate in lands or tenements, expectant on a particular estate created together with the same and at the same time, and is to expire on the particular estate, that unless it can take effect when the particular estate determines, it is void. Co. Lit. 49, 143, 2 Co. 51. Mor. 344. Vaughan. 269. 1. Of the several kinds of remainders, as distinguished into remainders whyled, or in contingency and abeyance. 2. Of craft remainders, or those arising by implication and consequence of law. 3. Of what things a remainder may be made, or limited. 4. Of what words are sufficient to create a remainder. 5. Of the continuance of the particular estates, and when the remainder is to commence. 1. Of the several kinds of remainders, as distinguished into remainders whyled, or in contingency and abeyance. If an estate be limited, either at Common law, or by way of use, to one for life, or in tail, remainder to the right heirs of J. S. who is then dead, this is a good remainder, and vests prefently in the person who is heir at law to J. S. by purchase; and though a daughter be then heir at law, and after a son is born, yet shall the daughter retain the land against him; for the being heir, and coming within the abeyance at the time when the remainder was limited, it then vested and settled in her immediately as a remainder by purchase, and shall not by any accident after be defeated. 2. Rep. Abr. 415. 1 Co. 95, 103. Plow. 56. If the remainders are of three sorts; Fiftly, When it is a limitation to one not in ife, for in that case, if the remainder-man never does come in ife, it is a void remainder. Secondly, When the particular estate may determine before the remainder can commence; as an estate to A. for life; and from and after the determination of his estate, then to C. during the life of A. this is good by contingency, that is, if A. forfeit his estate by alienation, or otherwise, in his life-time. Thirdly, When there is a limitation precedent, or something to happen before the remainder can vest; then it is a void ife, as a remainder to commence when J. S. shall reside in England from Rome. In the case of Dermor v. Feretich, Mich. 14 Geo. 2. Per. Lee Chief Justice. But if J. S. in the case above, be living at the time of the remainder limited to his right heirs, this puts such remainder in abeyance, and whatever contingency, that is, if, A. does not give the estate, but in mihibus viti nullius, if the sefior or donor it not, because he has limited it out of him, and all remainders must pass out of him at the time of the limitation, though they do not presently velt in the person intended; and in the right heirs of J. S. it cannot be, because he cannot have heirs during his life; for in such cases no estate can vest in abeyance, but by inquiry, to take it; therefore it is in the mean time in abeyance or expectancy, to vest or not vest, as the cafe happens; for if J. S. dies during the particular estate, then the remainder presently takes place in his heirs; but if the particular estate determines by death of otherwise in the life of J. S. then such remainder is become totally void, and can never velt, but the estate settles again in the sefior or donor, as if no such limitation in remainder had been; and he becomes tenant to the propriety, and is obliged to do the services; and though \( J. S. \) do live after, yet his heir can have no benefit by it, nor have his capapcity to take the estate when it fell. 1 Co. 135. Co. Lit. 378. a. 2 Co. 51. 2 Red. Abr. 415. Plow. 28, 556. Poph. 74. Mar. 720. 3 Co. 10. 20. Co. 50. Raym. 145. Pollet. 56. But if there be no such J. S. at the time of the limitation, though he be after born, and dies, during the particular estate; yet his heirs shall have the remainder. So if a remainder be limited to A. fan of B. in tail, &c. or to E. wife of D. where in truth there is no such A. or E. though B. has a fon called A. or D. marries one E. yet they cannot take the remainder; because if there be such persons as the words of the gift import, there the remaineder ought to velt in them presently, and they will never after be made capable of taking the estate, but if there be no such per son then in ifes, none who come within that description after can lay claim to it, because the limitation was prefent to per ons; but a remainder limited primogenitus filia, or proxime heredi majusi of A. or perpetuus hereditario de jurgant pannorum, or fentanti parae of A. or to the right heirs of A. being then such A. in ifes, or to the wife that A. shall marry; there are good remainders, and shall velt when such persons come in ifes as are within the description; because here appertains no present regard for any person in particu lar, and therefore if they answer the description at any time before the particular estate determined to be time enough, and so there is a diversity between a remainder limited to one by name in particular, and such remainder limited by description or circumscription, or between a general name and a special name. Co. Lit. 3. 1 Co. 66. 2 Co. 51. Hib. 33. Mar. 104. Dyrt 337. 2 Law. 210. 1. A. makes a lease to B. for life of B. and after the death of A. to remain to B. and his heirs; this remainder is contingent, and cannot vest prefently, for if A. survives B. it is void; and because otherwise the expiration of liverty would be interrupted during the life of A. for he cannot give himself any estate, his livery operating to pass estates from him, not to give any thing to him who had the whole before; and therefore during his life the operation of the livery must cease, and by consequence no remainder can take effect in virtue of that livery, which pro tempore being at an end, all that depended thereon ceases, and can never after be revived for it. But all the estates conveyed from the seflor, and if he comes again into the possession before they can all take effect, this breaks the force of the livery, and brings back again to him all such livery which had taken out of him, and they can never take effect but by a new livery; and this is the reason of the common ease, that one cannot give lands to another to begin
begin after his death, because being to make livery pre-
ferably, if that cannot operate preterently, it can never ope-
rate at all, for it is a contradiction to give lands to one
after death, and to remove them from those very persons,
and yet by words to refrain that operation to a
future time; but in the principal case, where A. dies
first, there is no interruption of the livery, for B. had
an eftate for life by virtue thereof, and before that de-
termines, the same livery, which carried the remainder
behind, was in A.'s heirs, the collateral remainders
upon A.'s death direct and lette, or bring down the re-
mainder to B. and his heirs. 10 Co. 85.

If a lease be made to A. and B. and C. for their lives, and
if B. survives C. then to remain to B. and his heirs, this
remainder is in abeyance, because though the perfon
for whose benefit the last-mentioned eftate was to
have that B. survives C. yet till that be known the remainder cannot vest. So if a lease be
made to A. for life, and after the death of B. who is a
stranger, to remain to C. in fee, or to A. in fee, these
remainders are in abeyance or contingency, and depend
on B.'s dying before C. or A. for if he survives them,
the remainder cannot take effect. 3 Co. 20. 10 Co. 85.

2. If a lease be made to A. for life, remainder to the
abbot of D. and his feoffadores, though the abbot be then
dead, so as there is then no abbot at all, yet the re-
mainder shall be good if an abbot be made before the death
of the abbot; and if an abbot be made before the death of
D. and chapter, prior and convent, yet there
be then no mayor, dean or prior. So of a remainder
to the bishop of D. parson of D. or other folio corpo-
ration and his feoffadores; these remainders not being li-
limited to them by name specially, but to them generally,
and so whenever comes within the description before
the determination of the particular eftate, is capable of ta-
kine by virtue thereof, are good remainders in abeyance,
etc. But if there be no such corporations at the time of the
limitation, then the remainders are totally void ; and
none created after, though by the same name, can
ever have any effect, unless a patent be there
after granted to make such corporation. 1c. 212. 12 H. 3.

23. 1 Co. 51. 10 Co. 20. Mar. 104. 1 Rol. Rep. 240. 2
Bull. 275.

2. Of crofs remainders, or those arising by implication and
constrution of law.

A having ilive five fons, his wife being enfei-
anted two thirds of his lands to his four younger fons,
and the child in vente sa mere if he were a foon, and
their heirs; and if they all die without ilive male of
their bodies or any of them, that the lands flall revert
to the right heirs of the defiver; by this defive the
property is in default in one of the dying heirs, the crofs
remainders in tail to each other, and no part flall revert
to the heir of the defiver till all the younger fons be dead
without ilive male of their bodies. Dyer 302.

But when one having ilive three fons, A. B. and C.
devises one house to A. and his heirs, another house to
B. and his heirs, and a third house to C. and his heirs,
provided if all his foid children flall die without ilive,
then if then all the foid meifiages flall remain and be
to his wife and her heirs, and it was held by three
judges, that upon the death of one of the fons without
ilive the wife might enter, and that here there were no
fuch crofs remainders from one fon to another, because being
devised to them severally by expres limitation, there
shall be no greater effe to them by implication but
Law Ch. J. doubted; and Delderidge J. faid, that though
perhaps crofs remainders may be by implication where
there is a defive to two ferior perfon, yet not so if in
abeyance, for the uncertainty of its taking effect does
eflais by moieties to feveral perfon, and when an-
other dies, remainder again to another, because of the
uncertainty and inconvenience; and that it was never
feen in any book, where an effate is limited to divers,
that there could be crofs remians. Cra. Juc. 655.

2. Witty v. Witty, 173. 1 C. Cited, and admitted to be law.
As in 4 Lem. 259.

One felled of lands in fee, by his will in writing de-

plies Black Ace to A. his daughter and heirs, and White
Ace to his daughter B. and her heirs; and if the die-
before the age of eighteen years living A. then A. Shall
have Black Ace to her and her heirs; and if Richard, die,
having no ilive, living B. then B. Shall have the premises
A. to her and her heirs; and if both die, having no ilive, then
A. and B. to his and her heirs and B. attains her age of
sixteen years; and then dies without ilive in the life of
A. and first it was held by three judges against Dryr,
that the daughter B. had an heir male by the death of A.
will, and not a fee determinable upon a contingency
sub-


ferent; secondly, that by the words, if both die with-
out ilive, no crofs remainders in tail were created by im-


lication, but that upon B.'s death without ilive, after
sixteen, J. S. should have her part presently without
having part of the premises. 2 Rol. 130. 1 Dall. 230.

1 Bylet. 212. 1 Rol. Ait. 839. Vobg. 267. 2 Hat. 38.

A. felled of lands in fee, by his will devises all his lands in
the county of to his two daughters B. and C. and their heirs,
equally to be divided between them; and in cafe they happen to die without ilive, then he devises the faid lands to his nephew J. S. and the heirs
male of his body, and dies; and it was adjudged, that
upon the death of B. one of the daughters of the other
tather took her moiety as a crofs remainder. Raym. 452.

Shir. 7. 2 Joy. 172. 2 Show. 180. 3 Petr. 434. S. C.

Holmes v. Moore, and see 2 Vent. 545. 3 Mud. 107.

1 Crof. 147. 3 Vent. 224. Raym. 455. Finly. 79. Show.

v. Wrigg. 2 Joy. 82.

It is clearly agreed, that crofs remainders can only arise in life fees, and are not to be allowed of in any
deed or conveyance. 1c. Lit. 25. 1 Rol. Ait. 837. 2

Show. 136.

Richard Holden felled in fee, and having ilive a foon
and three grand-children, by his will devised part of his
eflate to his wife for her life, and the reversion of such part
expectant on her death, and all other her freehold
estates, etc. to her for her life, and after his death to his first and other fons suc-

cessively in tail male; and for default of such ilive, and after the determination of the faid effates, he gave the
premises to his grand-daughter Anne Holden, and his grand-

daufther Elizabeth Holden, to be equally divided be-
tween them, and to the heirs of their respective bodies
iliving; and for default of such ilive he gave the pre-


mises to his grand-daughter Anne in fee; the teffator
died feared, Richard the foon died without ilive male,
whereupon Elizabeth and the grandon ented, and


Elizabeth died without ilive generally; Anne Holden mar-
rried John Tare and the refolution was, whether there
were crofs remainders between Elizabeth and Richard
the grandon, or whether the moiety of Elizabeth Should go to
Anne or to Richard? And it was resolved, that there
were no crofs remainders between them, because here are
no express words, nor is there a neceffary implication,
without either of which crofs remainders cannot be rai-


led; that the words, and for default of such ilive, being
relative to what goes before, mean only, and for default
of heirs of their respective bodies, and there it is no
more than as if it had been a devile of one moiety to
Richard and the heirs of his body, and of the other moiety
to Elizabeth and the heirs of her body, and for
default of heirs of their respective bodies remainder over,
in which cafe there could be no doubt; and it was held
that this cafe differed from the cafe fupra of Holmes
and Meynell, the word reversion being in that cafe, and the
first devisors were the teffator's daufthers, and the
remainder-tevise his nephew; and the second

cafe, Anne was as near to the teffator as Richard,


Gent. v. Hill, Pafby 7 Geo. 2. in B. R. and Mitch. 8 Geo. 2.
a like cafe in B. R. between Brome v. Williams.

3. Of what things a remainder may be made, or limited.

As to eftates of inheritance, there can be no doubt
but that the granator, having a perpetual and durable in-


terest in the estate, may share and divide it, or grant as many remainders over as he thinks proper. 4 Bac. Abr. 497.

But as to personal goods and chattels, it was formerly held, that they in their own nature were incapable of any limitation over, being things transitory, and by many accidents subject to be destroyed, disposed of, delivered in trust, &c., and the exigencies of trade requiring a frequent circulation thereof, in which they differ from lands and tenements which are permanent, and therefore what is called an estate in lands is termed property in personal chattels; and hence it was held, that a grantor's devise of a personal estate, if not expressly qualified, to go to his heirs after a certain time or minute, was a gift for ever, and an absolute disposition of the intire property. Brs. Devise 13. Plew. 521. Dyer 74. 8 Co. 94.

Hence it came to pass, that it was a long time ere the courts of justice could be prevailed on to have any regard for a devise over even of chattel real, or a term for years after an estate for life limited thereon, because the estate for life being in the eye of the law of greater regard and consideration than an estate for years, they thought he, who had it devised to him for life, had therein included all that the devisee had a power to dispose of; but now such remainders over are allowed under the name of executory devices, and are established both in courts of law and equity and in trust and gift, and are made perpetual, so as to make estates unalienable. 4 Bac. Abr. 294.

Also a distinction was formerly taken between a devise of a personal chattel to one for life, with a remainder over, and of the use only; that in the first case the devise of life for the absolute property, but not so in the second, for that the devise of life had not the property of the goods, but only a special interest in them, so that there still remain a property which might be limited over; but this distinction is now exploded in conformity to the Civil law, and the devisee in remainder is allowed in equity the like remedy in both cases. Plew. 521. Grot. Car. 346. 1 Rol. Abr. 610. March 106. Owen 33. 1 Grot. Ca. 129. 2 Vern. 245. 1 P. Will. 4, 503, 657.

But a devise of a term for years or personal chattel to one for a day or an hour, is a devise of the whole term or interest, if the limitation over is void, and it appears at the same time that the whole was intended to be dispossessed from the execution. 1 P. Will. 666.

A being��classified of a term for ninety-nine years, devise of life for life, and after the failure of the devisees, all the seven persons being dead, and the term continuing, it was adjudged, that it should revert to the executors of the testator, and that it did not vest in the survivor of the devisees so as to vest it to his representation. 1 Salk. 231. 1 Ed. Raym. 325. Ayres v. Falsbeld.

A farmer devised his flock (which consisted of corn, hay, cattle, &c.) to his wife for life, and after her death to the plainfient. It was objected, that no remainder can be limited over of such chattels as these, because the use of them is to supply and consume them; but the Master of the Rolls said the devise over was good, but said if any of the cattle were worn out in using, the defendant was not to be answerable for them; and if any were sold as ufeless, the defendant was only to answer for the value of them at the time of the sale; and an account was decreed to be taken accordingly. Abr. Eqw. 561. Hayley v. Barrodale.

A gives his father, by will, to l. and directs that part of his personal estate, as his wife should leave of her substance, should go to the father; whatever the wife has not employed in that way, shall go over and be accounted for. 1 P. Will. 651. Uprawr v. Hafey.

But if a chattel real, money, goods or other personal things, are devised to one, and the heirs of his body, or to one, and if dies without heirs of his body, remainder over; this remainder is totally void, and the courts of equity will not allow of a bill of the remainder-man to compel security, &c. or to have the money, &c. after the death of the first devise, but it shall go to his executors or administrators; for the first devise gives the absolute property of a personal estate, as the like devise of a real estate before the statute De domini gave the absolute fee, upon which no limitation could be made further, and the same is true of the representation of an estate; so are the executors to take the personal estate; and this is not within the statute De domini, but remains as at Common law. 2 Tant. 339. 2 Vern. 600. 1 Salk. 156. Abr. Eqw. tit. Devise.

If A. devise that his goods and furniture shall remain in his house to be enjoyed according to the limitations in his will, by those intituled to the house, the first that would be tenant in tail of the house becomes absolute owner of the goods. Saunders v. Saunders admitted. Not only lands and tenements, but also rents, commons, eftovers or any other interest or profits in oil, wherein the grantor hath the absolute property to himself and his heirs, are to be granted with remainder over. Plew. 379. 9 Co. 45, 97.

So if one hath the office of park-keeper, forester, gaoler, sherif, &c. to him and his heirs, he may grant these offices to one for life, remainder to another for life, &c. for some major contract in fee minas, and as they are grantable over in fee, so may they be granted in fee or remainder. Jones v. Rolls. 1 Tit. Plow. 48, 100. 1 Salk. 330. 1 Salk. 577. 1 Lorn. 1225. March pl. 100.

In the case of The King v. Kemp, it was held, that the King may grant an estate in an office to commence in futuro, or upon a contingency, for he hath no inheritance in the office, or to the execution of it, but in point of time only, when he grants a lease. In the former case there was a diversification of offices in fee existing, and such as were grantable only for life, which being as a new thing created, might, as a rent de novo, be granted to commence in futuro. 4 Moel. 275. 1 Ed. Raym. 52. 3 Cary. 330. Salt. 495. Comb. 334. King v. Kemp. If one be desired to have a vicount, Earl, &c. created, and after, in the same patent, the same honour is granted to another in remainder, yet this operates as a new grant, and not as a remainder, for the King had no reversion of that honour in him, tho' he had the same power of appointing one in fee to take it, as he had of granting the office. 3 King v. Trenchard. 1 Co. 70. 1510. 1 Salk. 577. Underhill v. Besson. A licence to fell wine may be granted to one for life, remainder to another for life; because by such licence not only an authority pulchit, but an interest, by way of re"stitution, to that which was the subjedt before it was prohibited by statute. 1 Lorn. 226. Bridg. Rep. 193.

4. What words are sufficient to create a remainder.

The word remainder is no term of art, nor is it necessury to create a remainder. So that any words, sufficient to shew the intent of the party, will create a remainder; because such enfeetors take the denomination of remainder, though they may be limited over for time, as after they are limited, than from any previous quality inherent in the word remainder. To make them such therefore, if a man gives lands to A. for life, and that after his death the land shall revert, or defend to B. for
A. by indenture makes a leafe to B. for forty years, if A. so long live, and after his death to C. (who was no party to the deed) for one thousand years, and then A. leaves a fine and dies, and five years pass after his death, and then the plaintiff claiming under C. enters another suit, and ought to be in abeyance, or contingency, to vest or not vest when that determines; but here the first lease is no such particular estate; because that reaches not to the commence- ment of the remainder, nor is the remainder limited with any regard to the particular estate; because it is not determinable at all in the case, for it is to take effect at all events, upon the death of the lessee, be it before or after the end of the term, and therefore it can be no other than a future intertitt termini to begin after the death of the party that grants it, which being but for ten years it may well do; because it enures by way of contract, and though the grante there was no party to the deed, and therefore, as objected, could take nothing, yet it appears, that judgment was given for the plaintiff; which proves, First, That the grante had an interest; Secondly, That the interest was not determinable; and, thirdly, years non-claim after the death of the grante, not being touched, devolved or turned to a right; thirdly, That though the grante was no party to the indenture, yet he might well take by virtue thereof, if he gets the indenture to make out his title, for the grantor can't derogate from his own grant, or avoid his own act. 

5. Of the continuance of the particular estate, and when the remainder it is to commence.

If a man makes a leafe to A. for life, and that after the death of A. and one day after, the land shall remain to B. for life, &c. this is a void remainder, because not to take effect immediately upon the determination of the first estate, and so during that time there would be an interruption of the livery, and no tenant of the freehold, either to deal in the foil, or to hold in his right, for another life, or term, or years, non-claim after the death of the grante, not being touched, devolved or turned to a right; thirdly, That though the grante was no party to the indenture, yet he might well take by virtue thereof, if he gets the indenture to make out his title, for the grantor can't derogate from his own grant, or avoid his own act. 

5. Of the continuance of the particular estate, and when the remainder it is to commence.
Remembrances of the Chequeuage, (Rememrantes Scaccarii,) Are three officers or clerks there, One called the King's Remembrancer, 25 Edw. cap. 5. The second, The Lord Treasurer, and the third, the Clerk of the Judges of that court, in Remembrance of such things as are to be called on, and dealt in, for the King's behalf. The third is called The Remembrancer of the First-Fruits, 5 R. 2. Stat. 1. cap. 14, 15. Thee in 37 Edw. cap. 4 are called Clerks of the Remembrancer. The King's Remem- brancer makes all records, and enters them before the Barons for any the King's debts, or for appearances, or for observing of orders: He takes all bonds for the King's debts, for appearance, or for observing orders, and maketh processes for the breach of them. He writeth processes against the collectors of customs, fabulums, and fifteenth, for their accounts: All informations upon processes are entered in his office, and there all matters upon English bills in the Exchequer chamber remain: He makes the bills of compositions upon penal laws, takes the falsment of debts, has delivered into his office all manner of indentures, fines and other evidences whatsoever, that concern the affuir of any lands to the crown: He every year, in trallina animarum, reads in open court the statute for election of sheriff's, and gives them their oath; and he reads in open court the oath of all the officers of the same when they are admitted, besides many other things: The Lord Treasurer's Remembrancer makes processes against all sheriff's, effectors, receivers and bailiffs, for their accounts. He makes other processes of fees, fines and extents for any debt due to the King either in the pipe, or with the auditors; makes processes for all such revenue as is due to the King, by reason of his tenures: He makes a record, whereby it appears, whether sheriff's or other accountants pay their fines due at Egles and Michaelmas. He makes another record, and procures that the sheriff's give their days of prefixation. All efects of fines, fines and amercements, fee in any courts at Westminster, or at the alleys or seftons, are certified in this office, and are by him delivered to the clerk of the efects, to write processes upon them, &c. There are brought aloft into his office, all the accounts of cUSTOMERS, controllers and other accountants, to make entry thereon of record. The Remembrance of the First-Fruits takes all compositions and bonds for first-fruits and tenth, and makes processes against such as do not pay the same. Cornwell, edit. 1757.

Remembrances to make copies of seizures and inquisitions certifyed into their offices; and to enrol and certify to the improper of the great roll such debts as are charged upon sheriffs, &c. 13 & 14 Car. 2. cap. 21, fol. 4, 6. Remitter. (Remitter, to relieve.) In a legal sense intends a restitution of one that has two titles to lands or tenements, and is feiled of them by his latter title, which proving defective, he is referred to the former and more ancient title. Cowell. E. N. & B. fol. 149. Dyer fol. 68.

Remitter is an ancient term in the law, and is where a man has two titles to lands or tenements, viz. one a more ancient title, and another a more late title; and if he comes to the land by a later title, yet they shall adjudge him in by force of the elder title; because the elder title is the more free and worthy title; and then when he is adjudged in by force of his elder title, he is said a remitter in him, for that the law does admit him to be in the lands by the elder and fitter title; as, if tenant in tail discontinues the tail, and after he dies his discontinue; and to died feised, whereby the tenements reversion, inheritable by force of the tail; in this case, it is to him to recover the tail, and discontinue, who has right by force of the tail, a remitter to the tail; because the law shall put and adjudge him to be in by force of the tail, which is his elder title; for if he should be in by force of the defendant, then the discontinue might have a writ of entry for dixit diem in the per annum, after the death of his adversary, and his damages. But inasmuch as he is in his remitter by force of his tail, the title and interest of the discontinue is quite taken away and defeated, &c. Lit. leg. 659.

Regularly to every remitter there are two incidents, viz. an ancient right and defeasible estate of freehold continuing together, &c. Lit. 548. Tenant in tail instituted his heir apparent in the tail within age, and another jointnain in fee, and the tenant-in-tail dies; the heir in tail is in his remitter as to the one moiety, and as to the other moiety he is put to his writ of formon, &c. Lit. leg. 663.

So if the discontinue after the death of tenant in tail made a demand of the heir apparent, he might take in the person who has a right, and to a stranger in fee, and makes livery to the infant in name of both; the issue is not remitted to the whole, but to the half; for, till he takes the feise, and after the remitter is wrought by operation of law, and therefore can remit him but to a moiety, &c. Lit. leg. 663.

But if tenant in tail insted his heir apparent, the heir being of full age at the time, and dies; this is no remitter to the heir, because it was his folly, that being of full age he would take such feeedom, &c. but such folly cannot be adjudged in the heir being within age at the time of the feecom, &c. Lit. leg. 664. For where the right of pollefion is distinct from the right of property; there if the proprietary re-obtains the right of polleffion by agreement, he must hold it under such agreement, for the other having the right of pollefion, and transferring it to the proprietary, such proprietary must take the right in the same manner as the other was conserved; for it is his own folly and laches, the proprietary would contrat about such right of pollefion, and not afflit his property in a proper action; but when he has contracted for such right of pollefion, and such right of pollefion is transferred, he must keep to the terms of the bargain, and he leaves all the right in the seceur he has not contracted; &c. 6 G. Treat. of Ten. 111. 134. A woman after her divorcement or keeping a husband, who alias to another in fee, the alience lets the same land to the husband and wife for their two lives, saving the rever-
to give him an adequate satisfaction or compensation for them, as the jury cannot determine what injury he has sustained. Ca. Lit. 96. a. Stil. 397. 2 Ld. Raym. 1160.

The services implied are such as the law obliges the tenant to perform when there are none contracted for in the grant; and there are more or less according to the duration of the gift; as at Common law, before the statute Ruin emperior terarrum, if the tenant made a feast in fee without any reservation of services, the feast-fee held by his grantor for services by which the feoffor held over; because the services being an incumbrance on the land, which the tenant could not discharge without his lord's consent, must follow the land into whose hands ever it comes. Ca. Lit. 22. 23.

Where a man is feoffed of lands grants by deed poll or indenture a yearly rent, to be floating out of the same land, to another in fee, in tail, for life or years, with a clause of diffrefs; this is a rent-charge, because the lands are charged with a diffrefs by the express grant or provision of the parties, which otherwise it would not be. See Allmyn.

So if a man makes a feast in fee, referring rent, and if the rent be void behind, that it shall be lawful for him to disclaim, this is a rent-charge, the word referring amounting to a grant from the feoffor. Lit. feñ. 217. Ca. Lit. 170. a. Plow. 134.

A rent granted for equality of partition by coparceners to another is a rent-charge, and disfainable of common right without clause of diffrefs; and altoso there be no tenure of the fitter who grants it; for as the law for the convenience of coparceners allows of such grants, it must conseqiently give a remedy to the grantee for the recovery of it. Lit. feñ. 252.

A rent-fee is fo called, because it is unprofitable to the grantee, as before feiff he had a life in any rent granted, whether in fee or in fee tail, with any clause of diffrefs; these are rent-fee's; for which, by the policy of the ancient law, there was no remedy, as there was no tenure between the grantor and grantee, or feoffor and feoffee, and consequently no fealty could be due. Lit. feñ. 215. 218. Cro. Cas. 520. Kelto. 104. Cro. Eliz. 646.

And it hath been ruled in equity, that where an annuity was devised by will to A, and the land subject to the annuity to B, that B. should give feifin of the rent-fee to A, in order to the recovery of the rent of it at Common law, it being the original intention of the gift, that the devisee should have some benefit from it. Mor. 626. 3 Chan. 92.

So when a bill was brought for 3 for a rent of 5. for twelve years, the equity of the bill being that the deeds by which the rent was created were lost, and consequently no remedy for the rent at law; and the court, upon the plaintiff's proving confiscatory payment till the latt twelve years, decreed the defendant to pay the arrears and growing rent; for since by the payment it was evident the plaintiff had a right to the rent, and that he could not without his deeds make a title at law, therefore the court decreed the defendant to pay the rent, and so subjected his person, which possibly might not have been liable by the deed that created the rent. 1 Chan. 120. Colet. v. Jacque. But fee hat. 4 Geo. 2. c. 28. in the next division of this title.

1. Statutes concerning rent.
2. Of recovering and demanding rent, and in what cases a demand is necessary.
3. Of the time of demanding rent, and the place where the demand is to be made.

1. Statutes concerning rent.

Stat. 32 Hen. 8. c. 37. Stat. 1. The executors or administrators of tenants in fee-simple, tenants in fee-tail, and tenants for term of life, of rent-fervices, rent-charges, rent-fee's, and rent-farms, unto whom any such rent:

For more learning on this subject, see 18 Vin. Abr. tit. Rentorse. Rentfore.

Remorse, The entry in B. R. on a writ of error's licence in the Exchequer chamber, is called by this name. See Circo.

Amount of good perfons. See Settlement of the poet.

Remover, Is where a cause or suit is removed out of one court into another; and for this there are divers wrinkles and means, 11 Rep. 41. And remaining of a cause the sinding it back into the same court, out of which it was called and sent for. See Palais Corpus.

Remitttir, or rather remittir, (mentioned in Hat. f. 8, c. 3.) Denying, from the French Renier, negare.

Renter, (from the French Rendre, i. reddere, retirare,) Signifies with us the same thing. For example, this word is used in levying of a fine, which is either free, whereby nothing is granted or renders back again the cause cognize to the cognizor; or double, which conveys a grant or renders back some of rent, common or other thing, out of the land itself, to the cognizor. E. W. Syn. part. 2. tit. Fines, fæd. 21. and 50. Also there are some things in a manor that lie in render, viz. which may be taken by the lord or his officers, when they happen, without any effect made by the tenants, is echeats, and the like; and some that lie in render, that is, must be delivered or answered by the tenants, as rents, reliefs, heriots and other services. Ibid. fæd. 126. Also some services confiit in seifance, some in render.

Perkin's Reformation 608.

Rempte, According to the curiously call Rempte, is one who was a Christian, and afterwards negat Christiam: it is mentioned in Hovenden anno 1192. by the name of Rentnius, viz. Et capit in equitationi illa 24 pagani, & annu renum qui quondam Christianus fuerat & Damnator Christianum seignorat.

Remuiu (from remane, to renew) Renewing or growing again. The parson fued one for titles, to be paid if things renovated, but his fores being only for labour and service, would not renew, &c. Cro. cop. part. 2. fol. 430.

Rent, (redditus in Latin, from redere, because, as Plato tells us, "Reditus " & quot; quies") Signifies in English, a right of money, or other considerations left, either in possession of the lands, or tenant's. Plowden, fol. 132. 138. 141. Browning's cafe; of which there are three forts, viz. Rent-service, rent-charge and rent-fee. Rent-service is, where a man holds his lands of his lord by fealty and certain rent, or by fealty-service, and certain rent. Lit. lib. 2. cap. 12. Or that by which a man making a lease to another for term of years, referreth yearly to be paid him for them. In the terms of the law, this reason is given for it, because it is at his pleasure either to disclaim, or bring an action of debt. Rent-charge is, where a man makes his essay to another, by deed indented, either in fee, or fee-tail, or for term of years, or other convenient time, for a sum of money yearly to be paid him, with clause of diffrefs for non-payment. See Littleton su fpa. Rent-fee, otherwise a dry rent, is that, which a man making over his essay by deed indented, referreth yearly to be paid him, without clause of diffrefs mentioned in the indenture; and the tenant is at liberty to demand the difference between a rent and an annuity in Dower and Stanton, pag. 30. Dial. prono. Cowell.

Littleton describes a rent-fee to be service where the tenant holdeth his land of his lord by fealty and certain rent, or by other services and certain rent. Lit. fæd. 215. Where these two sorts, either expressed in the lease or contrac, or raised by implication of law. When the services are expressed in the contract, the quantum must be either certainly mentioned, or be such as to a reference to something else may be reduced to a certainty; for, if the lessor's demands be uncertain, it is impossible
rent or fee-farms shall be due, shall have an action of debt for 6 ch arrears against the tenants that ought to have paid the same or their representatives, against the executors and administrators of the said tenants; and it shall be lawful to every such executor and administrator of any person unto whom any such rent or fee farm is due, to distrain for the arrears against the land charged with the payment, so long as the said lands continue in the possession of the tenant, or his heirs in the nature of a fee, or the tenant ought to have paid the rent or fee-farm, or in the feisin or possession of any other person claiming only from the same tenant by purchase, gift or descent, in like manner as their tesorator might have done.

Sect. 2. This act shall not extend to any such manor or lordship in Wales, whereby the inhabitants have used time out of mind to pay unto every lord of such lordship, &c. at his first entry, any sums of money for the discharge of all duties and penalties wherewith the said inhabitants were chargeable to any of the lord's ancestors or predecessors.

Sect. 3. If any man shall have in the right of his wife, any estate in fee-simple, fee-tail, or for term of life, in any rents or fee-farms, and the same shall be unpaid in the wife's life; the husband after the death of his wife, his executors and administrators, shall have an action of debt for the arrears against the tenant of the demesne that ought to have paid the same, his executors or administrators, and also the husband after the death of his wife may distrain for the arrears, in like manner as if his wife had been living.

Sect. 4. If any shall have any rents or fee-farms for term of life of any other person, and the said rent, &c. shall be unpaid in the life of such person, and after the said person doth die; he unto whom the rent or fee-farm was due, his executors and administrators, shall have an action of debt against the tenant in demesne that ought to have paid the same, his executors or administrators, and also distrain for the same arrears upon such lands out of which the said rents or fee-farms were flowing, in like manner as if such person, by whole death the estate in the said rents and fee-farms was determined, had been in full life.

Sect. 5. Ann. cap. 14. sect. 1. No goods upon any tenements leased shall be taken by any execution, unless the party at whose suit the execution is sued out, shall before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent for the present and for the arrears do not amount to more than one year's rent, and in case the arrears shall exceed one year's rent, then the party at whose suit, &c. paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff, as well the money paid for rent, as the execution money.

Sect. 2. In case any lease of tenements, upon the demise whereof any rents shall be referred, shall fraudulently or clandestinely carry off from such premises his goods, with intent to prevent the lessor from distraining; it shall be lawful for such lessor, or any person by him empowered, within five days next ensuing such carrying off, to repair to the premises whereon such goods shall be found, as a distrain for the said arrears of rent; and the same to sell or dispose of, as if the goods had been distrained upon such premises.

Sect. 3. Nothing in this act shall impower such lessor to seize any goods as a distrain for rent, which shall be bona fide sold, and for a valuable consideration, before such tenant's default.

Sect. 4. It shall be lawful for any person, having rent due upon any lease for life, to bring an action for such arrears, as upon a lease for years.

Sect. 5. All distrains hereby impowered to be made, shall be made to such fates, and in such manner, as by a Writ & Order of the Court of Chancery are prescribed.

Sect. 6. It shall be lawful for any person having rent due upon any lease for life, for years, or at will, determined, to distrain such arrears, after the determination of the lease.
new and that in Hob. and it have referred as, in cafe of rent referred upon lease.

Sett. 6. In cafe any leafe shall be surrendered in order to be renewed, and a new leafe executed by the chief landlord, the new leafe shall, without a surrenderer of the leafe upon the first day of this present or any other, or shall be hereafter created, as in cafe of rent referred upon lease.

Sett. 7. Nothing in this act shall extend to Scotland. Stat. 11 Geo. 2, cap. 10. [See the first nine sections of this act under tile Diftrefs] sect. 10. It shall be lawful for any person lawfully taking any Distress for rent, to impound or secure the distress on such part of the premises, as shall be sufficient to pay the rent, or the half yearly rent, and to appraise, fell and dispose of the same upon the premises, as any person may now do off the premises, by virtue of 2 Will. & Mar. stat. 1. cap. 5. or of 4 Geo. 2. cap. 28. And it shall be lawful for any person to come and go to and from such part of the premises, to view, appraise and buy, and also to carry off the same on account of the purchaser; and if any pound-breath or recus be made of goods disinfained for rent secured by virtue of this act, the person aggrieved shall have like remedy as in cafes of pound-breath or recus by the said statute.

Sett. 14. It shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the tenements occupied by the defendants, in an action on the caufe for the use and occupation of what was held; and if in evidence on the trial any parol deed, or any agreement not by deed, whereon a certain rent was referred, shall appear, the plaintiff may make the same thereof as an evidence of the quantum of the damages.

Sett. 15. Where any tenant for life shall die before or on the day, on which any rent was referred upon any demise which determined on the death of such tenant for life, the executors or administrators of such tenant for life may in an action on the caufe, recover of the under-tenants, if such tenant for life die on the day on which the same was made payable, the whole, or if before such a day, then a proportion, of such rent, according to the time such tenant for life lived of the last year or quarter, or other time, in which the said rent was growing during making all just allowances.

Sett. 16. If any tenant holding tenements at a rack-rent, or where the rent referred shall be full three fourths of the yearly value of the premises, who shall be in arrear for one year's rent, shall defeat the premises, and leave the same uncultivated or unoccupied, and shall not be able to make a second view; and if upon such second view the tenant, or some person on his behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distresses upon the premises, the justices may put the landlord in possession, and the lease to such tenants, as to any demise therein contained only, shall become void.

Vol. II. No. 121.

Sett. 17. Provided, That such proceeding of the justices shall be examinable into in a summarv way by the next justices of assize, and if they lie in London or Middlesex, by the judges of the courts of King's Bench or Common Pleas; and if in the counties palatine, then before the judges thereof; and in Wales, before the courts of quarter sessions: Who are impowered to order restitution to be made to such tenant, together with his costs to be paid the landlord, if they shall fee cause for the same; and in case they shall affirm the act of the justices, to award costs not exceeding 5 l. 6s. 8d. under the appeal.

Sett. 18. In case any tenant shall give notice of his intention to quit the premises, and shall not accordingly deliver up the possession at the time in such notice contained, the said tenant, his executors or administrators, shall pay to the landlord double the rent which he should otherwise have paid.

Sett. 20. [See sect. 19. under tit. Distrefs] Provided that no tenant shall recover for such irregularity aforesaid, if tender of amendments hath been made by the party disclaiming, or his agents, before action brought.

Sett. 21. In actions of trespas, or upon the case, brought against persons intitled to rents or services, their bailiffs or receivers, or other persons, or for any distress or action upon the premises chargeable with such rents or services, or to any distress or feizure, sale or disposal, of any goods thereupon, it shall be lawful for the defendants to plead the general issue; and in case the plaintiffs become nonsuit, &c. the defendant shall recover double costs.

By plat. 1, 7 Geo. 2. c. 16. a tenant may be prejudiced by payment of rent to a grantor before notice of the grant. And by plat. 20 Geo. 2. c. 52. sect. 42. Arrears of rent due from farmers of revenue are excepted out of the general pardon.

2. Of recovering and demanding rent, and in what cases a demand is necessary.

Here the material difference is between a remedy by re-entry, and a remedy by distress, for the non-payment of the rent; for where the remedy is by way of re-entry for non-payment, there must be an actual demand made previous to the entry, otherwise it is peremptory; because such condition of re-entry is in derogation of the grant, and the eftate at law being once defeated is not to be restored by any subsequent payment; and it is presumed that the tenant is there refusing on the premises in order to pay the rent for the possession of his estate, unless the contrary appears from the tenant's bitterness to the landlord, and therefore unless there be a demand made, and the tenant thereby, contrary to the presumption, appears not to be on the land ready to pay the rent, the law will not give the lessor the benefit of re-entry, to defeat the tenant's eftate, without a wilful default in him; which cannot appear without: a demand hath been actually made on the land. Ca. Lit. 201. 6. Hob. 207, 331. 5 Co. 56. Dyer 51. Plow. 70. 7 Co. 56. Mandin's cafe, Vough. 32.

So if there had been a numine pane given to the lessor for non-payment, the lessor must demand the rent before he can be suffered to make the penalty, or if the clause had been, that if the rent were behind, that the eftate of the lessee should cease, and be voided; in these cases there must be an actual demand made, because the presumption is, that the lessee is attendant on the land to save his penalty and preserve his estate, and therefore shall not be punished without a wilful default; and that cannot be made appear without a demand be proved, and that was not answered; and the demand in these cases must be made at the day prefixed for the payment, and alleged expressly to have been made in the pleading. Hutt. 114. Hob. 207, 337. 7 Co. 56.

But where the cause of recovery of the rent is by distress, there needs no demand previous to the distress: for he the deed says that if the rent be behind, being lawfully demanded, that the lessor may disclaim; but the lessor, notwithstanding such clause may disclaim when the rent becomes due. So it is, if a rent-chARGE be granted to A, and if it be behind, being lawfully demanded,
Ren

that then A. shall distrain; he may distrain without any previous demand, because this remedy is not in destruction of the estate, for the defendant is not a pledge for the payment of it, and the very taking of the disfrets is a legal demand of the tenant to pay the rent, which was all that was required by the deed; and the tenant is not injured by the taking of the disfrets, because upon the tender of the rent the pledges are immediately to be re-

flected at the defendant's choice. After the rent has been forfeited in a replevin; whereas in the case of re-

entry or of the penalty, the tenant is really injured either by the loss of his estate, or the payment of a greater sum than the rent, which cannot be restored upon the payment of the rent; and therefore he shall not be punished in this way, unless it should happen, which cannot otherwise appear than by the proof of a demand, which was not suffered by the tenant.


But this general diffusion must be understood with those restrictions.

Fifth. That if the King makes a lease, rendering rent, and if the rent be arrear and be demanded, that it should be lawful for the prebend to re-enter; if the reversion in the case comes to the King, the King must in this case demand the rent, though he be by his prerogative excused of an implied demand; for the implied demand is the act of the law, the other the express agreement of the parties, which the King's prerogative shall not defeat; therefore in case of the King, if he makes a lease, rendering rent, with a proviso, that if the rent be in arrear, the King must in this case demand the rent, though he be by his prerogative excused of an implied demand, it appears that the King himself, whilst he continues the reversion in his own hands, is obliged to make an actual demand by reason of the express agreement for that purpose.


Secondly. Another exception is, where the rent is payable off the land, without a clause that if the rent be behind, being lawfully demanded at the place of the land, or where the clause is, that if the rent be behind, being lawfully demanded of the person that is to pay it, that then he may distrain; in such cases, though the remedy be by disfrets only, yet the grantee cannot distrain without a previous demand, because here the disfrets and demand are not complected, but different acts, to be performed at different places and times, the demand must be previous to the disfrets; for the disfrets is an act of grace, and not of common right, and therefore must be used in the manner that it is given.


But where the clause is no more than that if the rent be behind, being lawfully demanded, (without paying at any place off the land, or of the person of the grantor) then that the grantee may distrain; there needs no actual demand, because here the disfrets and demand is but one complected act, the one included in the other, and all done at one time and place, viz. upon the land; for the disfrets is in itself a lawful demand, and therefore needs no previous to it, because all that was required by the deed was a lawful demand, which the disfrets in its own nature is.

2 Rol. Abr. 446. Hob. 268, and see Dy. 438.

And there seems to have been formerly another exception admitted, that where the remedy was by way of debt for non-payment, that yet there needed no demand, if the tenant could not pay at any time of the land; because they looked upon the money payable off the land to be in nature of a sum in gross, which the tenant had at his own peril undertaken to pay; but this opinion has been entirely exploded, for the place of payment does not change or alter the nature of the service, but it remains a debt for the same sum as if it had been made payable upon the land; and therefore appears that the tenant was there to pay it, unless it be overthrown by the proof of a demand, and without such demand, and a neglecf or refusai therupon, there is no injury to the leflee, and consequently the estate of the leflee ought not to be deprived. Plow. 70. 4Co. 73. Mor. 408, 598. Ch. Eliz. 445, 451, 453, 457.

But when the power of re-entry is given to the leflee for non-payment, without any further demand, there it seems that the leflee has undertaken to pay it, whether it be demanded or not; and there can be no preump-

tion of his power in his favour in this case; because, by dispensing with the demand, he could put him self under the necessity of making an actual proof that he was ready to tender and pay the rent.

Dy. 68.

There is another exception when the remedy is by dis-

frets, and that is, when the tenant was ready on the land to pay the rent at the day, and made a tender of it; there it seems there must be a demand previous to the disfrets, because where the tenant has flown himself ready on the day by the tender, he has done all that in reason can be re-

quired of him; for it would put the tenant to endless trouble to oblige him every day to make a tender; it being altogether uncertain when the leflee will come for his rent, when he has omitted to receive it the day which he him-

self has appointed by the lease for payment and receipt; wherefore as the leflee must expect the leflee, and he must be ready to pay it at the day appointed for the payment of it, or else the leflee may distrain for it without any demand; for where the leflee has lapsed the day of payment, and was not on the land to receive it, he must give the tenant more time before he can distrain for it; for the tenant shall be put into no trouble when it appears that he has omitted nothing on his part.

Hob. 207. 2 Rol. Abr. 427.

And where the tender was made by the tenant on the land at the day, there a demand on the land is sufficient cient after the day, because the demand in such case is of equal notoriety with the tender, and a parity of reason the tenant ought to take notice of such demand, as well as the leflee of the tender on the land.

Hob. 207.

But if the tenant had tendered the rent on the day to the perfon of the leflee, and he refused it, if it seems by the better reason, the leflee cannot distrain for that rent, without a demand of the tenant, because the demand ought to be equally notoriety to the tenant, as the tender was to the leflee.

Hob. 207. 2 Rol. Abr. 427.

So if the services by which the tenant holds be perfoon, homage, fealty, &c. the demand must be of the perfon of the tenant, because this is only performable by the very perfon of the tenant; and therefore a demand, where he is not, would be improper.


Again, if the rent be feck, and the tenant be ready at the half inlant of the day of payment to pay the rent, and the leflee there to receive it, he must afterwards demand it of the perfon of the tenant on the lands before he can have his affise; because the tenant, by the tender at the day, has done all that was required on his part; and if the grantee might have his affise, after such tender on the day, without a demand of the,
person, the tenant might be made a defifter, and damages for the default laid upon him, without any wilful default in him; but in the case of a rent-charge, after such tender of the tenant on the land, the grantee may afterwards demand the rent on the land, because he has his remedy by diftreff, which is no more than a pledge for the rent; and this being to be found and taken of the land, the grantee need only demand his rent where he can find his remedy, which is on the land; but in this case, if the grantee cannot find the tenant on the land to demand the rent, he may, on the next feast on which the rent is payable, demand all the arrears on the land; and if the tenant is not there to pay it, he has failed of his duty, and is guilty of a wilful default, which amounts to a denial; and that denial being a defeafion of the rent, the grantee may have his aflife, and by that aflife recover all the arrears. Cor. Cas. 508. 7 G. 57. 1670. 2 Red. Abr. 437.

But if there has been neither a tender of the rent, nor a demand of the grantee on the day, then the grantee may afterwards demand the rent on the land; because the tenant having omitted to do his duty by a tender on the day, he is till obliged to answer the legal demands of the grantee, which is well made upon the land, because demand by the leflee, tender on the day of payment, the rent is due and payable every day afterwards; and therefore a demand in the same manner as the law requires is sufficient; and consequently the non-payment, after a demand on the land, is a denial and defeafion, for which the grantee may have his remedy as according to law. 

If a lease be made referring rent, and a bond given for performance of covenants and payment of the rent, the leflee may sue the bond without demanding the rent; for the bond being only a collateral security for the rent, makes no alteration in the nature of it; but it must still be paid in the same manner, and at the same time and place, as if there had been no bond given; and therefore is subject to the former rules and distinctions as to the demand. Cor. Eliz. 33. Cor. Cas. 76. 1670. 8.

If there be several things demifed in one lease, with several refervations, with a clause, that, if the several yearly rents referred be behind or unpaid in part, or in all, by the space of one month after any of the days on which the same ought to be paid, then that it shall be lawful for the leflee, into fuch of the premises, whereupon such rents being behind or are referred, to re-enter; these are in the nature of diftinct demifes, and several refervations; and consequently there must be different remedies to defeat the whole entail demifed. Vaughan 71, 72.

Also as to the necessity of a demand of the rent, there is a difference between a condition and a limitation; for instance, if tenant for life (as the cafe was by marriage settlement with power to make lease for twenty-one years, so long as the leflee's executors or assign(s) shall duly pay the rent referred) makes a lease pursuant to the power; the tenant is at his peril obliged to pay the rent without any demand of the leflee; because the estate is limited to continue only fo long as the rent is paid; and therefore for the non-performance according to the limitation makes no demand without a tender made to a woman dura/fae fuerit, this is a word of limitation which determines her estate upon her marriage. Vaughan 31, 39. Triftram v. Countess of Baltinglas.

Note: It seems the better way for the leflee to have a clause of re-entry for non-payment of the rent, than a clause that the lease shall be void for non-payment; becaufe if the rent be behind, and the non-payment by the leflee does not avoid the lease; becaufe there must be an actual entry to determine it, to which, as it is said, there must be an actual demand precedent; fo that in this cafe an actual demand does not determine the lease, but only puts it in the power of the leflee to recover it, if the rent be behind the day and ten days after, and for, he may either recover the rent by action of debt, and suffer the lease to continue; or after such actual demand he may by entry defeat it. But if the clause be, that for non-payment the lease shall be void, then if the leflee should undeviety make an actual demand of the rent, and the leflee not be able at that time to pay it, he has thereby actually determined the lease; because there is no re-entry previously to determine an estate already void in itself. Yet even in this case, if the leflee forbeard to make an actual demand when the rent is in arrear, he may recover it by action of debt or diftreff, and to continue the lease, becaufe these remedies, being not in defafture of the grant, the leflee may pursue without an actual demand; but this observation is to be intended only of a lease for years; for in a lease for life, no demand can determine it without actual entry, though the clause there, that for non-payment of the rent the lease shall cease, and be void. Hob. 331. 2 Red. Abr. 439. 2 Med. 264. 3 Ca. 64. Pembatt's cafe.

One makes a lease for years, rendering rent, payable at the two moft usual feasts in the year, or within a month after each of the said feasts, with a proviso, that if the rent be arrear by the space of a month after either of the said days (being demanded in due form) that then the lease shall be void. If the leflee does not pay the rent at the feast-day, but sometime after within the month makes a tender of it at the place and time as aforesaid, if this be refused, the leflee may by entry on the last infant of the last day of the month; but it seems not, because the leflee might have been there on the last infant of that day to have demanded it, and then for non-payment the lease will be void, and consequently such tender before the last infant cannot save it. Dyer 8, 233. 3. 228. 272.

Nicholls prayed the opinion of the court in this case; leflee of tithes (without any barn or foil) rendering rent, with a proviso, that if the rent be not paid, that the leflee should be void, whether the leflee should be obliged to seek the lessee, and demand the rent of him, or that the leflee ought to seek the leflee? And it was held, that the leflee ought to seek the leflee. But it was said, that the lease was ruled before that time, for he that needs, must blow the coals, and at the peril of the leflee the rent must be paid, otherwise the leflee is gone. Nor 145.

3. Of the time of demanding rent, and the place where the demand is to be made.

The time for payment of rent, and consequently for a demand, is such a convenient time before the fun-fetting of the laft day, as will be sufficient to have the money counted; but if the tenant meet the leflee on the land at any time after the fourth day, and tender the rent, that is sufficient tender, because the money is to be paid indefiinitely on that day, and therefore a tender on the day is sufficient. Cor. Lit. 202, a. Dalj. 44. Sav. 253. 4 Lem. 171. 1 Saund. 287.

If a lease is made, rendering rent at Michaelmas between the house of Ellen and five in the plain certain, with a clause of re-entry, and the leflee comes at the day about two in the afternoon, and continues to five, this is sufficient. Cor. Eliz. 15. Ld. Cromwell v. Andrews. The demand may be by attorney. 4 Lem. 479. But the power must be special, for such land and of such tenant. Tull. 37. 11. 30. 30. In the demand must be proved by witneffes. Dyer 68. Must be made of the precise sum due. 1 Lem. 305. Sav. 212. Med. 207.

If a lease be made, referring rent, upon condition that if the rent be behind at the day, and ten days after, becaufe the lease be behind the day, and ten days after, and for, he may either recover the rent by action of debt, and suffer the lease to continue; or after such actual demand he may by entry defeat it. But if the clause be, that for non-payment the lease shall be void, then if the

for
for when the rent is reserved, upon condition that if it be
behind, that the lessee may re-enter, in such case the
demand must be upon the most notiuous place upon the
land; and therefore if there be a house upon the land,
the demand must be at the fore-door thereof, because the
tenant is presumed to be there residing, and the demand
being required to give notice to the tenant that he may
not be turned out of possession without a willful default,
for it is no matter to him in the place where the end
and intention will be best answered. Co. Lit. 153. 201.
2 Rol. Adr. 428.

And it seems the better opinion, that it is not ne-
cessary to enter the house, though the doors be open,
because there is a place appropriated for the lawful use
of the tenant herein, which no person is permitted to
enter without his permission, and it is reasonable
that the lessee shall go no further to demand his rent,
than the tenant shall be obliged to go, when he is bound
to tender it; and a tender by the tenant at the door of
the house of the lessee is sufficient, though it be open,
without entering; and therefore by a reason of a demand
by the lessee at the door of the tenant, without
entering, is sufficient. Dalst. 59. Co. Lit. 201. 1 And.
27. 3 Leon. 4. and see Cro. Elia. 15.

But when the demand is only in order for a disaffrfs,
there it is sufficient, if it be made on any notious part
of the land, because that is only to inform him to his
repair of his rent, and therefore the whole land being
equally the debtor, and chargeable with the rent, a de-
mand upon it, without going to any particular part of it,
is sufficient. Co. Lit. 153.

If a wood be let, referring rent, the demand ought to
be made at the gate, or some highway leading through
the wood, as the most notious place. Co. Lit. 202.

If a rent-foek be granted out of A. payable at B. the
grantee may demand it at A. and if the tenant be not there
to pay it, it is a disaffrt, for which the grantee may
have his affrt, and a demand at B. had likewise been
good, because that, by the express appointment and a-
 greement of the parties, was the place where the rent
was made payable. Band. 59. Cro. Elia. 324. 11
Car. 507.

But a demand of the person of the tenant is not suf-
cicient off the land, because the demand is required to be
made in order to an immediate payment; but no peron
is presumed to carry his wealth in a place, but it is rea-
sonably supposed he will be in his place of habitation, or
upon the occurrence he is gathered, and therefore the demand
of the person off the land being not sufficient to answer
the intention of the demand, is useless and insignificant.

If the King makes a lease referring rent, the tenant
must pay it without demand, as is laid, either to his
receiver for that purpose, or at the receipt of the Exche-
quer, as well as if by the words of the lease the rent had
been made payable at his Exchequer, or into the hands of
his receiver; but if the King grants the reverson, the
patentee must demand the rent upon the land, because
that is the place appointed by law, for the reasons already
given, for common reason to demand the rent. 4 Co.

If a rent be reserved payable, at the charge of S. or
D. upon condition, it ought to be demanded at both
places, because the lessee hath his election to pay it at
either place; and therefore to take advantage of the con-
dition, the lesse must demand in each places where by
his renunciation he has permitted the tenant to pay it.
A Rol. Adr. 428.

So it had been referred to be paid at or in the church
of D. it ought for the same reason to be demanded both
within and without the church. 2 Rol. Adr. 428.

If a lease be made of two barns, rent demanded thereon, with
condition of re-entry for non-payment, the lessee tenders
the rent at one barn, and the lessee demands it at the
other, yet the lessee cannot re-enter, because one barn
being as notious, and consequently as proper a place as
the other for the payment, 'tis presumed that the lessee
was at the proper place for payments, unless that pro-
fusion be overthrown by a demand; and therefore
since the demand was not made at both the barns, there
is nothing to destroy the presumption that the tenant was
at the proper place ready to pay to the condition; and
if the lessee did not demand it at the proper place, he
shall not take advantage of the condition. Dyer 239.
in margin.

But they just and reasonable the above cases and dis-
tinctions might have been, and however necessary the
knowledge of them, yet now, by Art. 4 Geo. 2. c. 28.
sec. 2, it is enabled, &c. See the first division of this title.
For more learning on this subject, see 4 Bac. Abr. and 18
Vin. Abr. tit. Rent.

Rental, A rent wherein the rents of a manor are
woven and let down, and by which the lord's bailiff
collects the fame : It contains the lands and tenements
let to each tenant, and the names of the tenants, the se-
veral rents arising, and for what time, usually a year.
Compl. Court Rep. 475.

Rents of affiliates. (Reduttio officii, de officia, ut redut-
tio officii) The certain and determined rents of ancient
tenants paid in a fett quantity of money or provisions;
sold because it was affiled or made certain, and so
distinguished from reduttus millibus, variable rent, that did
rise and fall, like the corn-rent now referred to colleges.
Cowell, edit. 1727.

Rents referable, (Reduttio referable) Are accounted a-
money or corn-rents, to be hold by the statute of 22
Car. 2. cap. 6. and are such rents or tenths as were an-
ciently payable to the crown, from the lands of abbeys
and religious houses; and after their dissolution, not-
withstanding the lands were demised to others, yet the
rents were still referable, and made payable again to the

Reparations. A tenant for life or years may cut
down timber-trees to make reparations, although he be
not compelled thereto; as where a house is ruinous at
the time of the lease made, and the lessee suffers it to fall,
he is not bound to rebuild it, and yet if he fell timber for
reparrations before the lessee had built. The lesion, the
same covenants, that from and after the amendment
and reparation of the house by the lessee, he at his own
charges will keep and leave them in repair: In this case the
lessee is not obliged to do it, unlefs the lesse frifst make
good the reparations: And if it be well repaired at frist,
when the lessee began, and after happen to decay; the
lessee shall still reparer, both before the lessee is bound to keep
it fo. 2 Cro. 625. And if one covenant for the repara-
tion of a house, upon request of the lessee, and he re-
pair without it; this is no performance of the covenant.

Reparations in trede, is a writ which lies in a
divided land, where there are several tenants in com-
mon, or joint tenants or pro indivis, of a mill or house
which is fallen into decay, and the one being willing to re-
pair it, the other two will not: In this case the party will-
ing, shall have this writ against the other two. F.N.B.
fol. 127. Of the various ufe of it, read Reg. Orig. fol.
151.

Reparium, A re-ship or meal, unmum reparium, one
meal's meat given to fervile tenants, when they labour-
ated for their lord. Parach. Antq. 401.

Repeat, (from the French Rappeller, revocate) Signifies
to revoke, as the repeat of a title is the revoking it.
Cowell.

Repleader, (Replectare) Is where the plea of the
plaintiff or defendant, or both are ill, or an importent
affire joined; then the court makes void all the pleas
which are ill, and awards the parties to repel. Terms
de la ley. Cs. Ent. 152, 221, 274.

In debt against lessee for years for rent the defendant
must pay the rent due hist to demand the term. d. at
which the plaintiff had notice; ifssue was joined
upon the notice, and verdict for the defendant. It was
infected, that judgment ought not to be given, but a re-
pleader, the issue being upon a matter immaterial, the
notice being no discharge without agreement or acceptance
by the frist lefse. And Ten. J. laid, that if an importent
issue is taken and verdict given, judgment shall there-
be given whether for the plaintiff or defendant, and cited
Riff, his cattle or goods distraint upon any cause, upon
surety that he will pursue the action against him that
distraint; and if he pursue it not, or if it be adjudged
against him, then he who took the distress shall have it
again, and for that purpose may have a writ of return
bonds. Co. Lit. 145 b. 4 Inst. 139.
Replevin is a writ, and usually granted in cases of
distraint, and is a matter of right; so that if a man grants
a rent with clause of distraint, and grants further, that the
distraint taken shall be irretrievable, yet may they be re-
pleived; it is a writ that determines the nature of a
distraint, and no private person can alter the common
course of the law. Co. Lit. 145.
In this writ or action both the plaintiff and defendant
are called actors; the one, i.e. the plaintiff, suing for
damages, and the avowant or defendant to have a return
of the goods or cattle. 2 Bend. 84. Cru. Eliz. 799. 2
Med. 149.
That the avowant is in nature of a plaintiff, appears,
that, from his being called an actor, which is a term in
the Civil Law, and signifies plaintiff; 2dly, from his
being intitled to have judgment de return habendo, and
damages as plaintiff; 3dly, from this, that the plaintiff
might plead in bar of the distress, and therefore
consequiently such avowry must be in nature of an action.
The avowant being in nature of a plaintiff, need not
ever his avowry with an hoc paratus est se infra, more
than any other plaintiff need aver a writ in praecipe.
Plac. 1603.
An avowry, though it be a writ, but does not have a
provision, as to have him more than any other plaintiff. 2
Inst. 339.
But though an avowry be in nature of an action, yet
one tenant in common may vow for taking cattle dam-
Replevin is an action founded on the right, and
different from trespass. Carth. 74. Trol. 148. Hob. 15.
Cru. Eliz. 799.
In Finch it is held, that when in the pleadings in
the title of the lands is brought in question, it
is then a real action, but if otherwise, that it is a
personal one; but this distinction has not been exploded,
and it is now held, that as no lands can be recovered
in this action, it cannot with any propriety be considered as
a real action, though the title of lands may incidently
come in question, as it may do in an action of trespass,
or even of debt, which are actions merely personal.
Finch's law 316, and Trol. 148. Fling. 100.
In the case of Eaton v. Southby, Mich. 12 Geo. 2. in C.B.
1. For what things a replevin lit.
2. Of the different kinds of replevins; out of what courts
they issue, and of the power and duty of the sheriff.
3. Of the pledges in replevin, and the proceedings against
them.
4. Of the original writ, and the Writnam in replevin.
5. Of the writ of second delivery, and the writ Do
propriate probands.
6. Of the writ de return habendo; of returns irreplev-
ifiable, and in what manner the sheriff is to return and execute such process.

It is a general rule, that the plaintiff ought to have
the property of the goods in him at the time of the
taking; and not only a general property which every
owner hath, but also a special property, such as a person
has, who hath goods pledged with him, or who hath the
cattle of another to manage his lands, &c., it is
sufficient to maintain a replevin, and in such like cases either
A replevin does not lie of things which are free
nature, as coins, hares, monkeys, dogs, &c. but if things
wild by nature are made tame, or are reclaimed, so long
as they continue in that condition, they belong to the
person who hath the possession thereof, and he may
bring a replevin; and the general rule herein seems to be,
be, that a replevin lies for any thing that may by law be distrained. 2 Rol. Abr. 430. Godb. 124.
A replevin lies of a leveret; for it has minimum rerum
therein; and fo for the same, if a filly be of a ferret; but
it is not to lay a maffif dog, though an action of
trespass will. Br. Repl. 64. 2 Rol. Abr. 430.
Replevin lies of a swarm of bees. F. N. B. 68.
Replevin does not lie of trees, or timber growing;
nor of things annexed to the freehold, because such
things cannot be distrained; but replevin lies of certain
ironmonging to the party's mill. F. N. B. 68.
So replevin does not lie of deeds or charters concerning
lands; for they are of no value, but as they relate
Replevin lies not of money, nor of leather made into
shoes. Moor 394. 2 Broam. 139.
If a man keep a cow in calf, &c. are distrained,
and they happen to bring forth their young, whiliff
they are in the custody of the distrainer, a replevin lies for
the foal, calf, &c. Repl. Br. 41. F. N. B. 69. 1 Sid. 82.
Replevin lies for a ship; so of the falls of the ship. Melf. 165. 2 Ran. 223.
It was ruled by Paleifon Ch. J. upon evidence at
Guelphall, in replevin for goods taken by order of the Esof
India company from interlopers in the Indies, that no re-
plevin lies for goods taken beyond sea, tho' brought
hither by the defendant afterwards. 1 Shen. 61.
2. Of the different kinds of replevins; out of what courts
they issue, and of the power and duty of the sheriff.
Replevin may be made either by original writ of
replevin at Common law, or by plaint by the flat of Mart,
By this flat, enacted 2 Ed. 5, it is provided, "That if
the beasts of any person be taken, and wrongfully with-
held, the sheriff, after complaint made to him thereof,
may deliver them without let or gainfaying of him that
took the beasts, if they were taken out of liberties; and
if the beasts were taken within any liberties, and the ba-
lliff of the liberty will not deliver them, then the sheriff
for default of these bailiffs shall cause them to be deliv-
ered."
The milchies before this act were the great delay and
lofs the party was at by having his beasts or goods with-
held from him; as also that cattle, when and how distrained
and whether with or without any liberty that had since
return of writ, the sheriff was obliged to make a warrant to the
bailiff of the liberty to make deliverance; and there was
another milchiff when the diftreff was taken without and
impounded within the liberty. 2 Iftf. 139. 13 Ca. 31.
To remedy which,
By this statute the sheriff, upon plaint made unto him
without writ, may either by parol or precept command his
bailiff to deliver the beasts or goods, that is, to make
replevin of them, and by these words (posl querimiam f&i fafi) the sheriff may take a plaintiff out of the county
court, and make a replevin precinctly, which he is to enter
in the court, as it would be inconvenient, and against the
feeling of the court, and the owner, for whose benefit the
statute was made, should tyrify for his bafliff till the next
county court, which is holden from month to month.
And by this act the sheriff may hold plea in the county
court on replevin by plaint, though the value be of
20 l. or above; and yet in other actions he shall hold
plea where the matter is under 40 l. value. 2 Iftf. 139.
1 Id. 225. Dalt. Stb. 430.
By the words of this law, Si averia capiat, vicec-
mes posl querimiam f&i fafi deliberare possit; so that it becomes the sheriff's duty upon such complaint, by parol
or by precept to his bailiff, to replevy them, which is
clearly, if given even by any county court; but such
plaint is afterwards to be entered, and as holden in Cum.
by the party who made the complaint, and not by the
Replevins by writ issue properly out of the courts of
K. B. and C. B. at Whitefleifer, and are returnable into
such courts. Dyer 246.

Replevins by plaint are made by the sheriff by force
of the above-mentioned statute of Marl. by which he
is directed, upon complaint made to him by the party
that his goods or cattle are distrained, to command his
bailiff (which may be by parol or precept) to make de-
liverance; and which plaint may be taken at any time,
and as well out of, as in court. Bro. Rep. pl. 4. 2 Ca.
Lit. 145. 2 Iftf. 139.
And it is hath been agreed, that the hundred court, and
other hundred courts of manors, may by preferable
hold plea in replevin, and may incidently have power to
replevy goods or cattle taken; but that, it seems, must
be by process of the court after a plaint entered, but not
by parol complaint out of court. Corb. 380.
And where therefore in trespas for taking, &c. the
defendant saith, this is the place where, &c. was a hun-
dred, and time out of mind had a court of all actions,
replevins, &c. grantable in or out of court, virtute cu-
jur, &c. The question was, If good or not? And the
reason of the doubt was, because the county court could
not hold plea in replevin at Common law; but were en-
abled by the statute of Marlebrige, which extends not
to the hundred court, which is a court derived out of the
county court; but per cur. clearly, Supposing they
may grant them in court, yet they cannot prescribe to
grant them out of court. 2 Salk. 580. 5 Mod. 1532.
Skin. 674. Corb. 380. 1 1d. Rym. 219. Halley v
Birch.

The sheriff is obliged to grant replevins in all such
capes as they are allowed of by law; and the officer,
who takes the goods by virtue of a replevin illusing for
what cause soever, is not liable to an action of trespas,
unles the party in whose possession the goods were claims
property in them; and note, that in all cases of misbe-
haviour by the sheriff or other officers, in relation to re-
plevins; they are subject to the control of the King's
superior courts, and punishable by attachment for such
misbehaviour. Corb. 381.
And though the sheriff may grant replevins by plaint,
and may proceed thereon in his county court, yet if any
ting touching his freehold come in question, or any
thing demand not be pleaded, the sheriff can proceed no further;
or can any such proceedings be carried in the hundred
court, court baron, or any other court claiming a juridi-
cion herein by preemption. 4 H. 6. 30. 2 H. 7. 6.
Ca. Lit. 145.

The King is party, or the taking is in right of the
rown, in these cases the sheriff is the recusant. Bro.
Repl. pl. 3. 1 Bram. 31.
The law was ruled in the case of one Bradfawne, that
where an act of parliament ordains a diffires and sale of
goods, this is in nature of an execution, and replevin does
not lie; but if the sheriff grants one, yet it is not such a
contempt as to grant an attachment against him; and
Powell Justice saith, He remembered a case in the Exche-
quer, where a diffires was taken for a fee-farm rent due
to the King, yet upon debate in the court no attachment
was granted, though it was in the King's case. Trin.
12 H. 3. in C. B. Bradfawne's case. See 14 Car. 2.
4.

And for the great case in bringing replevins, and as a
duty incumbent on the sheriff, it is enacted, by the 12th
and 2dof Ph. & Mar. cap. 18. "That the sheriff shall
at his first county day, or within two months after he re-
ceives the patent, depute and proclaim in the same town
four deputies to make replevins, not dwelling 12 miles
distant from one another, in pain to forfeit for every
month he wants such deputy or deputies 51. to be divid-
ego between the King and the proctor.

3. Of the pledges in replevin, and the proceedings against
them.

When the sheriff makes replevin, he ought to take
out two kinds of pledges; plégi de préfenduq, by the Com-
mun law, and plégi de retorn o futuro, by the statute of
Weym. 2. cap. 2. by which it is provided, "That
bailiffs or bailiffs from thenceforth shall not receive of
the plaintiff the pledges for the purifying of the faits,
before they make deliverance of the diffires, but also for
the
the return of the bealls, if return be awarded; and if the party take pledges otherwise, he shall answer for the price of the bealls, and the lord that disfains shall have his recovery by writ, that he shall restore to him so many bealls or cattle; and if the plaintiff be not able to restore, his superior shall restore.

In the conclusion hereof the following cases have been tried, and the opinions holden:

That if the sheriff returns insufficient pledges, he shall answer according to the statute; for insufficient pledges are no pledges in law; and such pledges must not only be sufficient in estate, viz. capable to answer in value, but likewise sufficient in capacity; and therefore insufficiency, false-coverts, persons outlawed, &c. are not to be taken as pledges, nor are persons politic, or bodies corporate. 

2dly. If taken by the sheriff, conditioned that if C. B. appear at the next county court, and prosecute with effect for taking, &c. and make return, &c. if return be adjudged, and save harmles for the sheriff, &c. and then, &c. the defendant after oyer pleaded, that at the next county court, return &c. for, he did return, and whereas the same was not moved by recordari, nor did false harms for the sheriff, but doth not say, that no return. baland was adjudged; and upon demurrer the court inclined for the plaintiff; for the defendant should have said, that no return was adjudged at all; and though he prosecuted to the recordari, yet return baland might be made return, &c. and the condition goes to any adjudication of the court.

Upon the return a bond was sued in the sheriff's court in London, and pledges were found de return baland. 1st. If this plaintiff remove according to their Suffolk into the mayor's court, and after into the King's Bench by certiorari, and there oyer of the certiorari being demanded, the party declared in B. R. upon this a return was awarded, and upon an etnagel returned a feire facias went against the pledges in the sheriff's court of London. Upon a demurrer the question was, whether the same be discharged by certiorari; the pledges in the inferior court are discharged, or whether they remain liable to be charged by this feire facias? The court were inclined to be of opinion, that the pledges are not discharged, for the mischief that might ensue; for then the plaintiff might bring a certiorari, and the defendant would lose his pledges; and on the other side, they doubted whether the principal be in court but at his pleasure, and that he is not demandable, and cannot be non-suited; but afterwards at another day it was adjudged, that the pledges were not discharged. 3d. If in the case the plaintiff declared, that he disfavored for 7 l. 10s. rent, referred on a lessee, and that the defendant delivered the cattle without taking pledges; to which the defendant pleaded, that the plaintiff in the replie deliv- ered to him 3l. 10s. for pledges, which he accepted; and on demurrer the court held, that pledges being to be discharged by certiorari; the pledges in the inferior court are discharged, or whether they remain liable to be charged by this feire facias? The court were inclined to be of opinion, that the pledges are not discharged, for the mischief that might ensue; for then the plaintiff might bring a certiorari, and the defendant would lose his pledges; and on the other side, they doubted whether the principal be in court but at his pleasure, and that he is not demandable, and cannot be non-suited; but afterwards at another day it was adjudged, that the pledges were not discharged.

In an action was brought upon a bond in replevin to pro- fect his suit with effect, and also to make return, &c. the defendant pleaded, that E. G. did levy a plain in replevin in the court first before the reward of Wyfemister, and that afterwards, and before the suit was determined, viz. on such a day, &c. E. G. died, per quod the suit abated; the plaintiff replied, quod kern &c. remit, that E. G. levied such a plaint against the Defendant, who immediately afterwiser exhibited an English bill in the Exche- quer against the plaintif in that suit, and by injunction hindered the proceedings below until such a day, &c. on which the said E. G. died; so that he did not prosecute his suit with effect; and upon demurrer to this replication the defendant had judgment; for per Holt, Ch. J. this was a prosecution with effect, because there was neither a nonsuit or a recovery against E. G. Carth. 519. Duke of Ormond v. Birley.

In an action upon a replevin bond common bail shall be filed. 1. Salt, 99.

There are two sorts of pledges, pliego de proueques, and pliego de return baland; the pledges of prosecuting were at Common law, but the return baland were appointed by Wyfemister, &c. by which statute an ac- tion lies against the sheriff, if he omits to take pledges, or if he takes those that are insufficient; for the party may have a feire facias against the pledges, where the suit is in any court of record; and though in the county court, a feire facias will not lie against the pledges, because the sheriff has the power of taking false facias ought to be grounded on a record, yet there the party may have a preceopt in nature of a feire facias against the pledges. 1. Lydm, 278. per Holt, Ch. J. See Comb. 1, 2. Cum. 593.

An action on the cafe was brought against a sheriff for taking insufficient pledges upon a replevin; to which he pleaded not guilty, and a verdict being found against him, and judgment given thereupon in the Court of B. R. it was objected, first, That an action on the cafe was not the proper remedy; adly. Supposing such action lay, that there ought to have been a feire facias first sued out against the pledges. As to the first the court held, that the party disclaiming has by the statute of Wyfemister 2. an interest in the pledges, and if the sheriff omits to take such, or which is the same thing, takes insufficient ones, he is aggrieved, and conse- quently intitled to his action. adly. That a feu facias

bond had been void, because it had been to fave the feu- rif harmles in making replevin by plaint, which he could not have done before the statute of Marlbo. 1. Lydm. 278. 2. Lydm. 686. Blackett v. Crifip.

If in replevin in an inferior court, the condition of the bond is, if he prosecute his suit commenced with effect in the court of record; and so the suit is suspended until the return be adjudged by law, and it happens, that the plaintiff hath judgment in the court below, which is afterwised reversed on a writ of error in B. R. in such cafe, unless the party makes a return, he forfeits his bond; for though he had judgment in the court below, yet the wrong of irreparable injury is done, and cannot be extended to the prosecution of the writ of error, which is part of the suit commenced in the county below; in this cafe, the taking such bond was held to be lawful, and paid to be common practice. Carkth. 428. 1 Show. 450. S. C. Chapman v. Rutter, 153.

In debt in replevin, if taken by the sheriff, he shall answer for the suit, and make return, &c. for the plaintiff, conditioned that if C. B. appear at the next county court, and prosecute with effect for taking, &c. and make return, &c. if return be adjudged, and save harmles for the sheriff, &c. and then, &c. the defendant after oyer pleaded, that at the next county court, return &c. for, he did return, and whereas the same was not moved by recordari, nor did false harms for the sheriff, but doth not say, that no return. baland was adjudged; and upon demurrer the court inclined for the plaintiff; for the defendant should have said, that no return was adjudged at all; and though he prosecuted to the recordari, yet return baland might be made return, &c. and the condition goes to any adjudication of the court.

Comb. 238. Lane v. Fout.

An action was brought upon a bond in replevin to pro- fect his suit with effect, and also to make return, &c. the defendant pleaded, that E. G. did levy a plain in replevin in the court first before the reward of Wyfemister, and that afterwards, and before the suit was determined, viz. on such a day, &c. E. G. died, per quod the suit abated; the plaintiff replied, quod kern &c. remit, that E. G. levied such a plaint against the Defendant, who immediately afterwards exhibited an English bill in the Exche- quer against the plaintif in that suit, and by injunction hindered the proceedings below until such a day, &c. on which the said E. G. died; so that he did not prosecute his suit with effect; and upon demurrer to this replication the defendant had judgment; for per Holt, Ch. J. this was a prosecution with effect, because there was neither a nonsuit or a recovery against E. G. Carth. 519. Duke of Ormond v. Birley.

In an action upon a replevin bond common bail shall be filed. 1. Salt, 99.

There are two sorts of pledges, pliego de proueques, and pliego de return baland; the pledges of prosecuting were at Common law, but the return baland were appointed by Wyfemister, &c. by which statute an ac- action lies against the sheriff, if he omits to take pledges, or if he takes those that are insufficient; for the party may have a feire facias against the pledges, where the suit is in any court of record; and though in the county court, a feire facias will not lie against the pledges, because the sheriff has the power of taking false facias ought to be grounded on a record, yet there the party may have a preceopt in nature of a feire facias against the pledges. 1. Lydm, 278. per Holt, Ch. J. See Comb. 1, 2. Cum. 593.

An action on the cafe was brought against a sheriff for taking insufficient pledges upon a replevin; to which he pleaded not guilty, and a verdict being found against him, and judgment given thereupon in the Court of B. R. it was objected, first, That an action on the cafe was not the proper remedy; adly. Supposing such action lay, that there ought to have been a feire facias first sued out against the pledges. As to the first the court held, that the party disclaiming has by the statute of Wyfemister 2. an interest in the pledges, and if the sheriff omits to take such, or which is the same thing, takes insufficient ones, he is aggrieved, and conse- quently intitled to his action. adly. That a feu facias
facies may be brought against the pledges, yet it does not follow from thence, that an action does not lie against the sheriff; and such *facies* facies, which is only to certify the sufficiency of the pledges, is the extra necessarium in the present case, such insufficiency being set forth in the declaration and found by the verdict. *Misc. 12 Geo. 2. 2.*

And for the greater security of persons disclaiming for rent, it is enacted by *Bat. 11 Geo. 2. c. 10.* sect. 23.

That sheriffs and other officers having authority to grant replevins, shall in every replevin of a drefs for rent take in their own names, from the plaintiff and two sureties, a bond in double the value of the goods disclaimed. 

**Shall take...**

Of the original writ, and of the Withernam in replevin.

The original writ of replevin issue out of Chancery, and neither it nor the altius replevin are returnable, but are only in nature of a *justicia* to impower the sheriff to hold plea in his county court, when a day is given the parties; but the *altius* replevin is always with this clause of a continuance, and it is a returnable process.

*F. N. B. 68. 72.*

If a *pluris* replevin be returned in *Michaelsmas* term, that the defendant claimed property, and after nothing is done, nor any appearance nor continuance till Everith term after, at which term they appeared and pleaded, and judgment was then given, though no continuance was between Michaelsmas and Everith, yet this is not any discontinuance, because there is no any continuance till appearance; for the parties have not any express day in court, and whereas there is no any continuance, there cannot be any discontinuance.

*Rede Mor. 485.*

The *pluris* replevin superseded the proceedings of the sheriff, and the proceedings are upon that, and not upon the plaintiff, as they are when that is removed by *recordari,* and though there be no summons in the writ, yet it gives a good day to the defendant to appear; and if he does not appear, then a *nuus illius,* and then a *capias.*

*Rede Ley. c. 157.

*Copias* and process of outlawry lies in replevin; for when on the *pluris* repligari facit the sheriff returns *avoria elangata,* then a *copias* in *Withernam* issue, and on that's being returned nullo bona, a *copia illius,* and so to outlawry. *Copias* and process of outlawry in replevin were given by 25 *Ed. 3.* 17. 6 *Mod. 84.*

If on the *pluris* replevin the sheriff return, that the cattles claimed to places unknown, *sic* so that he cannot deliver them to the plaintiff, then shall issue a *Wither- nam* directed to the sheriff, commanding him to take the cattle or goods of the defendant, and detain them till the cattle or goods disclaimed are referred to the plaintiff; and if upon the first *Withernam* a *nobil* be returned, there are *copias* and outlawry issue, and so to a *copias* and exequia. *F. N. B. 73.*

The writ of *Withernam* ought to rehearse the cause which the sheriff returns, for which he cannot release the cattle or goods; so that it does not lie upon a bare suggestion, that the beasts are elogned, *C. F. N. B.* 69, 73.

If upon the *Withernam* the cattle are referred to the party who eloquent them, yet shall pay a fine for his contempt. 2 *Lean.* 220. *Dyer* 280, in the margin.

And as the party is to have the use of the cattle, he is not to have any allowance or payment made to him for the expenses he has been at in maintaining them. *Quaerum* 24 *Ed. 3.* 103. *2 Leam.* 35.

*Seire facias* against an executor, reciting, that where replevin was brought against his tefator for a cow, and judgment against him de *returno habendo,* which was not executed, that he should shew cause why he should not have execution. The executor pleads *plea administrativi,* upon which the defendant demurred, and *Hyde* justice said, that upon the judgment the cow is in the custody of the law, and therefore he ought to have execution; but the doubt is, because the replevin is determined by the death of the party; yet by him and *Rainford,* being only in court, the plaintiff shall have execution, for the defendant cannot be prejudiced, for if the *sheriff* return *avoria elangata,* and *Withernam* is not *nullo bona,* and execution, and therefore the defendant has his ordinary way to charge the defendant, if he hath made a *denouement,* and it was adjudged for the plaintiff. *Pulch. 27 *Car.* 2. in B. R. *Suckley* v. *Green.*

W. for a *replevin,* if the writs be removed by *recordari* into the King's Bench, the plaintiff does not declare, and upon that a return awarded to *H.* upon which the sheriff returns *avoria elangata,* and this *Withernam* was awarded and executed; then the plaintiff does not declare, and now the plaintiff comes and prays he may be admitted to declare, and pray a delivery of the sheriff's tenement, the defendant not being in the court, the sheriff shall have execution, for the defendant cannot be prejudiced, for if the sheriff return *avoria elangata,* and there shall be execution, and it was adjudged for the plaintiff, *F. B. 27.*

The plaintiff, taking the writs returned to him, and no delivery, and the suit *De propriete* probanda. 

At the Common, if the plaintiff in the replevin had been nonnullit either before or after verdict, the defendant who disclaimed should have had return, but not of any replevina; so as the plaintiff after nonnullit might have had as many replevins as he would, which was vexatious and mischievous; for remedy whereof the act of *Westm.* 2 *cap.* 2. it restrains the plaintiff from any more replevins after nonnullit, but gives a writ of second delivery. *2 Red.* 74.

And if in such writ of second delivery the plaintiff be nonnullit, or if the plea be discontinued, or the writ abates, or if he prevails not in his suit, returns irrepleivable shall be granted. 2 *Hyde.* 341.

If defendant in replevin his return awarded upon nonnullit in replevin, upon which he issues a *writ de returno habendo,* upon which the sheriff returns *avoria elangata per querentem,* and upon this a *Withernam* is awarded, and upon the *Withernam* the defendant has set est
The writ of de proprieitate proxima is an inquest of office, and the sheriff is to give notice to the parties of the time and place of the executing of it. Dall. 59, 274. If the defendant for the time and place of the writ of de proprieitate proxima; and this by the nature and form of the writ of second delivery. 2 Rol. Abr. 435.

If a returno habendae be awarded to the sheriff after a writ of second delivery prays by the plaintiff, this a fuperfedeas to the returno habendae, and closes the sheriff's hand from making any return therein; and if the plaintiff cannot have a second delivery, the party has his remedy against him. Dyer 41. Dall. Sh. 275.

This statute of Wifum. 2. gives the writ of second delivery out of the same court, where the first replevin was granted, and a man cannot have it elsewhere; for it is the only form which the writ varies from the place limited as to this by the statute. Plead. 206.

In replevin the defendant avowed, that the plaintiff being non-suited brought a writ of second delivery, whereupon it was moved to stay the writ of inquiry of damages; if per curiam, This is a fuperfedeas to the return habendae, but not to the writ of inquiry of damages; for these damages are not for the thing averred for, but are given by the statute of 21 Hen. 8. c. 19. As a compensation for the expense and trouble the assignor has been at. 1 Saft. 95. and like point adjudged, Palm. 493.

Leach 72. A judgment in C.B. in a second delivery, upon demurrer in pleading the error alleged was, because there was not any writ of second delivery certified, and in nullo eli erratum being pleaded, it was moved not to be material, because it is awarded on the roll, and the parties had appeared and pleaded to it; but it was adjudged ill, and reversed for that cause; for there ought to be a writ, and if it vary from the declaration in the replevin, it shall be abated. Cro. Jac. 424. Newm. v. Moor.

No second delivery lies after a judgment upon a demurrer, or after a verdiic, or confession of the assignor, but in all these cases the judgment may be quashed; and upon a nonsuit, either before or after evidence, a second delivery will lie, because there is no determination of the matter, and there a writ of second delivery lies to bring the matter in question; but in the case of a demurrer and verdict the matter is determined by the confession of the party. 2 Litt. 457.

If the plaintiff's writ abates, he may have a new writ, and is not put to his writ of second delivery. Cam. 122.

If the plaintiff in replevin be non-suited for want of delivering a declaration, if it happened through the plaintiff would have invited him to a writ of second delivery, as sickkens of the person employed, &c., the court will order the defendant to accept of a declaration on payment of costs; otherwise the plaintiff would be re-modified, the writ of second delivery being taken away by the 17 Car. 2. 1 Vent. 64. See Above.

If the defendant in replevin claims property, the sheriff cannot proceed; for property must be tried by writ; and in this case the plaintiff may have the writ of de proprieitate proxima to the sheriff, and if it be found for the plaintiff, then the sheriff is to make delivery; if for the defendant, then he is to proceed no further; but in this case an inquest of office, if it be found against the plaintiff, he may have a replevin to the sheriff; and if he return the claim of property, yet shall it proceed in the C.B. where the property shall be put in issue and finally tried. Cro. Lit. 145 b. F. N. B. 77. Dyer 173.

Cam. 592.

Now, but he who is party to the replevin shall have the writ de proprieitate proxima; so that if upon a replevin the beasts of a stranger are delivered to the plaintiff, such stranger being no party to the replevin, shall not have this writ. 14 Hen. 4. 25. 2 Rol. Abr. 431.

The sheriff is to return the claim of property on the ground of which time the writ of de proprieitate proxima does not issue, for it recites the previous title. Reg. 83. Cam. 595.

Vol. II. No. 122.

6. Of the writ de returno habendae; of returns irrepleivable, and in what manner the sheriff is to return and execute such processe.

The returno habendae is a judicial writ, that lies for him who has avowed the diftres, and proved the fame to be lawfully taken; or where, upon the removal of the plaint into the courts above, the plaint, whose cattle were replevened, made default, or does not declare or prosecute his action; and thereby becomes nonsuited, &c., and by this writ the sheriff is commanded to make a return of the cattle to the defendant in the replevin. 35 Hen. 6. 40. Dyer 280. Cro. Lit. 145.

A bill of which makes conuance may have judgment of a return, and consequently a writ de returno habendae grounded on such judgment. Cro. Ent. 59.

The writ de returno habendae is not a returnable processe. 2 Rol. Abr. 433.

If the defendant hath a return aledged to him, and he fether a writ de returno habendae, and the sheriff return upon the plaintiff, qua ilia aliqui dixit fundit, &c., he shall have a false process against the pledge, &c. According to the statute of Wifum. 2. and if they have nothing, then they shall have a Withernam against the plaintiff of the plaintiff's own cattle. F. N. B. 172.

Return irrepleivable is a judicial writ directed to the sheriff for the return of a part of cattle unjustly taken by another, and so found by verdict, or after a nonsuit in a second delivery. 2 Rol. Abr. 434.

7 Q. It
If the plea be to the writ, or any other plea be tried by verdict, or judged upon demurrer, return irrepealable shall be awarded, and no new relevin shall be granted, nor any second delivery, unless by Writ of Hæfion, 2. Hob. 330. or a writ of Mandate, 2. Inf. 250.

If upon issue joined in relevin the plaintiff does not appear on the trial, being called for that purpose, yet return irrepealable shall not be awarded, as in case of a verdict's being given, but the party may have a writ of second delivery, as well as if in a nonuit before declaration or appearance. 1. Leon. 407.

If a man has return irrepealable, and a beast die in the pound, he may distrain a new; so if the beast die before judgment, Hob. 61.

If return irrepealable be awarded, the owner of the cattle may offer the arrestees; and if the defendant re- fuses to releive, the plaintiff may have the delivery, because the distrains is only in nature of a pledge. 1. Leon. 740.

By the statute of Weylin, 1. cap. 17. If the party who distrains, conveys the distrains into any house, park, cattle or other place of strength, and refuses to releive, the sheriff may take the house and, on return, give it with reful useful open such house, cattle, &c. and make delivery; and this was a necessary law so soon after the irregular time of Hæfion. 3. Inf. 193, 5. &c. 93. Dail. Sb. 373.

If the sheriff returns, that the beasts are inclosed in a park among large woods, or concealed in a stable, &c. there is a further writ of relevin shall be awarded; for he ought to have taken the house and, for this was a denial. F. R. B. 257. Hale's notes.

If the sheriff return, quod mandatui nullius libertinat, &c. qui nullum debet miti reperamini, or that the bailiff will not make delivery of the cattle, these are not good returns; for by the said statute of Hæfion. 2. the sheriff upon such return made to him by the bailiff, ought presently to enter into the franchise, and make delivery of the cattle taken. F. R. B. 157.

If a man for a relevin in the county court without writ, and the bailiff return the writ, that he cannot have view of the cattle there delivered, the sheriff by impress of office ought to inquire into the truth thereof, and if it be found by a jury, that the cattle are inclosed, &c. the sheriff in the county court may award a Wethornam to take the defendant's cattle; and if the sheriff will not award a Wethornam, then the plaintiff shall have a writ out of Chancery directed unto the sheriff requiring the writ, and commanding him to award a Wethornam, &c. and he may have an alias, and after a pluries, and an attachment against the sheriff, if he will not execute the King's command. F. R. B. 158.

If the sheriff return, quod averia elongata ad loca in- cognita, this is a good return, and the party must purifie his writ of Wethornam; but if the sheriff return averia elongata ad loca innotitiam infra custitatum munum, he shall be amerced, for the law intends that he may have notice in his county. Bras. Restor. de Br. pl. 100.

If in relevin the sheriff return, quod averia mortua sunt, that is a good return. Bras. Restor. de Br. pl. 125.

It is a good return, quod nullius libertatis &c. quorumvis atque aliorum, but if the sheriff be not obliged to require this. Dail. Sb. 556. Allen 32.

If the sheriff be shewn a stranger's goods, and he takes them, an action of trespass lies against him, for otherwise he could have no remedy; for being a stranger he cannot have the writ &c. proprio specie praebenda, and were he not obliged to require them, it would be an action of the sheriff to strip a man's house of all his goods; but Keris, seems to hold, that the action lies more properly against the person who shews the goods. 2. Relat. 552. Cum. 596.

If the sheriff comes to make relevin of beasts imprisoned in another county, if the place be inclosed, and has a gate open to the inclosure, he cannot break the inclosure, and enter thereby, when he may enter by the open gate; but if the owner hinders him, so that he cannot go by the open gate for fear of death, he may break the inclosure, and enter there; 20. H. 6. 28. 2. Relat. 543.

If the sheriff is to return, that the cattle are inclosed, or that the person cannot deliver, &c. or that he cannot return, that the defendant nec capte the cattle, because it is supped in the writ, and is the ground of it, which the sheriff cannot falsify, 1. Ld. Raym. 613. 1. Laut. 581. See Hune, Dilectis.


Repliation, (Replicatio) is an exception or answer made by the plaintiff in a suit to the defendant's plea: And it is also that which the complainant replies to the defendant's answer in Chancery, &c. Wifl. Symb. par. 2. The replication is to contain certainty, and not vary from the declaration, but must purifie and maintain the same to be the true declaration; otherwise it is an improper answer in pleading, and going to another matter. 1. Inf. 34. Though as a faulty bar may be made good by the replication; so sometimes a replication is made good by a rejoinder; but if it wants subsidence, a rejoinder can never help it. 2. Ld. Ael. 462.

A replication being entire, and ill in part, is ill in the whole: But if there be three replications, and one of them is superfluous, and the other two sufficient, and the defendant demurs generally, the plaintiff may have judgment upon these which are sufficient. 2. Sumand. 71. 5. Sumand. 338. Where the defendant pleads in bar, and the plaintiff replies in his replication, and the defendant demurs specially upon the replication and the bar is insufficient, if the action be such a nature that a title is yet forth in the declaration or count, as in a form. medon, &c. judgment may be given for the plaintiff upon the insufficient bar of the defendant: And where the title doth not appear till forth in the replication, and that is insufficient, there judgment shall be had for the defendant for the ill replication. Galsb. 138. 1. Laut. 75: 3. Nefl. Abr. 133.

If the bar is naught, and the replication likewise, the plaintiff shall never have judgment: So if there is a va- riance between the declaration and the replication, that there is a verida, &c. Hb. 13. Style 359. And replication concludes either with hac parasita &c. voirisirisque, or to the country. In action on a bond to pay all sums expended about a certain business, &c. on the defendant's pleading he paid all; the plaintiff replied, that he had not, &c. hae parasita, &c. Upon a demurrer it was held the plaintiff ought not to have concluded the bar as an affirmative, and negative; and if he be admitted to aver his replication thus, there would be no end in pleading. Raym. 98. But where new matter is offered in a replication, the plaintiff shall aver is pleas, so as to give the defendant an opportunity to rejoine. 4. Med. 205. Laut. 98. See 19. Vin. Abr. 295. 464.

Repons, (Repouns) is a publick relation of cases judi- cially argued, debated, resolved, or adjudged in any of the King's courts of justice, with the causes and reasons of the same delivered by the judges. Co. Litt. 323. Also when the Chancery, or other courts, refer the case to the Court of Chancery, or another court, for computation, &c. as to a Master of Chancery, or other reference, his certificate therein is called a report. Cowell, edit. 1727.

A report by a Master in Chancery, is a judgment of the court. Per. Ld. C. Parker's Winch's Rep. 653. Tinn. 1720. in the case of Burn v. Barkham. By a banding order of the court of Chancery, made 23. Sept. 1687, the law of 4. W. 4. &c. it was directed, 'That all reports should be filed within four days after the making, otherwise no decree or proceeding had thenceupon; but that the register reporting, that it was sufficient if the report were filed before any proceedings had thenceupon, though not done within four days, might be allowed.' And the court took it to be well enough, though in this case the motion to confirm the report was made the same day that the report was filed. 21. Hin's Rep. 517. Elyer (and Traverses of the B. S. Company) v. Ward.

In contrast, the Irish act (1701) was an act whereby certain forest grounds being made part of upon view, were by a second view laid to the forest again. Monmouth, part 1, pag. 178.

Representation, (Representatio) is a perfonifying of another! And there is an heir by representation, whereof the son, a legatee, a devisee, a devisee, who shall inherit his grandfather's estate, before the father's brother, &c. Bro. Abr. 303. Also executors represent the person of the testator, to receive money and goods.

Reprieves, (from the Fr. Repri{se} ) Signifies to take back, or to restore from the execution and disposing of the body of the person, for not complying with the pre{crib}ed for the time.

Every judge that hath power to order any execution, hath power to grant a reprieve; and oftentimes execution is stayed upon condition of transportation. But no proneros convicted of any felony, for which he cannot have his clergy, at the sessions at the Old Bailey for London or Middlesex, &c. ought to be reprieved but in open felony; and reprieves are not to be granted otherwise, without the King's express warrant, not by order of any justice of judicature. Eliz. 4. 2 H. 4. P. C. 463.

When a woman is condemned for treason or felony, and is to be executed, unless she is found by an equerry or a jury, and is not swayed by the sheriff, or by any one of the judges, or the king, execution shall be reprieved, and the woman reprieved till her delivery; though the shall take this favour but once; and the cannot preserve by this means from pleading upon her arraignment, nor from having judgment pronounced against her on her conviction. 3 P. C. 1724. H. 239. Where it is found by a jury of women, that a woman convicted of felony, is with child, some judges have used to command a reprieve of her execution until a convenient time; i.e. a month after her delivery, and then to be executed, but this is irregular; for the may have a pardon to plead, and be reprieved till the next session. 12 Maff. 10. 1 Hall's P. C. 368, 369.

Requi{f{ies} (Requisita,| from the French Repr{is} , i.e. Receipés, vel capitis rei unius in alterius satisfactionem) is the taking of one thing in satisfaction of another, and is all one in the Common and Civil law. Requisita sp\(\text{d}\)es, &c. &c. are granted, not by the decree of a court, but by the will of the party; and the party can have the thing at any time.

This among the ancient Romans was called Claritas, of the verb claro, i.e. clear clarer is represented. It is named in the statute 27 B. 3. stat. 3. cap. 17. Law of marque, because for one defect of justice in another it is just and necessary to the goods belonging to men of that territory, taken within his own bounds, Cawell, edit. 1727. See Marque.

Requi{s}es, is commonly taken for deductions and duties which are yearly paid out of a manor and lands, as rent-charges, rent-fid, perfons, carollas, annuities, fines of finewards, the half-yearly rents, &c. for the reason here above, when we speak of the clear yearly value of a manor, we say it is so much per annum ultra requir{es}, besides all requirs. Cawell, edit. 1777.

Repugnants, (Repugnant) is what is contrary to any thing laid before. 1st. A deed of seoffment of lands to B. with warranty, provis{e} the warranty shall be void, C. provis{e} to the contrary. In a deed a grant to the premisses, is void; for both being in one instrument where the last clause is repugnant to the first, the last is void; but if the provis{e} leaves any benefit of the warranty to the seof{f}{e}e; if so be, that he shall not vacate, was much as it leaves rebutter to him, it is a good pr{e}vise. And the last time, each warranty may be destroyed. 1st. 66. 6. 86.

Where contraries are in several parts of deeds or fines, the first part shall stand; in wills the last, if the several clauses are not reconcilable: so where a manor is devided in the first part of the will to A. in fee, and after in the same will this manor is devis'd to B. in fee, A. and B. in this case are joint tenants; but if in the last clause are non-reconcilable, that A. shall not have it, then the devise to B. only, is good. 1st. 66. 6. 86.

In contrast to the English, evidence, where direct contraries are for the same thing at the same time, all is void. 1st. 66. 6. 86.

A. made B. and C. executors, provided that C. shall not administer his goods, B. and C. brought debt upon a bond as executors. It was held that the action was too general a release within four days after the award; provis{e} that if either of them disliked the award within 20 days after it be made, and should pay to the other within the said 20 days 10s., then that the arbitration shall be void, the provis{e} is repugnant, and judgment for the plaintiff. 1st. 66. 6. 86.

A provis{e} good in the commencement may be conf{


R E S

requit, because the action is for the thing itself: But if an action of the cafe is had for these things, then the requit must be specially alleged; as it is not brought for the thing itself, but for the thing alleged. See St. Co. 3 Salk. 30. If a promise is made to pay money to plaintiff upon requit, no special requit is required: But where there are mutual promises between two persons to pay each other money upon requit, if they do not perform such an award, the requit is to be specially alleged. And if there is a promise to pay money upon requit, and he dies before requit is made, it shall be paid to his executors; but not till the requit is made. 3 Salk. 369. 3 Bail. 259. See Demand. 

Requirit. See Court of requirls. 

Receiv'd. See County. 

Received. 

Write shall be delivered in the full county, or the county. Statute 2 Edw. 3. cap. 5. See Ritn. 

Received. 

Refus'd, (Receiver,) Is an admittance, or receiving a third person to plead his right in a cause formerly commenced between other two. New Book of Entries, verb. Refus'd. As if the tenant for life or years brings an action, he in the rehearsal comes in, and prays to be received to defend the land, and to plead with the demandant. See Bros., tit. Refus'd, f. 295. and Perkins' Deuter 488. The Civilians call this assimilium tertii pro fuo interesse. Refus'd is also applied to an admittance of plea, tho' the controversy be only between two. See Briz., tit. Ehippe, and Co. on Litt. f. 192. 

In a reheasal for the tenant makes default, &c. the wife or he in reheasal shall be received. St. Wifhum. 2. 13 Ed. 1. c. 3. 

Proceedings where the demandant vouched, &c. on the tenant's fhewing his right, Stat. Wifhum. 2. 13 Ed. 1. c. 4. 

The tenant by receipt shall find security to the demandant to answer the meane profits, St. de Defens. jur. 20 Ed. 1. f. 3. 13 R. 2. f. 1. c. 17. 

He in reheasal or remainder may have attaint or writ of error on a recovery against the particular tenant, 9 R. 2. c. 3. 

He in reheasal or remainder may have attaint or writ of error on a recovery against the particular tenant, 9 R. 2. c. 3. 

Days of grace may be given against tenant by receipt, 13 R. 2. f. 1. c. 17. 

Tenant by receipt shall have no dilatory plea, 13 R. 2. f. 1. c. 17. See 15 Tit. Abr. 489. 

Lies, or Lye, or Lies, or Lyes, or Lyes, (Lies of Magistrats,) Is the lord's receiving homage of his tenant at his admission to the land. Kitchen, f. 148. See Homage. 

Murfes or Reus'd, (Reusifius, from the French resfusit, &c. liberatis,) Is a refusal against lawful authority; as if a bailiff, or other officer, upon a writ do arreft a man for the feudal or common nuisance taking his goods, or procuring his escape; this is a resus in fact. So if one drainat beafts for damage scatant, in his ground, as he drives them in the highway towards the pound, they enter into the owner's house, and he with-holds them there, and he will not deliver them upon demand, this detainer is a resus in law. See St. Co. 2. cap. 12. Coffemun in his book De Confertad. Burg. f. 124. hath the same words coupled with resfusitum. It is also used for a writ which lies for this fact called Brece de resusfits, wherefore you may see both the form and use in F. N. B. fal. 101. Reg. of Writs, f. 125. and New Book of Entries, verb. Reusifius. This in some cases, in matters relating to treason, is treafon; and in matters concerning felony, is felony. Cramp. Tafs. fel. 54. Cowell. Reusifus is the taking away and fetting at liberty against law any driffes taken for rent, or services, or damage-fant; but the more general mention of resus is, the forcible freeing another from an arreft or some legal commitment, which being a high offence, subjects the offender not only to an action at the suit of the party injured, but likewise to fine and imprisonment at the suit of the King. Co. Lit. 160. F. N. B. 226. 

If a man drainat cattle, and as he is driving them to the pound they go into the owner's house, and he refuses to deliver them, this is a refuse in law. Co. Lit. 161. 

But here we must obverse, that there can be no refuse but where the party has had the actual possession of the cattle, or other things whereas the refuse is supposed to be made; for if a man come to arrest another, or to distraint, and is disturbed, regularly his remedy is by action on the cafe. Co. Lit. 161. a. Lit. Rep. 256. Heft. 145. 

If upon a fori facius the sheriff fines goods which are taken away by a stranger, this is not properly a refuse; but for the forfeiture of the goods, by virtue of the fori facius, it is not a good return, but he shall maintain trefpas or trover for them; also the party injured may have an action on the cafe against the wrong-doer. Heft. 145. Lit. Rep. 296. Sheriff of Surry v. Alderton. 

If upon a fori facius the sheriff returned that he had seized the goods, but that they were rescued by B. and C. &c. this is not a good return, but he shall be arrested; the party also, at whose suit the execution issued, may charge him by fede facius for the value of the goods. 1 Vent. 21. 2 Sound. 343. 1 Chet. 180. 

If the lord drainat for rent when none is due, the tenant may lawfully make refuse; so may a stranger, if his goods be drainat when no rent is due. So if the tenant tender the rent when the lord comes to drainat, and yet he does drainat, or if he drainat any thing not drainatible, as beasts of the plough, when other sufficient diffires may be taken, the tenant may make refuse; so may he if the lord drainat in the highway or out of his fee. Co. Lit. 47. 160. b. 164. 

But though drainat be for reason for the diffires, and that otherwife the refuse cannot be unlawful; yet it hath been held in a pare fratrila, that the defendant cannot justify breaking the pound, and taking out the cattle, though the diffires was without cause, because they are now in the actual custody of the law. Salt. 247. Conf.-worth v. Belfall. 

There is a difference between a man's being arrested by a warrant on record, and by a general authority in law; for if a capias be awarded to the sheriff to arrest a man for felony, though he be innocent, he cannot make refuse; but if a sheriff will by the general authority committed to him by law arrest any man for felony, if he be innocent he may make refuse himself. Co. Lit. 161. 


1. Of the offence of making a refuse, and how the offenders are to be proceeded against, and punished. 

2. Of the form of the proceedings on a refuse. 

3. In what cases the sheriff may return a refuse; of the form of the return, and for what defects it may be quashed. 

3. Of the offence of making a refuse, and how the offenders are to be proceeded against, and punished. 

It seems agreed, that the refusing a person imprisoned for felony, is also felony by the Common law. 1 Hal. Hift. P. C. 606. 

Also it is agreed, that a stranger who refuses a person convicted of felony, and refusal of high treafon, knowing him to be so is in all cafes, guilty of felony. See P. C. 11. 1 f. 455. Whether he knew that the prisoners were so committed or not. Cro. Cas. 583. 

To make a refuse felony, the following rules are laid down by Lord Chief Justice Hale; 18. That it is necessary that the felony be in custody or under arrest for felony; and therefore if A. hinder an arrest, whereby the felony escapes, the township shall be amerced for the escape, and A. shall be fined for the hindrance of his taking; but it is not felony in A. because the felony was not taken. 1 Hal. Hift. P. C. 606. 3 Ed. 3. Corom. 333. 

For refusing to make a refuse felony, the party refused must be under custody for felony or suspicion of felony; and it is all one whether he be in custody for that account by a private person, or by an officer, or warrant of a justice; for where the arrest of a felon is lawful, the refusal of him is felony; but it seems necessaty that he should have knowledge that the person is under arrest for felony.
...but if he be in custody of an officer, as confable or that, where, at his peril, he is to take notice of it; and so if there be felons in a prison, and A. not knowing of it, breaks the prison, and lets out the prisoners, though he knew not that there were felons there, it is felony. 1 Hal. Hjft. P. C. 606. Cro. Car. 583.

A perfon committed for high treason, who breaks the prison, and escapes, is guilty of felony, unless he lets them also escape whom he knows to be committed for high treason; in which case he is guilty of high treason, not in respect of his own breaking of prison, but of the refcues of the others. 2 Hawk. P. C. 140.

If the perfon were indicted or attainted of several felonies, yet the escape or refcure of such a perfon makes but one felony. 1 Hal. Hjft. P. C. 599. Wherever the imprisonment is so far groundless or irregular, or the breaking of a prison is occasioned by such a necessity, Et. that the party himself breaking prison, is either by the Common law, or by the statute De fran- gentibus prifonem, faved from the penalty of a capital of- fend, a franger who refcues him from such imprison- ment is in like manner also excused; &c. 2 Hawk. P. C. 139. A return of a refcure of a felon by the fheriff againft A. is not fufficient to put him to anfwer for it as a felony, without indictment or prefentment, by the statute 25 Ed. 2 Hl. Hjft. P. C. 567.

As in cafe of an efcape, so in cafe of a refcure, if the party be imprisoned for felony, and be refcued before indictment, the indictment muft furinate a felony done, as well as an imprisonment for felony or fupfiction thereof; but if the party be indicted, and taken by a fheriff, and refcued, then the damages only a recital that he was wicked praut, and taken and refcued. 1 Hal. P. C. 607.

But though the refcuer may be indicted before the principal be convicted and attainted, yet he shall not be arraigned or tried before the principal be attainted; but if the perfon refcued were imprisoned for high treason, he may then be immediately be arraigned, for that in high treason all are principals; also it feems that he may be immediately proceeded against for a misprision only, if the King pleafes. 2 Hawk. P. C. 140.

The refcuer of a prisoner for felony, though not within in clergy, yet fhall have his clergy. 1 Hal. Hjft. P. C. 607.

By the 6 Gra. 1 cap. 23. fett. 5. it is enabled, that if any perfon fhall refcued felons ordered for transportation, or affift them in making their escape, he fhall be guilty of felony, and fuffer death without benefic of clergy. See also 9 Gra. 1. c. 28.

A perfon refcued by refcuing perfons in cafes of treafon and felony is usually punifhed by indictment, fo the offence of refcuing a perfon arrested on mefne proccfs, or in execution after judgment, subjects the offender to a writ of refcues or a general action of treafon of et armis, or an action on the cafe, in all which damages are recoverable. Also it is the frequent praftice of the courts to grant an attachment againft fuch wrong-doers, it being the highest violence and contempt that can be offered to the procedes of the court. Co. Lit. 161. Co. Ent. 614. Roff. Ext. 577.

He who refcues a prisoner from any of the courts of Wifinifher-Hall without thiking a blow, fhall forfeit his goods and the prefts of his lands, and fuffer imprifonment during life, but not be his hand, because he did not strike. 22 Ed. 2. c. 13. 3 Hljft. 141.

It is clearly agreed, that for a refcues on mefne proccfs the party injured may have either an action of treafon of et armis, or an action on the cafe, in which he fhall recover for the paff of goods, and falfe imprifonment during life; but not be his hand, because he did not strike. 22 Ed. 2. c. 13. 3 Hljft. 141.

By the cafe, the party injured may have either an action of treafon of et armis, or an action on the cafe, in which he fhall recover for the paff of goods, and falfe imprifonment during life, but not be his hand, because he did not strike. 22 Ed. 2. c. 13. 3 Hljft. 141. 2. Of the form of the proceedings on a refcues.

An indictment of a refcues ought to fe forth the special circumftances of the faé, with fuch certainty, as to enable the defendant to make a proper defence. Dyer 164. That no defcent can be aided by the verdift, 1 Ed. Abr. 781.

And therefore, if an indictment lay the offence on an uncertain or impoffible day, as where it lays it on a future day, or lays one and the fame offence at different days, or lays it on fuch a day which makes the indictment repugnant to itfelf, it is void. 3 Mar. 555. Rad. Ext. 263.

Where an indictment of refcues fet forth that J. S. committed fuch a felony, fuch a day, and year and place, per quod A. B. pradidit J. S. capiti et armis, et in fano culfus, ipfius fecus in domibus, et tunc et ibidem exaudi J. S. builitum et cuftodia, it is made a quare, whether the indictment is not impoffible, because no time of the arreft is alleged in the fame fentence with it; and it is doubtful whether the time of the cuftody, which is alleged in the fame fen- tence by force of the copulae, be applied alfo to the arreft; or it was Dyer that refcued rather to incline to the contrary opinion. Dyer 164. pl. 60.

Alfo it is held in Dyer, that an indictment of a refcues is not good without expressly fiewing the day and year both of the arreft and alfo of the refcues, and that the time of the latter is not fufficiently fiewed by fiewing that of the former. Dyer 164.

7 R

6 But

jurid hath his remedy againft the fheriff, and the fheriff hath his remedy againft the wrong-doer; for perhaps the fheriff may be dead or infolvent; but herein it hath been held, that if he bring his action againft the party who made the refcure, he may plead it in bar to an action brought by the fheriff; fo if againft the fheriff or his bailiff, they may plead that he had fatisfaction from the party, fo that if he recovers against one, the other is difcharged.


By the statute 2 Will. 3. cap. 5. if it is enacted, That upon pound-breath or refcues of goods dif- trained for rent, the perfon grieved fhall in a special action on the cafe recover treble damages and costs a- gainft the offenders, or againft the owners of the goods if they come to his use.

In an action for a refcure, if the cafe for a refcure, upon this flautte it hath been held, that the plaintiff fhall recover treble costs as well as treble damages, for the damages are not given by the flautte but increafed; an action on the cafe lying for a refcure at Common law. 1 Salk. 205. 

An attachment will be granted not only against a common perfon, but even againft a peer of the realm, for refcuing a perfon arrested by due course of law; fo that if the fheriff fhall in any cafe return to the court, that a perfon arrested, or goods feized, or poftfession of lands delivered by him, by virtue of the King's writ, were refcued or violently taken from him, &c. they will award an action of attachment againft the refcuers. Dyer 212. 2 Tn. 39. Salk. 322.

But herein it feems to be the praftice of late, not to grant an attachment in any cafe for a refcure, unlefs the officer will return it; for that it hath been found by ex- perience, that officers will take upon them to fwear a refcure where they will not ventures to return one. 2 Hawk. P.C. 153.

In a late cafe, a diftinction was taken where an at- tachment is prayed for a refcure in the firft instance, and where a rule to frow causae is only faked; in this affidavit of the fach are fufficient; in the other cafe the fher- riff's return is requisite. Trin. 5 Gra. 2. in B. R. Young v. Payne.

Where upon the return of a refcure, an attachment is granted, and the party examined upon interrogatories, upon anfweuing them be fhall be difcharged; but if the refcues is returned to the philazer, and proceeds of out- lawy ftiftles, and the refcure is brought into court, he fhall not be difcharged upon affidavit. Salk. 580. Rix v. Belt.
But it has been since adjudged, upon exceptions taken to an indictment for a recusant, that it was not necessary to allege the place where the recuse was made, and that it should be intended that where the arrest was, there also was the recusant. 2 Ld. Cas. 345. 2 Bulst. 228. S. C. Cranlington's cafe.

An exception taken to an indictment of recusants, that it wanted the words vi & armis or mount fortis, but overruled, it being held by the court, that the word reficous implies it to be done by force. 

Cra. Jus. 345. The same exception taken in Cra. Jus. 173, overruled, and there held, that though it were error at Common law, yet it is made good by the statute 37 Hen. 8. c. 8.

An exception taken to an indictment of a recusant from a ferrent at masse, who had taken a man on a plaster in Lincoln, because he did not set forth that the person was taken by virtue of an arrest; but being alleged that he was lawfully arrested, it shall be intended by a good warrant. Cra. Jus. 472. Hert's cafe.

It is said, that an indictment of recusants is not within the statute of additions, and that the naming the person indicted of such a parfit, without giving him any title, is sufficient. 2 Lof. 665. 2 Show. 84.

In the above, an exception to his being, if it were upon an arrest upon meyne procels, and the party has appeared, the court will be easily induced to quash it; so if it be on procels out of an inferior court, tho' the party has not appeared, for no aid is given to inferior jurisdiction.

In an action for a recusant the plaintiff must allege in his declaration all the material circumstances; as that such a writ issued, that he was arrested, and in custody, and that he was recusant, &c. Godh. 175. 1 Lue. 120.

In an action on the cafe for a recusant on meyne procels, the evidence was, the bailiff flowed at the street door, and sent his follower up three pair of stairs in dialogue with the warrant, who laid hands on the party, and told him that he arrested him; but he with the help of some women got from the follower, and ran down stairs, and the defendant hearing a noise ran up, and put the party into a room, locked the door, and would not suffer the bailiff to enter. Holt Ch. J. doubted whether this was a lawful arrest, being by the bailiff's servant, and not in his presence; but said, that the plaintiff must prove his cause of action against the party; that he must prove the writ and warrant by producing sworn copies of them; he must prove the manner of the arrest, that it may appear to the court to be legal, and in point of damage he must prove the loss of his debts, viz. that the plaintiff was innocent, and could not be retaken. 6 Mod. 211. Wilcon & Gaty.

In what cafes the flirriss may return a recusant; of the form of the return, and for what defects it may be quashed.

The diffinition herein laid down in variety of books and cafes is, that on a recusant on meyne procels the flirriss may return the recusant, and is subject to no action; for this on a meyne procels he was not obliged to raile his paffe comites, nor would it be convenient so to do on the execution of every meyne procels. Cra. Eliz. 868. 1 March 4. 1 Jov. 201. 3 Baff. 198. 12 Rec. Rep. 260. 2 Lue. 140. 14 Lue. 130, 131. But the flirriss may, if he pleases, take his paffe to arrest one on meyne procels. Noy 40.

But if the flirriss takes a man upon an execution, as upon a capias ad satisfaciendum, and he is recusant from him before he can bring him to prison, tho' he returns the recusant, yet this still not excepted that he has delivered the body, but he and his do not furrender him, nor pay the condemnation money, and then a capias infites, to which there can be no bail, there is presumed that he will not be forth-coming, because neither he nor his bail have satisfied the judgment; and therefore the flirriss ought to take the paffe comites; and consequently it comes within the rule that he takes the body, but that the paffe is returned; and the party may have an action of escape against the flirriss upon this return; and this is provided by the statute Wylm. 2. rep. 39. which was made to pre-
But Vent. Upon See as Ven. for where the truth is that he was rescued always concludes, that after the rescues made the defendant so oft invent in bullion. 6 Med. 120. Rex v. Wesley.

The return of a rescue was, that the party was in candle of three of the bullions, and that the defendant bullion descended upon one, which the thief called bullion, and for that reason it was qualified. 5 Med. 118.

It had been a great question, and much debated in various cases, whether upon a rescue of a person out of the candle of a thief's bullion, the thief is to return the rescue secundum veritatem facti, or secundum veritatem in lego, that is, that he was rescued out of the candle of the bullion, or out of his own candle being true in law; the bullion's candle being in law the candle of the thief himself; and it seems now agreed that a return either way is good; and herein some books differ.

Where the return of a rescuer was, that for the first in the suit must declare as the truth is, viz. that he was rescued being in the candle of the bullion; but in an indemnity it must be according to the operation in law. 2 Rol. Rep. 263. Hil. 417. 1 Lev. 214. Cuf. Fac. 242. Raym. 161. 5 Med. 217.

And where the thief returned virtute breuis nihil direct: vestiurante A. & B. bullium nisi qui virtute referens suspenderet the defendant, & in cufumia mua habuerunt quaeque sibi et sibi reippeferunt ei ex cufumia bullionem; and this return was on motion quashed; for per Hote Ch. J. when the bullions have arbitrated the party, he is in fact and truth in their candle, but in law he is in the candle of the thief; an answer either way is good, viz. that he was rescued out of the candle of the bullion; or that he was rescued out of the candle of the bullion, and to that fire, of the candle of the bullion, and yet rescued out of the candle of the thief, and yet rescued out of the candle of the return is repugnant. 2 Salt. 586.

It seems that antiently, when the thief returned a rescue, the party was admitted to plead to it as to an indemnity; but the course of late has been not to admit any plea to it, but drive the party to his action against the thief in the candle he returned was false; and hence it is now settled that the return of a rescue is not transferable, but yet it hath been held that the submission to the fine doth not conclude the party grievcd from bringing his action for the false return, if it were so. Cr. Eliz. 1781. Dyer 212. 2 Jan. 29. 1 Vent. 224. 2 Vent. 175. Comb. 255. See 19 Vin. Abr. tit. Refusaxt. Refrifful, as that commits such a Refusaxt. Cr. Eliz. 2 par. 20. fol. 419.

Refillit, (Refillitory) A taking again of lands into the hands of the King, whereof a general recovery, or utter la maine, was formerly mis-used, contrary to the form and order of law. Burnis. Privy. 26. See Emedentation

Refitation, (Refitation) A keeping or providing; as when a man lets his land, he referrus a rent to be paid to himself for his maintenance. Sometimes it signifies as much as an exception; as when a man lets a house, and refers to himself one room, that room is excepted out of the demesne. Growth. edit. 177.

It is always of part of the thing granted; and of a thing in being: And a refitation is of a thing not in being, but is newly created out of the lands or tenements demised; though exception and refervation have been used promiscuously. 1 Ift. 47. The proper place for a refitation, is next after the limitation of the estates; and refervation of rent may be every two, three or four years; as well as yearly, half-yearly, quarterly. 1 Ift. 47. 8 Rep. 71. It must be out of an house, or lands; and be made either by the words of yielding and paying, etc; or the word covenant, which is of both feller and seller, and therefore makes a refervation. Rep. Rep. 86. The refervation of rent is good, although it is not referved by apt and usual words, if the words are equivalent. Plowd. 120. But refervation of a rent secundum rotum, is a void recision. 2 Ben. 272. See Rededuation. Rex, and 19 Ift. Abr. tit. Refusaxt.

Refiliate, (Refitante) from the Fr. Reffiant or Reffante, (defident) Signify a man's abode or continuance in a place. Old Nat. Brev. fol. 85. Whence also comes the participle reffant, that is, continually dwelling or abiding in a place. Kitchen. fol. 33. It is all one indeed with refidence, but that custom ties this only to persons ecclesiastical.

Cus. edit. 1777.

Refiduate, (Refidantia) is peculiarly used both in the Canon and Common law, for the continuance or abode of a person or vicar upon his benefice. The default, whereas (except the party be qualified and dispensed with) is the loss of ten pounds every month, by statute 28 H. 8. cap. 13. Cus. edit.

The King's clerks attending their duty, not obliged to reside at their benefice. Art. Cler. 6 Ed. 2. b. 1. c. 8. The penalties of non-residence, 21 H. 8. c. 13. 26. 28 H. 8. c. 13. Chaplains of certain judges, and of attorneys and licensor general, may be non-resident, 25 H. 8. c. 16. Chaplains of great officers may be non-resident, 33 H. 8. c. 28. f. 7.

An incumbrant presided by the university to a recusant's living, shall lose it by 60 days absence in a year, 1 W. & M. c. 26. f. 6. See 19 Vin. Abr. tit. Refusaxt.

Refidens, is a tenant who is bound to reside on his lord's lands, and not to go from thence. Leg. Hen. 1. cap. 47.

Refiduary Legatee, is he to whom the residue of an estate is left by will. And such legatee being made executor with others, shall retain against the reft; where there are two refiduary legates, and one dies intestate, his administrator shall have a moiety of the purfuit of the testator, contrary to joint executors, who are not intituted to moieties; because making them refiduary legates, the testator intended an equal share to both. And if a refiduary legatee dies before the will is proved, his executor shall have admissation, &c. 6 H. 7. 1 Chaun. Rep. 253. 2610. See Cus. edit.

Refugation, (Refugation) Is used particularly for the giving up of a benefice into the hands of the ordinary; otherwise by the Canons it termed Resignation. And tho' it signify all one in nature with the word surrender, yet it is by custome refrained to the yielding up a spiritual living; the real surrender to the giving up of temporal lands into the hands of the Lord. And a refugation may now be made into the hands of the King, as well as of the diocesan, because he hath suprapream authoritatem ecclesiasticam, as the Pope had here in times past. Plowden. fol. 498. Grendon's cafe. See Simony.

As to refugation of temporal offices, declaring at an assembly of the corporation, that he would hold the place of alderman no longer is a good refugation, especially since the corporation accepted it, and chose another in his place; but till such election he had power to waive his refugation, but not afterwards. 2 Salt. 433. The King v. Mayor of Ripon. 2039. A burgess of a corporation came to the mayor, and desired the mayor to remove and dismiss him from the place of burgess. Upon return of this a mandamus was denied to restore him; for having refigned voluntarily, he is ellopped to pay that the mayor had no power to remove him; and the case being sent to Hall. Ch. 2, he agreed.
Herring.

It is directed

to accounts

and fenfe,

which was

man.


Reignition by a common council man need not be by
declaration of the Mayor of Cambridge, etc.

Where an alderman of Bury is a justice of peace for
life, by force of the patent of the King, who created
the corporation, he cannot reign his office of justice of
peace; because he cannot reign it but to a superior; per
Coke Ch. J. Quod nulli concursum; per Hugh. 2 Red. 355. pl. 19. Tit. 12 Jac. B. R. Alderman of Bury, etc.

Rejoyt, or Rejoyt, is properly used in a writ of tail
or conveyance, as defendant is in a writ of right. In French
it signifies the authority or jurisdiction of a court, Sales
senum tam referto quam aliis jure sufrta & etiam jure aliena. Lit. Par. Philipp. le Hardy, Reg. Franciae, mentioned by Spelman in his glossary. Derricr refors, left refugee.

Refpecto computi Ultraconmitte hauderno, is a writ for
the respite of a sheriff's account, upon just occasion;
directed to the treasurer and barons of the Exchequer.

Rejoyt, fol. 139, & 179.

Refree, (Reffee) It is used for delay, forbearance, or
suspension, lib. 12, cap. 9. In breve regis. Pracpsiti tibi quad posui factum in respendum, ite ad ipsum terminum competentem.

Refute of homage, (Refestus homagii) Is the for-
bearing of homage which ought first of all to be per-
formed by the tenant that holdeth by homage; and it had
the most frequent use in such as held by Knight's service
in capite, who did pay into the Exchequer every fifth
term some small sum of money, to be respite the do-
ing of their homage. See the Stat. 12 Car. 2. c. 24.
whereby this is taken away as a charge incident or ari-
ing from Knight's service, &c.

Refrendas suiller, To answer over in an action to the
merits of the cause, &c. If a demurrer is joined upon a plea to the jurisdiction, petition or writ, &c. and it be adjudged against the defendant, it is a respendas suiller. Jenk. Cent. 306.

Refondinat superior, Where the sheriffs are remove-
able for insufficiency, (as in London) respendat superior, that is, the mayor and commonalty of London. Par. in-
fated that respendat dominus libera-
tius. 45 Eliz. 2. 13. 4 Inf. fol. 114.

Refondinat, (Qui responsum differt) He who gives in
an answer, or he that appears for another in a day alligned, concerning whom hear Glanville, lib. 12. c. 1.

Placita in superioribus capitis, etiam pertinent, aliquid quod possit factum altae quaestor clarum, tam per just.

Placita quam responsum facio in se ipsum, &c. But Plota makes a difference between attornment, attornment &
responsum, lib. 6. cap. 11. Jelt. Officium. As if offi-
nator came only to declare the cause of the party's ab-
sence, whether demandant or tenant; and responnalis
came for the tenant, not only to excuse his absence, but
also to declare the cause of his absence, meanly to undergo, viz. the combat or the country. A man in ancient time, could not appoint an attorney for him, without warrant from the court. Plota, lib. 6. cap. 13. This word is used in the Canon law, & significat propter pretoriam vel cum qui abhomen excitat. Cowell, edit. 1727. See Attornment.

Refondinat, (Refundat) See respendat. By a word chiefly used in the 12th Book of St. John of Jucquefevilles, for certain accounts made to them by such as held their lands or

Refonditum, Busines: The word is used in this sense by Florence of Wescyfcr, who tells us, that Pope
Alexander had two pertons to Edu. 1. pro respendis excus.

Refute, To say or flop: It is mentioned in Matt.

Paris. 515.

Refutation, (Refusttus) Is the yielding up again, or
refusing of any thing unlawfully taken from another. But
it is most frequently used in the Commonwealth law for the
refusal of lands or tenements, that had been unlawfully
acquired by fraud or deceit.

As to the refutation of stolen goods, Stat. 21 H. 8. c. 11. enacts, That if any felon or felons hereafter do rob,
or take away any money, or goods, or chattels, from any of
the King's subjects, from their persons or otherwise,
in their realm, and thereof the said felons or felons be
indicted, or are accused of theft, or felon, and found guilty
thereof, or otherwise attainted, by reason of evidence
given by the party so robbed, or owner of the said
money, goods or chattels, or by any other by their
procurement, that then the party so robbed, or owner,
shall be reforted to his said money, goods and chattels;
and that if the justices of gaol-delivery as other
justices, shall not apprehend any felon or felons shall be
found guilty, or otherwise attainted, by reason of evi-
dence given by the party so robbed, or owner, or by
any other by their procurement, have power, by this
present act, to award, from time to time, writs of refi-
tution for the said money, goods, and chattels, in like
manner as though any such felon or felons were attainted
at the suit of the party in appeal.

Before this statute there was noaid by way of indict-
ment for the party robbed; for though the inquest, that
tried the felon, would, after the finding him guilty, say,
that the party robbed had made fresh fault, yet this would
be nothing but a restitution of the goods, as appears
Fitz. tit. Coron. pl. 460. Hilt. 22 Edw. 3. Before this sta-
tute granted restitution upon evidence given by the party
against the felon, as it seems, though he never made fresh
fault against the felon. Statw. Pl. C. 167. lib. 3. cap. 10. Sargent Hawkins says, that this seems agreeable to
practise, and the purport of the first part of the statute;
but that if it shall plainly appear to the court, that the
party has been guilty of gross neglect in prosecuting the
offender, it may reasonably be argued, that he is not
indicted to a restitution; for the latter part of the statute,
by ordaining, that writs of restitution shall be awarded
as though the felon had been attainted in an appeal,
seems to imply, that it is a sufficient favour, within the
intentions of the makers of the statute, to the prosecu-
tor of an indictment, to give him a like remedy for a
restitution of his goods, as the Common law gave to the
plaintiff in an appeal; but it is certain, that the plaintiff
in an appeal, who appears to have been guilty of such
neglect, may, on demand a restitution by the Common
law. As the Statw. 31 Edw. 3. says, That any suit or
action would contend for will appear the more reasonable if it
be considered that it can hardly be imagined to be the
intention of the makers of the statute to give the party
a greater benefit from a conviction grounded on his own
evidence, as a conviction on an indictment may be, than
from a conviction on the evidence of others, as a con-
viction in appeal must be; however, if it shall apply to
the court upon the evidence of the trial, or otherwise,
that the party has been reasonably diligent in prosecuting
himself, he readily grants, that the justices may, if
they think fit, in their discretion, award a restitution
by a like reasoning inquiry concerning the fresh fault;
but this seems to be no more than they may do in any
appeal, if they think fit. 2 Hawk. P. C. 171. cap. 23. jelt. 56.

A servant took gold from his master, and changed it
into silver; the master shall have restitution of the silver
by this statute, cited by Fonner, C. R. 2. fol. 46. in the
case of Holdy v. Hitti, to have been adjudged in Han-

A. bolte cattle and sold them at Coventry, in an open
market, and immediately he was apprehended by the
sheriff of Coventry, and they feized the money; and
afterwards the thief was arraigned and hanged at the suit
of the owner of the cattle. And by the court, the par-
ty, at the suit of the money, notwithstanding the words
of 21 H. 8. the words should be held. And the court said, that it was usal at Newport. Ns 128. Harris.'s Cafe.
The words of the flatute are general, that where the thief is convicted at the prosecution of the party robbed, there the party shall have restitution; and takes no notice, whether the goods are sold in a market overt or not; so that by this statute the Common law is altered as to that point. And as for the Bishop of Worcester's case [48. 626, where to a restitution granted at a feellion, and afterwards the property of the right owner] 'tis true the inference of the book is as it is there said; but the main point was not there in question, although in those times there was a doubtfull opinion what the law was. And King's case, he spake with Mr. Lee, a very good clerk who was attended the feellion at the Old Bailey above forty years, and asked him how the practice there was; and he told him, it was doubted till about 4 & 5 Car. 1. and then Justice Jones and several other judges advised about it, and did resolve, that the party who lost the goods and prosecuted the felon to conviction, should have restitution of his goods which were stolen, notwithstanding they were sold in a market overt; and ever since that time, he says, the practice has been accordingly. And if any one pleads to a writ of restitution in such a case, that he bought the goods in a market overt, ever since that resolution, the other party pretty defmdered unto it, and had judgment. And he thinks it to be a very good restitution, whether it be true that the flatute of 21 H. 8. and that it tends to the advancement of justice to make men prosecute felon, and it will discourage persons from buying stolen goods, though in a market overt; for under that pretence men buy these for a small price of persons whom they have reason to suspect, which probably by this resolution will date. King's Rep. 47, 48, 52. S. P. Dant. Jusf. cap. 154. As Appeal of Humber, and 19 Vin. Att. tit. Restitution.

As to restitution in cases of forcible entry. See Faptible Cutre.

Re-restitutio, has been, when there has been a writ of restitution before granted: And restitution is generally matter of duty; but re-restitution may be granted upon motion, if the court fee cause to grant it. And on quashing an inditement for forcible entry, the court of B. R. may grant a writ of re-restitution, &c. 2 Lid. 42. 474.

Restitutio extracti ab ecclesia, Is a writ to relieve a man to the church, which he had recovered for his sanctuary, being suspected of felony. Roy. Orig. fol. 69.

Restitutio temporalis, is a writ that lies where a man being elected and confirmed Bishop of any diocese, and hath the King's royal silent thereto, but the recovery of the temporalities or baniy of the said bishoprick: And it is directed from the King to the ecclesiarch of the county, the form whereof may be read in Roy. Orig. fol. 1842, and F. N. B. fol. 169.

Rehuminus, (Refumations) Is a compound of re, laid down, and signifies a second foundation, and calling of a man to anwser an action, where the first foundation is detected upon any occasion, as the death of the party or such like. See Br. tit. Refumans, fol. 214. Of these there are but four, according to four divers cases in the table of the Registrar Judices, fol. 1. and Ruffell's Church, verily, Restitution and Refumans. See 19 Vin. App. 158-170.

Refumation, (Refumans) Is a word used in the flatute of 31 H. 6. c. 7. particularly to signify the taking again into the King's hands such lands or tenements as before, upon fair agitation, or other error, he had delivered into the hands, and bound the property of the right owner. See Br. tit. Repleiion and Refumation, fol. 298. 31 H. 6. c. 7. and 19 H. 7. c. 10. See Releitum.

Refumption of certain grants of annuities, 11 Ric. 2. c. 2. Of appugnments of the revenues of Calais, Vol. II. N. 121.

1 Hen. 5. cap. 9. Of other grants, 31 Hen. 6. cap. 7. Of grants to Queen Elizabeth Orty, 1 Ric. 3. cap. 15. Of grants to the King and Berwick, 1 Ric. 4. cap. 27. Of grants on the surpluses of the excise, 5 & 6. M. 5. 27.

Realtif, (mentioned in flat. 33 & 4 Edw. 6. cap. 21.) Qui reum integram emanavit, per minimas eas partes diutribuat; Anglices, to buy by great, and fell by retail, i.e. by parcels.

Retainer, (From the Latin Retineri) Signifies in a legal sense, a servant but not menial or familiar, that is, not continually dwelling in the house of his master, but only wearing his livery, and attending sometimes upon special occasions. This livery was wont to consist of coats (or hoods) badges, or other furs of one garment by the year, and for many times of the sons and great men, upon defign of maintenance and quarters, and is therefore jutly forbidden by several flatutes; as 1 R. 2. cap. 7. upon pain of imprisonment and grievous forfeiture to the King; and again, 16 R. 2. c. 4. 20 R. 2. c. 1. and 1 H. 4. c. 7. by which the offenders should make random at the King's will, and any knight or esquire thereby duly attainted should lose his fai livery, and forfeit his fee for ever, &c. Which flatute is further confirmed and explained by 2 H. 4. c. 21. 7 H. 4. c. 3. and 8 H. 6. c. 4. And yet this offence was to be so deeply held by Edward the Fourth was necissitated to confirm the former flatutes, and extend them further, their meaning, as appears by 8 Edw. 4. c. 2. and a special penalty of five pounds upon every man that gave such livery, and as much on every one to restrain, either by writing, oath, or promise, for every month. These are the saids called affidati, fci enim dictum qui in aliqui fumetus et paulo recepta jut. And as our retainers are here forbidden, so are those affiants in other countries. But most of the above-mentioned flatutes are repealed by 3 Car. 1. c. 1. Cowell, edit. 1727.

Retaining fee (Mercer retrim) Is the first fee given to any feignant or councellor at law, whereby to make him sure that he will perform the services he is to do. This is an ancient flatute, and further in the contrary part: It is, Honoraarium ius premium causd peteuentorem, quia eliter ius obligator ne adversus suum agat.

Retrenchement, restrain, retrench, with-holding. A full and absolute conveyance was anciently made in this phrase, sine adu retrenchme. Cowell, edit. 1727.

Reversion, retitle or perform retaining to a prince or nobleman. Cowell, edit. 1727.

Retractus aquae, Ebb or low water, the retreat of the tide. The expression occurs in Plautus, caron Regis, Pofleb. 30 Edw. 1. apud Cantur. Rat. 38.

Retraction, Is so called, because that word is the effectual word of a //, and is where the plaintiff or defendant comes in person into the court, and he shall be well proceed no further. And this is a bar of all other actions of like or inferior nature, quin fellem adiutum re- nunciat, amplius repetere non potest. Co. on Lit. liib. 2. c. 11. fol. 288. The difference between a nonsuit and a retracit is, that a retracit is ever when the demandant or plaintiff is present in court; but a nonsuit is upon a demand made, when he should appear, and he makes default. Retracit (as we fald) is a bar, so is not a nonsuit, for he may commence an action of like nature again, Cowell, edit. 1727. A retracit is given when he is present in court (as regularly he is ever by intention of law, 'till a day be given over, unless it be when a verdict is given, and then he is but demandable); and this is either privative, when the entry is good, or materiell excusus non valet, sed a sueta tua in contemptum coram fce retracit, &c. or positive, when the entry is good, &c. fce cognitum est ultraerius nihil prosequi, &c. It is called a retracit, because it is the effectual word used in the entry, and is a bar to all actions of the like or inferior nature. Co. Lit. 139. a. 8 Co. 58. 62. S. P. laid down as a rule, 4 Mod. 87. S. P. A retracit is always the part of the plaintiff or demandant, and must be, unless the plaintiff or demandant be in court in proper person, &c. Reacher's cafe. Cre. Jus. 211. S. C. Co. Lit. 158. 6. S. P.

It is held, that a retracit cannot be entered before the plaintiff hath declared, and if entered before, it hath but
RET

the effect of a nonsuit. Daff. 78. 3 Law. 19, whether a
retreat may be entered after a general verdict. Cro. Elia. 465. doubtar.

Debt was brought upon a bond against A. wherein A.
and B. respectively and severally bound, and after plea
the plaintiff entered a retreat, in an ac-
tion after brought against B. upon the same bond, whe-
ther this should be a bar, between Dennis and Paines, Cro. Jac. 551. doubtar, & adjournment.
It was said, that a retreat was in nature of a safe, and a recive.
to one joint obligor discharged the other; but on the oth-
er hand it was said to be a bar only by way of eftopp-
el between the parties, whereas no other should take
advantage. 1 Jon. 451.

Rettapannagulii. After-paffage, or the merging of
hogs in a forest or park, when the action at maft is eaten,
and little left but hips, &c. 12. &c. Et abeant hacteri re-
tragamur a sips S. Martini auspici adversum Purifica-
ciatis, hostis Marini. Petit. in Par. temp. Edw. 3.

Return. (Return vel returna, from the French Re-
tour, i. regrefus, revenir.) In our law hath two partic-
ular applications; the one is, the return of the writ with
riiffs and bailiffs, which is only a certificate made to the cou-
try, that he hath done, touching the execu-
tion of their writ directed to him. And this among the
Civilians is termed certificatorium; of returns in this sig-
ificance feeks the statute of Wifum. 2 cap. 39. So is
the return of a commiffion a certificate or answer to the
court of that which is done by the commiffioners, thee-
rary, or any other, to whom such writs, commiffions,
peace, or mandates are directed. Also certain days in
every term are called return-days, or days in bank; and
fo Hilary term hath four returns, viz. Ostabla Hilar-
ti, Quintana Hilari, Cerifino Purtificacionis, and Ostab-
la Purtificacionis. Ealter-term five, viz. Quintana Paf-
tiana, Menfe Paffiana, Quarta Paffiana, and Cerifino Affen-
fiamenti, or Terentius-four, i. Cerifina Trinitat.,
Ostabla Trinitatis, Quintana Trinitatis, Tres Trinitat.
and Michembela term fix, to wit, Tres Michabielis, Menfe
Michabielis, Cerifino annorum, Ostabla Martinis, Quintana
Purtificacionis. See the ftatutes of days in bank, 51 H. 3.
32 H. 8. cap. 21. and 17 Car. c. 6. The other applica-
tion of this word is in cafe of Replevin, for a man di-
frain cattle for rent, &c. and afterwards justify or avow
his act, so as it is found lawful, the cattle before deli-
vered unto him that was disftrained, upon fecurity given
to follow the action, fhall now be returned to him that
diftrained them. Bro. Tit. Returns & acquitts & hommes,
for Fer. & E. N. B. in his table verb. Return. Cou-
well, edit. 1777.

The days to be given dies communes in bones. 51 H. 3.
2. A roll fhall be made of all liberties having return of
writs, St. Wifum. 2. 13 Ed. 1. c. 39. So is it to be returned tarte boldly, St. Wifum.
2. 13 Ed. 1. c. 39. Extended to all fale returnes,
Artic. juper coras, 28 Ed. 1. c. 16.
The plaintiff may by averment charge the fheriff with
greater issues, St. Wifum. 2. 13 Ed. 1. c. 39. Exten-
ded to bailiffs of liberties, 1 Ed. 3. c. 1. 5.
Returns by bailiffs of franchises to be by indenture be-
tween the bailiff and the fheriff, St. Ebor. 12 Ed. 2.
2. c. 1. 5.
The fheriff, &c. fhall ferve his name to his return, St.
Ebor. 12 Ed. 2. 1. c. 5.
Proceeds in Chriftie and Lancobfte may be returnable
in the vacation, 22 Ed. 2. c. 46.ift. 35. See Day,
Interfertiff. 42 Ed. 4. Vm. Ab. tit. Return.

Return-days, Are days in term called by that name, or
days in bank. See Day, Term.

Return habendus, Is a writ that lies for him that has
avowed a diffrefs made of cattle, and proved his diffrefs
to be lawfully taken, this being the return of the cattle
taken, which before were relefpred by the party dif-
strained, upon furety given to procufe the action; or
when the plain or action is removed by recordari, or ac-
cedas ad curiam, into the court of Common Pleas, and
he who cattle were diftrained makes default, and do not
procufe his fuit. Coutte. See Replefion.
But where the estate devised is altered in quantity or quality, there the devisee, though heir at law, takes by purchase; as where a man having two daughters, devises his estate to the fon of one of them and his heirs, it was adjudged, that the devisee took at the valuation of a purchaser, and was not in by descent as to any part. 22 Ed. 242.

2. 2d. Raym. 329. Camp. 123. Reding v. Rajfyn. A. in consideration of a marriage intended between him and B. and of a marriage portion, made a feoffment in fee to the use of himself and his heirs till the marriage of his son, and the trustees and their heirs, during the life of A., to support contingent remains, then to the fifth, second and other fons of his body in tail male, then to the heirs male he should have by any other wife, and for want of such issue to the heirs of the body of A. with remainder to his own right heirs; the remainder, or any of the same. 27 C. 372.

So that if one levies a fine to the use of his wife for life, the remainder to the use of his eftate, and the male of his body, and for want of fuch issue, to the use of his own right heir, this limitation to the use of his right heir is merely void, and he hath a reversion, and not a remainder in him. 1. 23 Law. 204. 1. 23. Law. 204. 1. 23. Law. 204.

In like manner, if a man makes a lease for life, or a gift in tail by deed, remainder to another for life or in fee, or to his own right heirs, or to his own right heirs only, this remainder to himself or to his heirs is void, because the fine continued still in him, and then he can't give himself what he had before, and he can't give to his heirs as such what the law gives them by a prior right, to vest at the famine time with his disposition to them. Dyer 9, 91. 20. 1. 23. Law. 204. 1. 23. Law. 204.

If a man makes a foaelfment in fee to the use of himfelf for life, remainder to the heirs male of his own body, this is a good estate-tail, executed in himelf, for the law conjoined his estate for life, and the remainder to the heirs male of his body, to prevent that remainder's being lost by forfeiture, or determination of the particular estate before it can vest, and the limitation is good by way of fee, because it is raised out of the estate of the feoffor, as if they had given it to him in such manner. C. Lit. 22. 20. 1. 23. Law. 204.

If one makes a foaelfment in fee to the use of himself for life, or in tail, remainder to the heirs of the feflor in fee, in the feeft, the reverfe is fo in the coahfessor, that he may in life make a life estate in any other, so that all who come in upon fuch coahfors are in by the coahfor, not by the Lord, for that nothing remains in the lord, but so much as is not disposed of, remains in the coahfessor as strongly as if it had been limited to him. Camp. 376. C. Lit. 148. 441. 1. 23. Law. 204. 4. 23.

If a man fided of lands in fee, by his will in writing, devifes them to one or life for tail, remainder to his own right heirs, this is void as a remainder, and the heir shall be in of the old reverfe by default, because immediately upon the death of the ancestor the reverfe depends to the right heirs, and so prevents his taking by the disposition of the will. Hot. 39. 10 C. 41. 1. 23. Law. 204.

If a man devifes land to his heir at law, paying a sum of money, or an annuity, yet the heir, not withstanding such incumbrance or charge, takes by default, and not by purchase. Salt. 241. Camp. 72. Clerk v. Smith, and see tit. Devifes.

Reviving
Revocation. Is a word metaphorically applied to rents and achoons, and signifies a renewing of them after they are null and void; and which fee divers examples in Bract, tit. Revivings of Rents, Attains, &c. fol. 29. See 19 Vin. Abr. 228—230.

Revivo, or Bill of Revivor, is where a bill hath been exhibited in Chancery against one who, answerws, and before the cause is heard, or if heard, before the decree is given. And where a bill of revivor must be brought, that the former proceedings may stand revived, and the cause be finally determined. Cowell, ed. 1727.

Revocation, is a destroying or making void a deed or will, which exciited before the act of revocation: And a reviewing and new declaration, a deed made pursuant to some proofs contained in a former deed or conveyance, giving power to revoke or call back some thing granted; and by a new declaration to create a new estate of the lands, after which revocation and declaration the land shall fitly accordin. 1 Wood's Convey. ed. edit. 754.

There were no powers of revocation at Common law, but a man may have a condition of re-entry. But now these proofs, containing power of revocation, are creat into voluntary conveyances, and are become very frequent, and pass by rolling of uses according to the flat, 27 H. 8. cap. 10. for being coupled with an ufe, they are void. There may be good, and not sufficient for the former estates; as if one feid in fee covenants to fland feid to the ufe of himself for life, and after to the ufe of his fon in tail, with divers removers over; provided, That he may revoke any of the said ufe, and if afterward he revokes them, he is feid in fee again without entry or claim. But in the case of a feestament or other conveyance, whereby the feeoffice or grantee is in by the Common law, such proofs would be merely repugnant and void. Co. Lit. 237. a. That it would be void to destroy the feestament, but it might be good as to revoking the ufe to which the feestament was made. 1 Wood's Common. ed. 753.

The revoker is seid again without entry or claim, Co. 173. 6. for being tenant in possession, cannot enter upon himself. But he cannot bring trespasses without entry. Carter 78.

Where in a trufi-term to rate portions there is a power for the husband, with the content of the truftees to revoke the ufe in a fettlement; this subsides the vesting of the portions. 2 Will. 102.

Of two voluntary settlements, if the fift is made without a power of revocation against the intent of the party, the second fhall prevail. 1 Will. 581.

A soul ought to be of as good difposing memory when he revokes his will or his deed, as when he makes it. Cre. jarf. 497. fol. 2.

Something may be revoked of coufe, though they are made irrevocable by express words; as a letter of attorney, a fubfcription to an act, a teftament or will; for thefe of their nature are revocable. 8 Cr. 82. See Life, Will.

Revolutiones Parlamenti, an ancient writ for recalling a parliament; and Anna 5 Ed. 3. the parliament being fummoned, was recalled by fuch a writ before it met. Pyr's Anon. ed. 4 Imp. fol. 44.

Rewards. There are rewards given in many cafes by law, for the apprehending of criminals, and bringing them to justice; as a reward of 40L. for apprehending of robbers on the highway, by 4 & 5 W. & M. also the like reward for the apprehending and taking of burglars. Stat. 5 Ann. The fame reward for apprehending of money coiners or clippers, &c. 6 & 7 W. 3.

An act of office, the apprehension of thief-takers, not prosecuting felons; and not removing the office of the cuntrems, by force of arms, &c. 6 Geo. 1. cap. 20, 22.

Rewry, (mentioned in flat. 43 Eliz. cap. 10.) Is a term among clothiers, figuring cloth unevenly wrought, and not well-rewev. Rabiuf, is a part in the division of the country in Wales before the conquest; as aift a canter confined of a hundred towns, under which were to many commotes, each commote had twelve manors or circuits, and two townships; there were four townships to every manor; every township contained an hundred acres, every grandle had four hundred, and four tenements were constituted under every rhudair. This word rhudair admits not of any proper fignification in English, but is by Dr. Davi's rend- ped arts for barditaris, from the verb rhundio, portere, distrubire. Taylor's Hift. of Gælendkind, p. 69. Rhuddpen, a place of good current for ten fhellings. In H. 6, by inordinate of the Mint, a pound weight under every rhudair. This word rhundpen admits not of any proper fignification in English, but is by Dr. Davi's rend- ped arts for barditaris, from the verb rhundio, portere, distrubire. Taylor's Hift. of Gælendkind, p. 69. Rudiantes. Whereby a servant's wages for current for ten fhellings. In H. 6, by inordinate of the Mint, a pound weight under every rhudair. This word rhundpen adm...
riot? To take away any thing by force: from the Sax. risfe, rapina, from whence comes our English word to rife. Cowell, ed. 1727.

Right: A right wound in the flesh. Bract. lib. 2. c. 1.

Right, (Just.) In general signification includes not only a right, for which a writ of right lies, but also any title or claim, either by virtue of a condition, mortgage or the like, for which no action is given by law, but only an entry. Co. on Litt. lib. 3. cap. 8. f. 445. There is jus proprietatis, a right of property; jus possessorii, a right of possession; and the just proprietarius et possessorius, a right both of property and possession; and this was anciently called jus duplicatum: For example, if a man be difeased of an acre of land, the difeisce has just proprietarius, the difeisce has jus possessorius; and if the difeisce relate to the difeisce, he hath jus proprietarius et possessorius. Co. on Litt. lib. 2. sect. 447.


Gilbert, Treat. of Ten. 18. fays, That the difeisce has only the naked poffeffion, because the difeisce may enter upon the poffeffion, and all others pthree the difeisce has right, and in this respect only can be said to have the right of poffeffion; for in respect to the difeisce he has no right at all. But when a defcendent is caft, the heir of the difeisce has jus possessorius, because the difeisce cannot enter upon his poffeffion, and evict him, but is put to his real action, because the freedom is caft upon the heir; and fays, that the notions of the law do make this title to him, that there may be a perfon in being to do the feudal duties, to fill the poffeffion, and to answer the actions of all poffeffors whatever; and since it is the law that gives him this right, and obliges him to these duties, antecedent to any act of his own, it must defend such poffeffion from the act of any other perfon whatever, till such poffeffion be evicted by judgment; which being also the act of law may destroy the heir's title. See Property, and 19 Vid. Abr. 230—233.

Riot in court. See Rutsus in ruit.

Rights and Liberties. See Liberties and rights.

Riot, and unlawful assembly. Riat, (riets and riwem, from the French riette, good non solam risam et jurgiam significat, fed vinculum etiam, quo plura in unum, tfeclarium uiuer, colligantur.) Signifies the for- cible doing of an unlawful thing by three, or more persons pented together for that pufpoe. Whil. Sacub. part 2. tit. Indiltments, fol. 67. The difference bet-ween a riot, rent and unlawful assembly, fee in Lamb, Eiren. lib. 2. cap. 5. Stat. 1 Mar. cap. 12. and Kitchen 19, who gives these examples of riots, the breach of inco- lares, banks, confeis, parks, pouds, houfe, barn, the burning of thacks of corn, &c. Lamb. &c. Jorja. mened, and to beat a man, to enter upon a poffeffion forcdly. Cowell.

Holt Ch. J. in delivering the opinion of the court faid, That the books are obscure in the definition of riots, and that he took it, that it is not neceffary to fay they pftenbeled for that pufpoe; but there must be an unlawful pffenbeled, and as to what act of poffeffion or trefpafs, fuch an act as will make a trefpafs will make a riot. If three come out of an alehoufe, and go armed, it is a riot. 3 H. 7. 1. Per Holt Ch. J. in delivering the opinion of the court. 11 Med. 116, 117. The Queen v. Selby.

Serjeant Hawkins fays, A riot seems to be a tumultuous disturbance of the peace by three persons, or more, affembling together of their own authority, with an in- tent mutually to affiff one another against any who shall oppofe them, in the execution of some enterpife of a private nature, and afterwards actually executing the fame in a violent turbulent manner, to the terror of the people, whether the act intended was of itself lawful or unlawful. Hawk. P. C. 155. cap. 65. f. 1.

Serjeant Hawkins fays, A riot seems to be, according to the general opinion, a disturbance of the peace by pefonns affembling together with an intention to do a unlawful thing, which, if they execute it, will make it a riot; and actually making a motion towards the execution thereof: But by some books, the notion of a riot is confined to fuch pffenbeled only, as are occafioned by some grievance common to all the company, as the inclofe of land in which they all claim a right of common. &c. However, inasmuch as it generally affifts with a riot, as to all the ref of the above-mentioned particulars, requisite to confiftute a riot, except only in this, that it may be a complete effence without the execution of the intended enterpife, it seems not to re-quire any further explication. Hawk. Pl. G. 158. cap. 65. f. 5.

Serjeant Hawkins fays, An unlawful assembly, according to the common opinion, is a disturbance of the peace by pefonns barely affembling together, with an intention to do a thing, which, if it was executed, would make them rioters, but neither actually executing it, nor making a motion towards the execution of it; but he fays this to be much too narrow a definition; for any meeting whatsoever of great numbers of people with fuch circumstances of terror, as cannot but endanger the public peace, and raise fears and jealousies among the king's fubjects, seems properly to be called an unlawful assembly; as where great numbers, complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of fuch an assembly. Hawk. Pl. C. 158. cap. 65. f. 9.

If a man be in his house, and he hears that f. will come to his house to beat him, he may well make an assembly of people of his friends and neighbours to affift and aid him in safe keeping his perfon. Fer Fatient Ch. J. Br. Rfts, pl. 1. cites 21 H. 7. 39.

But if a man be menaced or threatened that if he comes to the market of B. or to W. that he shall be beat, he cannot make an assembly of people to affift him to go there, and he is in safeguard of his perfon; for he need not go there, and he may have remedy by suery of the peace; but the house of a man is to him his caflle and his defence, and where he properly ought to abide, Br. Br. Rfts, pl. 1. cites 21 H. 7. 39. Per Finex Ch. Jutifce.

Dalt. Tyf. cap. 147. cites S. P. Hawk. Pl. G. 158. cap. 65. fol. 10. cites S. C. accordingly, and fays, That fuch violent methods cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace. —Th' a man may ride with arms, yet he cannot take two with him to defend himself even though his life is threatened; for he is in the protection of the law which is fufficient for his defence. Per Hilt Ch. J. in delivering the opinion of the Court. 11 Med. 116, 117. pl. 2. Trin. 6 Ann. B. R. The Queen v. Selby.

If a number of people affemble together in a lawful manner, and for a lawful enterpife, as for electing a mayor (as it was in this cafe) or the like, and during the affemblcy a fudden affay happens, this will not make it a riot ab initio; but it is only a common affay. Ld. Raym. 965. Trin. 2 Ann. Grampound Corporation's cafe.

Vol. II. No. 123.
If a number of people assemble in a riotous manner to do an unlawful act, and a person, who was upon the place before upon a lawful occasion, and not privy to their first design, comes and joins himself with them he will be guilty of a riot equally with the rest. Per Holt Ch. 1635, 1660, &c. it is to agree. Ld. Raym. Rul. 1665, Trin. 2 Ann. Grangemouth Corporation's case.

Holt Ch. J. thought an assembly might meet together with such circumstances of terror as to be a riot. 2 Salk. 594, 595. pl. 4. Trin. 6 Ann. in the case of The Queen v. Solley & al.

If few people assembled lawfully without any ill intent and in an affair, none are guilty but such as act; but if the assembly was originally unlawful the act of one is imputable to all. Per Holt Ch. J. 2 Salk. 595. 6 Ann. at nisi prius in Middlesex. The Queen v. Ellis.

It seems agreed, that a number of persons, being met together at a fair, or market, or church-ale, or any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affair only, of which none are guilty, but those who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly without any cause. And though circumstantial cause may be said, that if persons innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties, with promise of mutual affiance, and then make affair, they are guilty of a riot, because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from of their confederacy, as if their first coming together had been on such a design; however, it seems clear, that in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal should be flarted of going together in a body to pull down a house or in- closure, or to do any other act of violence, to the disturbance of the publick peace, and such motion be agreed to and executed accordingly, the persons concerned cannot but be rioters, because their associating themselves together for such a new purpose is no way extenuated by their having met at first upon another. Hawk. Pl. C. 156, 157. cap. 05. f. 3.

Statute concerning riot, &c. with adjurations. Stat. 34 Ed. 3. cap. 1. enacts, that justices of peace shall have power to refrain evil-doers, rioters, and all other barretors, and to take and chastise them, and carry them before the law.

This statute has been literally construed for the advancement of justice; for it has been resolved, that if a justice of peace find persons riotously assembled, he alone without staying for his companions hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail, but that he may also authorize others to arrest them by a bare parol command without other warrant, and that by force thereof the persons so commanded, may pursue and arrest the offenders in his absence as well as presence. It is also said, that if a justice of peace be sick, and hear that persons are riotously assembled, he may send his servants to him, and bring them to him; and that if he hear that persons are riotously together in a certain place, and go thither and find none there, he may leave his servants behind him with a command to arrest them, when they shall come. Alto it is said, that after a riot is over, any one justice of peace may send his warrant to any who was at the riot, and also that he may send him to go, till he shall find saries for his good behaviour. 1 Hawk. P. C. 160.

But it seems to be agreed, that no one justice of peace hath any power by force of this statute, either to record a riot upon his own view, or to take an inquisition thereon of a riot, or to be one justice of peace proceeding upon this statute, shall arrest and carry a person as a rioter, if he seemeth that he is liable to an action of tres- pas, and that the party arrested may justify the refusing of himself, because no single justice of peace is by this statute made a judge of the said offence. But if a riot shall be committed by persons armed in an unmanly manner, contrary to the statute of Northampton, and any other statute for the maintenance of the peace, and the said statute, feize the armour and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one acting in a judicial capacity, as appears more at large in the chapter of ariays: and for the same reason, if a justice of peace proceed upon the statute of 35 Geo. 2. against rioters, and offenders, and take upon him, or any other justice of peace, or any other person, or persons, view record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed, as hath been shewn in the foregoing chapter. Also if a justice of peace acting as a judge, by virtue of any statute whatsoever, empowering him to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such an uncontrovertible credit to all matters of record, made by any judge of record as such, that it will never admit of an averment against the truth thereof. 1 Hawk. P. C. 160. 13 H. 4. cap. 7. sect. 1. If any riot, assembly or rout be made against law, be made, the justices of peace, or two of them, and the sheriff, shall come with the power of the county (if need be) and arrest them; and the said justices and sheriff shall have power to record that which they find done in their presence against law; and by the record such offenders shall be convicted in the court according to the statute of the six and twelfth. If any persons or oligarchies be departed before the coming of the justices and sheriff, the fame justices, or two of them, shall diligently inquire within a month after, of such riot, assembly, or rout, and shall hear and determine the fame.

Sect. 2. If the truth cannot be found, then within a month next following the justices or two of them, and the sheriff, shall certify before the King and his council all the deeds and circumstances thereof, which certificate shall be of like force as the preceptment of twelve men; upon which certificate the offenders shall be put to answer, and they which be found guilty shall be punished after the discretion of the King and his council.

Sect. 3. If such offenders traverse the matter certified, the certificate and traverse shall be sent into the King's Bench to be tried and determined; and if the offenders do not come before the King and his council at the first command, there shall be made another, directed to the sheriff, to take the offenders if they may be found, and appearing them in the day before the council, either in the King's Bench, or in the King's Bench, or in the Chantery in time of vacation, within three weeks then following; and in case the offenders come not, and the proclamation made and returned, they shall be convic of the riot, assembly or rout.

Sect. 4. The justices of peace dwelling nigh where such riot, assembly or rout, shall be made, together with the sheriff, and also the justices of aide for the time that they shall be peace acting or officin, in pursuance of the fame statute, every one upon pain of 100 l. T. and three others were convicted of a riot, upon view of two justices of the peace, and the sheriff of the county, contra formam statut. 13 Hen. 4. cap. 7, and they were fined by the justices; and upon a writ of error brought, the King agreed, that the defendants were convicted by view of the justices. adz, That the sheriff did not join in setting the fire, whereas the statute says, that the sheriff shall be joined with the justices in the whole proceedings; and for these errors the judgment was reversed. Raym. 386. Tit. 32 Cor. 2. B. R. The King v. Temple & al. 1 H. 7. After the statute was taken before two justices of peace only, without the sheriff or under-the- sheriff;
 riff, but because it appeared to be taken a month after the riot end'd, the committee held it clear by good reason this statute. 


Where the conviction of a riot is made on this statute upon view only, there the sheriff or under-sheriff must be present; but it is not necessary where the conviction is upon an inquisition taken after the riot is end'd. And this is the difference. 

Garth. 383. 3 Tin. 8 W. 3. 3 Salk. 593. S. C. accordingly. 2 Salk. 95. 3 S. C. accordingly. 

The law by necessary implication and the nature of the attendance on the view is, that they may raise the poff comitatus to suppress the rioters, which need not when they are diuerfed, the justices having a lawful jurisdiction. 


An information against three justices of peace, for not making inquiry of a very great riot done by several persons, in burning hedges, &c. within a month after the fact done: And because the statute says nothing of any complaint or notice being to be made, or given to them, it was moved by some, that they were bound by law to take notice at their peril; but divers justices were of a contrary opinion. 

Ido quoque bene the words of the statute of 3 H. 4, cap. 7. and the law. But the reporter says, it seems reasonable that notice or complaint be made to them; so for is the statute of R. 2. of for the justices to take their inquiry by force of these statutes, must be reckoned according to the computation of a lunar or of a solar month; however, it seems to be agreed, that if the justices give their charge to the jury, and it is said that if they do but award a precept for the returning of the jury within a lunar month, they may take the verdict after. And as to the cause being regularly attached in them within the time prescribed by the statute shall be proscribed, as all other causes ought, with such convenient dispatch as to the judges thereof shall seem proper; and the statute, by obliging the justices to make speedily an inquiry, meant not to hurt them in the execution thereof. 

Tho' this statute be mandatory, that the inquisition shall be taken within a month, under a penalty in the neighbouring justices, yet after the month it is still discretion in the justices to take an inquisition, &c. And that by construction of the last clause of this statute which says that the mention of execution of this act, in pain of 1001. and it hath ever been the practice to take such inquisitions out of fections. 

Carthew 35. The King v. Ingram, S. C. and P. Comb. 423. and the time is only mandatory. 

The justices of peace dwelling nightly See 4. of the 32 Act 19. H. 7. It is not necessary that the next justices only should move a force, but all the justices of the county are bound to it: And these words in the statute, viz. that the next justices, are put but for convenience, and the more speedy execution of justice. 


Hawkins's Pleas of the Crown 165. 166. cap. 65. sed, 45. &c. The ferjeant says, that in the construction of this clause of the statute, the following opinions have been holden, 1. That no justice of peace is in danger of incurring the penalty thereof unleas he dwell in the county wherein a riot happens. 2. That any justicess of peace, who do not dwell nearest to the place do actually execute the statute, they excuse all the rest. 3. That if the justices, whose dwellings are nearest at the time of the riot, or one of them, happen to dwell within the month, those whose dwelling is thereby become the nearest, are bound to execute the statute in the same manner as the others were. 4. That notwithstanding these justices only, who dwell nearest, are liable to the penalty of the statute, the justices on the nearest occasion to supply their default, they are not liable at all. 5. That if the two justices, or one of them, do their duty in executing, or endeavouring to execute the statute, they shall not incur any penalty by a default of the sheriff, &c. either in refusing to appear, or to return a jury, &c. &c. 

That the said justices, &c. shall not avoid the penalty by recording the riot without committing the parties, 72. That no justice, &c. is subject to the penalty of the statute, on account of a petit riot, but only of such as are notorious, and in nature of insurrections and rebellions. 

Sibb. That if a justice of peace, &c. had no express notice given him of the riot, he shall be excused, unless it were so very flagrant, that by common intention every one dwelling near it could not but have notice thereof. 97. That the acquiescence or agreement of the parties aggrieved is no excuse to the justices, because they ought, &c. of offices, to make the inquiry, and make proclamation whether any shall give evidence; and for that reason they, &c. may bind fuch of the parties grieved, as shall refuse to prosecute their complaint, to their good behaviour. 

Stat. 2 Hen. 5. &. 1. cap. 8. sect. 1. If default be found in the said justices of peace, or justices of affile (named in the statute 3 Hen. 4. cap. 7. and the sheriff or under-sheriff of the county where such riot, assembly or rout, shall be made, touching the execution of the said statute; at the instance of the party grieved the King's commissiion shall go out under his great seal, to inquire as well of the truth of the caufe, and of the original matter, as of the defaults of the justices, sheriff or under-sheriff, to be directed to indifferent persons, at the nomination of the chancellor; and the commissioners shall fend into the Chancery the inquests before them taken, and the coroners shall make the panel for the time that the sheriff, that is appoised in default, shall stand in his office, which coroners shall return no perons but such which have lands to the value of 100l. by the year; and the coroners shall return upon the perons impannel'd at the first day signifies to 20l. and at the second day 40l. and at the third day 100l. And at every day after the double at least; and if default be found in the coroners touching the return of such perons impannel'd, or touching the return of perons, every one of them shall pay to the King 40l. and that the perons of him and the sheriff or under-sheriff shall make the panel. And the Chancellor, as soon as he may have knowledge of such riot, assembly or rout, shall cause to be sent the King's writ to the justices of peace and to the sheriff, that they put the statute in execution, upon the pain contained in the same; and tho' such writ come not to the justices or sheriff, they shall not be excused if they make not execution of the statute. 

Sect. 2. Provided, That the justices and other officers shall do their offices at the King's cost, by payment to be made by the sheriff by indentities bey the sheriff and the justices and other officers and rioters attainted of great and heinous riots shall have one year's imprisonment, and rioters attainted of petty riots shall have imprisonment, as beft shall serv to the King and his council; and the fines of such rioters shall be by the said justices increased, and put in greater sums of money than they otherwise would be. And the several people in the county shall be affistant to the justices, &c. the same artificers, sheriff or under-sheriff, when they shall be reasonably warned, to ride with them to refer such riots, &c. upon pain of imprisonment, and to make fine and ransom to the King; and bailiffs of franchises shall cause to be impannel'd sufficient persons, upon pain to lose the
the King 40 l. And like ordinances and pains shall hold place in cities, boroughs and other places which have justices of peace.

Sed. 2. A. S. 28. c. 4. s. t. 1. of murders, manslaughter, robberies, batteries, assemblies of people in great number in manner of insurrection, and other rebellious riots, if any person come into Chancery, and make complaint, that any such felon or offender fly or withdraw him, a bill shall be made for the King; and the Chancellor, after such bill to him delivered, shall be duly sworn that such bill and the writ thereunto shall have power to make a writ of capias at the King's suit directed to the sheriff, returnable in Chancery at a certain day; and if the persons be taken by the sheriff, or yield them in the Chancery, such persons shall be put in ward, or to mainprize; and he shall fend to inquire of such offences; and if the sheriff return in writ of capias, and the persons be not yielded them in the Chancery, the Chancellor shall cause to be made a writ of proclamation directed to the sheriff, returnable in the King's Bench, that he make proclamation in two counties, that the persons named in the writ shall come to answer to the matter comprised in the bill, upon pain to be convol'd; and in every such writ of proclamation shall be contained the substance of the bill, and if they come not at the day, then they shall be convol'd.

Sed. 2. Provided that the fuggellions of such riots be witnessed to the Chancellor by letters under the seals of two justices of peace and the sheriff, before the writ of capias shall be granted, in which writ the matter comprised in the bill shall be as well expressed as in the writ of proclamation; and if such cause happen in the County paleine of Lancastcr, or elsewhere in any franchise where there is a Chancellor, the Chancellor of England shall cause to be sent by the King's writ to the Chancellor of such county or franchise, all the fuggellions in the bill comprised, commanding him to make execution; so always that the King's writ do not run out of the Chancery of England into such county or franchise otherwise than hath been used. Made perpetual, 8 Hen. 6. c. 14.

Stat. 8 Hen. 6. c. 14. sed. 1. the said statute 3 Hen. 5. c. 9. shall be kept.

Sed. 2. Provided that it be witnessed by two justices of peace, that the same common runneth in the counties of the same riots, before the writ of capias be awarded. Provided also, that if such cause happen in the county paleine of Lancastcr, or elsewhere in a place infranchised, where there is a Chancellor, the Chancellor of such county or franchise shall be intrusted, for the cause contained in the writ to be witnessed by a justice, or the leutenant of a justice, and the sheriff of such counties paleine or place infranchised, shall have like power to award a capias, and a writ of proclamation, as the Chancellor of England hath.

Stat. 19 Hen. 7. c. 13. If any riot, rout or unlawful assembly, be committed, the sheriff having a precept directed to him shall return 24 perons dwelling within the mile, whereof every one of them shall have lands within in the hundred to the yearly value of 20 l. of freehold, or 30 l. 8 d. of copyhold, or of both, to inquire of the said riot, rout or unlawful assembly; and he shall return upon every peron impaneled in suits, at the first day 20 l. to be paid within 40 days, and if defaully found shall be found in the sheriff for returning of other persons, &c. the sheriff shall forfeit to the King 20 l. and if the riot, rout or unlawful assembly, be not found by the jury, by reason of any maintenance or embracery, the justices and the sheriff shall in the certificate certify the names of the maintainers and embracers, with their misdemeanors; upon pain of every of the said justices, and sheriff or under-sheriff, to forfeit 20 l. if they have no reasonable excuse, which certificate shall be of like force as if the matter were found by verdict of twelve men; and every peron proved to be a maintainer or embracer in the same shall forfeit to the King 20 l. and as well the maintainers as the embracers shall be committed to ward by the direction of the justices.

Stat. 1 Geo. 1. cap. 5. sed. 1. If any persons, to the number of twelve, being unlawfully assembled to the disturbance of the peace, and being required by one justice of peace, or by the sheriff or his under-sheriff, or by the mayor, &c. of any city, &c. by proclamation in the King's name, to disperse themselves, and depart to their lawful business; if any refuseth, shall riotously continue together by the space of one hour, such proclamation, such continuing together to the number aforesaid shall be felony without benefit of clergy.

Sed. 2. The form of the proclamation shall be in manner following, viz. the justice of peace, &c. shall, being among the rioters, or as near to them as he can falsely comply with, command them to disperse while proclamation is making, and then shall openly make proclamation in these words, or like;

**O** UR Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably return to their habitations, without further delay, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies.

God save the King.

And every such justice, &c. on notice of such unlawful assembly, is to retort to the place, and make proclamation in manner aforesaid.

Sed. 3. If such persons so unlawfully assembled shall, after proclamation made, not disperse themselves within one hour, they shall be lawful to every justice, sheriff, &c. and every high and petty confabulator or other peace officer, and for such other persons as shall be commanded to be assisting to such justice, &c. (who are empowered to command all his Majesty's subjects, of age and ability, to be assisting) to seize such persons and carry them before a justice of peace; and if such persons shall be killed or hurt by reason of their assisting the persons so dispersing or seizing them, such justices, &c. shall be indemnified.

Sed. 4. If any such persons so riotously assembled shall unlawfully demolish or pull down, any church or chapel, or any building for religious worship certified and registered according to the act 1 W. & M. cap. 18. or any dwelling houses, barn, fable or out-houses, it shall be felony without benefit of clergy.

Sed. 5. If any peron thall with force oppose, or in any manner willfully hinder or hurt, any persons who shall begin to proclaim, whereby such proclamation shall not be made, such offenders shall be adjudged felons without benefit of clergy; and all persons so unlawfully assembled, or the number of twelve, to whom proclamation ought to have been made, if the same had not been hindered, shall, if they continue together an hour after such hinderance knowing thereof, be adjudged felons without benefit of clergy.

Sed. 6. If any church, chapel, &c. shall be demolished or pulled down by any persons so unlawfully assembled, the inhabitants of the hundred shall yield damages to the person damnsed by such demolition, which may be recovered in any court at Westminster against any two inhabitants, such action for damages to any church, &c. to be brought in the name of the rector, &c. in trust for rebuilding and repairing such church, &c. and the judgment being given for the plaintiff in such action, the damage recovered shall, at the requent of such plaintiff, &c. be levied upon the inhabitants, and paid to such plaintiff by such ways as are provided by 27 Eliz. c. 13. for reimbursing any money recovered by any party robbed; and if such church, &c. shall be in any city or town, that is either a county or itself, or is not within any hundred, such damages shall be recovered against two or more inhabitants of such city or town.

Sed. 7. This act shall be read at every feessions and at every leet.

Sed. 8. No peron shall be prosecuted for any offence contrary to this act, unless prosecution be commenced within the time in which the offence committed.
Rob, in their river, 31 H. 8. c. 4. For building a new 
wear on the Est, 7 Jac. 1. c. 8. f. 12.

The Idle made navigable, 6 Geo. 1. c. 30.

The last made navigable, 30 Geo. 2. c. 62.

And the Kennet made navigable, 7 Geo. 1. c. 8. 3 Geo. 
2. c. 36. 24 Geo. 2. c. 8. f. 21.

The Lark made navigable, 11 & 12 W. 3. c. 32.

The Chancellor may grant commissions for amendment 
of the river Ley, 3 H. 6. c. 5. 9 H. 6. c. 9.

For improving the navigation of the Lee, 12 Geo. 2. 
c. 32.

The city of London impowered to make the river Lee 
or (or Ley) navigable, 15 Ed. 1. c. 18.

The Lyon made navigable, 23 Geo. 2. c. 12.

The Medway made navigable, 13 Geo. 2. c. 26.

The Mercy and Orwell made navigable, 7 Geo. 1. c. 15.

The Nene made navigable, 24 Geo. 2. c. 19.

The Nine or Nene made navigable, 11 Geo. 1. c. 19.

27 Geo. 2. c. 12. 29 Geo. 2. c. 69.

The Ouse in Huntingtontshire made navigable, 6 Geo. 
c. 29.

The navigation of the Ouse in Yorkshire improved, 
23 H. 8. c. 18. 13 Geo. 1. c. 33.

The River Ether made navigable, 10 Geo. 2. c. 33.

Sankey Brook in Lancashire made navigable, 28 Geo. 2. 
c. 8.

All men shall have free passage in the Severn, 9 H. 6. 
c. 5. 19 H. 7. c. 18. 23 H. 8. c. 12. 26 H. 8. c. 5.

For preferring the fifth in the Severn, 20 Car. 2. c. 9.

For preferring the fifth of the Severn, for Effinghime.

The Staines made navigable from Minhagure to Sud- 
bery, 4 Ann. c. 15.

Stroudwater made navigable, 3 Geo. 2. c. 13.

The Lord Mayor shall have the conservancy in the 
breaches of the Thames, 4 H. 7. c. 15.

Necessities in the Thames prohibited, 27 H. 8. c. 18.

For passage by water from London to Oxford, 3 Jac. 
1. c. 20.

The Thames to be made navigable from Berrow to 
Oxford, 21 Jac. 1. c. 32.

Exactions by owners of locks upon the Thames prohi-

bited, 6 & 7 W. 3. c. 16. 3 Geo. 2. c. 11. 24 Geo. 2. 
c. 8. f. 2.

For flopping Dagenham breach in the Thames, 12 Ann. 
fl. 3. c. 17. 7 Geo. 1. c. 20 fl. 32.

Commissioners appointed for regulating the navigation 
of the Thames, 24 Geo. 2. c. 8.

For a ferry cros the Thames, from Ratcliff to Reber-

beth, 28 Geo. 1. c. 8.

The Tine made navigable from Twonton Dean to Bridg-

water, 10 & 11 W. 3. c. 8.

The Trent made navigable, 10 & 11 W. 3. c. 20.

The Weaver made navigable, 7 Geo. 1. c. 10. 7 Geo. 
2. c. 28.

Warley Brook in Lancashire made navigable, 10 Geo. 2. 
c. 9.

The rivers Wyre and Lugg made navigable, 7 & 8 W. 
3. c. 14. 13 Geo. 1. c. 34.

For refurbing and maintaining the navigation of the 
river Witham, in county of Lincoln. 2 Geo. 3. c. 32.

Ridla, Is a coat or garment. And those who rob 
accipiebant, or rob and quod spectum, either because they 
were the true man of some of his robes or garments, or 
because his money or goods were taken out of some 
part of his garment or robe about his person. Ga. 3 Inf. 
rep. 16. This is sometimes called violent theft. With. 
Symbol. theft, which is felony of two-pence. Kitchin. 
16. 22. Lib. 58. 39. See nec "statua verum" fajuf,

Robbery is a felony by the Common Law, committed 
by a violent assault upon the person of another, by put-
ing him in fear, and taking from his person his money, 
or other goods of any value whatsoever. 3 Jul. 68. c. 16. 
1. Worl
refits and is overpowered without being under any fear at all, it is not the lea robbery upon that account; and the prisoners were discharged of the indictment. But afterwards an inditement was found against them, and prosecuted at the expense of the crown on the representation of the judges, for which the principal persons, brought before the special jury in the robbery bill were charged. On this indictment we were discharged; and the court gave judgment, that they be all set in and upon the pillory twice; that they stand committed for seven years afterward. One of them (Egan) lost his life in the pillory, through the relentment of the paper. And on that account, the others did not stand a second time. But they were tried in Negroe to be clofely confined in pursuance of their sentence. 96, 34, fept. 9.

The words of the inditement, violenter & selenie eptit, must be understood that there is an actual taking in deed, and a taking in law, and that may be when a thief receives, &c. For example: If thieves rob a true man, and finding but little about him, take it, this is an actual taking; and by means of death compel him to swear upon a book to fetch them a greater sum, which he does and delivers it to them, which they receive, this is a taking in law by them, and adjudged robbery; for fear again to take the oath, and the oath and fear continuing, the making them swear, is a taking in law; and in this case there needs no special inditement, but the general inditement (Quod violenter & selenie eptit) is sufficient. And so it is, if at the first the true man for fear delivers his purfe, &c. to the thief. 3 legit. 16. cap. 10.

Sargent Hurdins says, it seems clear that he who receives my money by my delivery, either whilst I am under the terror of his affault, or afterwards while I think myself bound in confidence to give him it by an oath to that purpose, which in my fear I was compelled by him to take, may in the eye of the law, as properly be said to take it from me, as he who actually takes it out of my hand with his own hands. Herch. Pl. C. 96. cap. 34. fept. 4.

This word (eptit) neceffarily implies, that the thief must be in poifion of the thing tribal. For example: If the bag or purfe of the true man be fenthen to his girdle, &c. and the thief, the more easily to take the bag or purfe, cuts the girdle, whereby the bag or purfe falls to the ground, this is no taking; but the thief had never any poifion thereof, & fie de fimilibus: But if the thief takes up the bag or purfe, and in thriftving had let it fall, and never took it again, this had been a taking, because he had it in his poifion; for the continence of his poifion is not required by law. 3 legit. 16. cap. 16. S.P. 34, fept. 4.

Though I do not say that he is guilty of robbery, he is highly punifhable by fine, and imprifonment, &c. for so enormons a breach of the peace.

The words of the inditement are (a perfon) &c. If the true man, seeking to escape for the safeguard of his money, calls it into a buff, which the thief perceiving, takes it: This is a taking in law from the purfe, because it is done at one time. 3 legit. 16. cap. 16. S.P. And so if he drives my cattle in my preffence out of my purfe, or takes my hat which fell from my head, he may be indicted as having taken things from my purfe. Herch. Pl. C. 96. cap. 34. fept. 8.

If the true man had call'd off his furcoat, or other uppermost garment, and the fame laying in his prefence, a thief affails him, &c. and takes the furcoat, this is robbery; for that which is taken in his prefence, is in law taken from his prefence. 3 legit. 16. cap. 16. And so it is of the hoife of a true man, which flands by him: Ecl. Pl. C. 8. cap. 34. fept. 10.

Upon not guilty pleaded to an inditement the evidence was, that P. &c. met W.S. & M.T. in the highway, where they endeavoured to rob them, and for that purpose drew their swords and offered to strike them, therupon W.S. rode away one way, and P. pursu'd him, and M.T. went another way, and P. &c. followed him and rob'd him out of fight or hearing of P. And it was held
And to the

But and

And per

to

and

as published; but that the forty days are given by the flat.

Ed. 3. c. 11. 2 H. 6. 559.—But in 3 Lev. 320, it is said, that upon search of the parliament roll it appears, that the statute of Wintons gives only forty days to the country, and that after that time, it was adjudged, where the plaintiff brought an action on the statute of Wintons, and declared that he was robbed, and none of the robbers taken within forty days, according to the said statute; and with this the modern precedents agree, as Raft. Ext. Cas. 351. Hen. 8. 2 Tho. Broc. 141. 2 Sal. 376.

The statute of Wintons gives the action against the hundred; but by subsequent statutes, such as 27 Ed. cap. 13. 8 Geo. 2. cap. 16. Several alterations and additions have been made therein, which we shall consider under the following heads.

It seems to be admitted, that no kind of robbery will make the hundred liable, but that which is done openly, and with force and violence; and that therefore the private stealing, or taking any thing from the party does not come within the statutes which make the hundred liable, because the hundred is not liable because they did not prevent the robbery, nor because they did not apprehend the robbers, which in private felonies, and of which they had no notice, it would be difficult, if not impossible, for them to do. 7 Co. 6, 7. 2 Sal. 674.

Alfo it hath been adjudged, and is admitted in all the books which speak of this matter, that a robbery in a house, whether it be done by night or by day, does not make the hundred liable: The reasons whereof are, that every man's house is in law esteemed his castle, which he himself is obliged to defend, and into which no man can enter, to see what is doing there, without his leave; also being done in a house, the inhabitants of the hundred cannot be deemed to have notice of it, so as to be able to apprehend the offenders. 7 Co. 6. 2 Sal. 674.

But if a person be assaulted in the highway, and carried into a house, and there robbed, it seems the hundred shall be liable; for otherwise the provision made by the statute would be null. 1 Sid. 263. and see 1 Sal. 674. 4 Fost. 137.

Also it does not seem necessary, that the robbery should be committed in the highway, nor alleged to have been so by the plaintiff in his declaration. 4 Fost. 159. may be in a private way, may be in a copiece; and in both cases the hundred shall be chargeable. 2 Sal. 674.

Therefore where upon the statute of hue and cry the plaintiff desired, and quod quandam persona ignata, et any quandam locum vagatur, &c. Fair-milgate, infra parochiam, &c. &c. alleged him, and robbed him of so much money, and there being a verdict for the plaintiff, it was moved in arrest, that any quandam locum might be meant of a robbery committed in a house, garden or wood, for which the hundred is not liable, being only obliged to guard the highways: But it was held, that the declaration was good, especially after verdict, because it must be intended that this was given in evidence; otherwise the plaintiff would have been non suite: Also the court held, that without the help of a verdict, this declaration had been good; and that it was not necessary for the plaintiff to allege, that the robbery was committed on the highway, more than that it was committed by day, and not by night; and that all the ancient precedents were accordingly. Corb. 71. 3 Med. 252. 1 Show. 60. Comb. 150. S. C. adjudged between Tang and the inhabitants of the hundred of Telford.

3. On what day, or time of the day, the robbery must be committed, and what hundred shall be liable.

It had been resolved by three judges against one, that a robbery on a day or a night, the plaintiff should charge the hundred, and that the purifying of robbers who violate the Sabbath, was so far from being a profanation of that day, that
that it was a work of charity and justice: also that several persons, such as physicians, chirurgeons, midwives, 
&c. were necessitated to travel on that day, and it was but reasonable that they should be provided in their journey.
Cra. fac. 156. Watts verus The Hundred of Souls.
1 Brown 156. S. P. •
2 By the 27 Eliza. 2. cap. 7. par. 5. it is en-
acted, "That if any perfon or perfons whatsoever, which shall travel upon the Lord's day, shall be then robbed, that no hundred, or the inhabitants thereof, shall be charged with, or answerable for, any robbery so com-
mitted; but the perfons or perfons to robb'd, shall be be-
halfed of hundred, and then for the said robbery, any law to the contrary notwithstanding. Neither the inhabi-
Gent of the counties and hundreds (after notice of any such robbery to them, or some of them given, or after hue and cry for the fame brought,) shall make or cause to be made fresh suit and perfect after the offen-
dee of horftemen and footmen, as by the 27 Eliza. is provided; upon pain of forfeiting to the King's Majesty, his heirs and successors, as much money as might have been recovered against the hundred by the party robb'd, if this law had not been made.
It is clearly agreed, that for a robbery committed in the night the hundred is not charged because they cannot be preterite to have notice thereof, so as to be able to apprehend the robbers. 7 Co. 6. a. Millborne's cafe. 2 Infl. 669.
But yet it is not necessary that the robbery should be committed after sun-rise, and before sun-set, and that therefore if there be as much day-light at the time that a robbery is committed, or may be inferred to have been committed, though it be before sun-rise or after sun-set, the hundred shall be liable. 7 Co. 6. a. Bell's cafe. Cra. Jas. 106.
1 And. 158. 1 Lev. 577. Sav. 33.
Also it is not necessary for the plaintiff to allege in his declaration, that the robbery was committed in the day,

time, and not in the night: But if it seems, that if upon the evidence it turns out to be, as to have been committed in the night, he cannot have a verdict. Carb. 71. Comb. 150.
3 Med. 258. 1 Show. 60. S. P. admitted.
Also it hath been held, that if robbers drive or oblige the waggoner to drive his wagon from the highway by day, but do not rob or take any thing till night, that yet this is a robbery in the day-time so as to charge the hundred. Sid. 265. Forsett. 150.
By the statute of Winchester it is enacted, "That if the robbery be done within the division of two hundreds, both the hundreds and the franches within them shall be an-
swerable.
If robbers affault a person with an intent to rob him in the night, and he escapes and flies into another, whether he is pursued by the robbers, and there robbed, the last hundred shall be liable. Hatton 125. Dean's cafe; per cur.
So where by special verdit it was found, that the plaintiff was travelling in the highway in the hundred of A. where he was set upon and carried into the hundred of B. and robbed in a copse in the highway of this hundred; it was adjudged that the hundred of B. should be liable, for that there the robbery was committed, and not before. 2 Salt. 614. Forsett. 157. S. C. Cooper v. The Hundred of Bogningley.
If one be taken in the hundred of A. and carried into the hundred of B. in a hole there, viz. a manor-
house, and robbed, or taken in the day-time in A. and carried to B. and there robbed in the night, it is said that there is no remedy against either hundred; these cafes not being provided for by the statute. 2 Salt. 615.
By the 27 Eliza. cap. 13. par. 2. Reciting that the in-
habitants of B. did not procuse the hue and cry brought to them, because those hundreds only are liable in which the robberies have been committed, it is enacted,
"That the inhabitants and resiitants of every or any such hundred (with the franches within the presidell thereof) wherein negligence, fault or defect of pursit and fresh suit after hue and cry brought to be, shall answer and satisfy the one moiety or half of all and every such sum or sums of money and damages, as shall be re-
covered or had against or of the said hundred, with the franches therein, in which any robbery or felony shall at any time hereafter be committed or done; and that the same moiety shall and may be recovered by action of debt, bill, plaint, or information in any of the Queen's Majes-
ty's courts or places wherever she shall think fit, and the clerk of the peace for the time being, of or in every such county within this realm, where any such robbery and recovery by the party or parties robb'd shall be, without naming the christian name or surname of the said clerk of the peace; which moiety so recovered shall be reduced within the hundred of the inhabitants of the said hundred where any such robbery or felony shall be com-
mitted or done."

4. Who is to bring the action, and make oath of the robb-
ery; and of the notice to be given thereof.
If a servant be robbed, in the absence of his master, of his master's money, it is clear that tie may main-
tain an action for it against the hundred, but then the ser-
vant must make oath that he knew not any of the rob-
djudged.
Also the servant being robb'd in his master's absence, may himself maintain an action against the hundred, and may declare that he was pofffed ut de bonis suis propriis. 56.
And though the jury find that he was robbed of his master's money, yet shall he recover for the servant is poffsed ut de bonis suis propriis, against all, and in re-
spect of all, both the man and the servant. 2 Salt. 615. 1 Mod. 30. Comb. 263. S. C. Comb. y. 125.
Hundred of Bradley, S. C. 1 Sid. 45.
The servant being robb'd may bring an action against the hundred: And though the jury find that part of the things belonged to the master, and part to the servant, yet he shall recover for the whole. 1 Brown 155. 3 Med. 258.
And S. C. cited.
If a servant be robbed in the presence of the master, the master must sue; and the oath of the master is suf-
cient. 2 Salt. 613. per cur.
By special verdict it was found, that the plaintiff sent his servant to Smithfield market with fat cattles, where he left them for 108 l. and sealed up 106 l. in four bags, and delivered them to T. S. a quaker, who travelled with him towards home, and they were both robbed; and the servant made oath of the robbery, according to the statute; but that the quaker refused to be sworn; and in an action brought by the master it was held, that as to the 40 l. taken from the servant he should recover; but that as to the 106 l. taken from the quaker, he could not, for want of an oath according to the statute; and that the oath being enquired merely for the benefit of the hundred, who were oppriessed by pretended robberies, the court could not depart from the express words of the sta-

tute. Carb. 145. 2 Salt. 613. 1 Show. 64. 3 Med. 287. S. C. Aitnow v. The Hundred of Eltham.
But it seems, that the servant who delivered the 106 l. to the quaker, and was present at the robbery, might main-
tain an action in his own name for all the money; and that his own oath would be sufficient; and that he might declare upon the taking away the money from the quaker as his servant, who in truth was fo for this time. Carb. 145. 613. per cur.
One Jones and his wife and servant, travelling to-
together, were all robbed of his money, and Jones alone brought the action for the whole money against the hundred, as well for what was taken from his wife and ser-
vant as from his own person, and he alone, with-
out his wife or servant, made oath of the robbery, all which was allowed. But if he in any special verdit, it was adjudged that his oath alone was sufficient within the intent of the statute; and although it was further found, that the servant of Jones who was robbed with his master, knew one of the robbers whole name was Lane, yet Jones had his judgment. Carb. 145. Jones v. Hundred of Brumgford.

So where one Bird a laceman of Colliton in Devon-
shire, in coming to London with his servant, they left the usual
ufal great road between Brentford and Hammarsmith, and rode through a by-lane near Seijant Maynard's house, to avoid the dust, and in that lane the fervant was robbed, in the presence of his master, of a box of lace which was behind him on the back of the horse, to the value of 1200l, and Bird the multer alone made oath of the robbery, and brought the action; and by the opinion of the Ch. J. Holt the oath of the multer was sufficient, because being present, the goods were in his possession; for the possession of the fervant in the presence of his master's multer, the parties that committed recovered 1200l, and had execution. Carth. 147. Bird v. The Hundred of Offulfine cited.

If A. and B. travelling together are robbed of a sum of money, to which they are both jointly intituted, they may both join in action against the hundred; jezif if they had separate and different interests. 1 Dyer 370. a. p. 59.

By statute 37 Eliz. c. 13. par. 11. it is enacted, "That no person or persons that shall happen to be robbed shall have or maintain any action, or take any benefit of the actions which make the hundred liable, except the same person and persons fo robbed shall, as much as in them lies, by give notice and intelligence of the fact done or robbery committed unto some of the inhabitants of some town, or hamlet, near unto the place where such robbery shall be committed."

In the construction of this clause of the statute it hath been held, "That if a person be robbed in a highway in divers hundredestum, he need not give notice to the inhabitants of each hundred, but notice to either of them is sufficient. Cro. Jac. 675. Eliz. v. The Hundred of Specknor and Jewlworth, adjudged."

That alleging notice to have been given at a village near to where the robbery was committed is sufficient, though such village happens to be in a different county; for that strangers are not obliged to take notice of the division of counties. Cro. Car. 41. adjudged, or in a different hundred. Cro. Car. 379. adjudged.

That though it be the bell courte to allege, that notice was given at the place where the robbery was committed, or at some village near the place, yet that notice near the hundred, or near the division of the hundreds where the robbery was committed, is sufficient; and that this shall not be intendment of the most remote part of the hundred, especially a verdé. Cro. Car. 41. adjudged.

If several persons are in company at the time of the robbery, it is said, that notice given by any one of them is sufficient. 1 Show. 94.

It hath been resolved, that though the notice given be five miles from the place where the robbery was committed, that it is sufficient; the reason wherein is, because that the party, who is a Franger to the country, cannot have connusance of the nearest place or town. March 11. Sir John Compton's cafe.

Also if the party robbed give notice with as much convenient speed as may be, though he be otherwise remis in not pursuing the robbers, or refuses to lend his horse and provisions, he shall not lose his action for this, near the hundred be executed. March 11. 2 Leon. 82. S. P. agreed per cur." And now by the 8 Geo. 2. cap. 16. felt. 1. it is further enacted, "That no person shall have or maintain any action against any hundred, or take any benefit by virtue of the statutes of Winstan, or 27 Eliz. or either of them, unless be, he or they shall, over and besides the notice already required by the last of the above-mentioned statutes to be given of any robbery, with as much convenient speed as may be, alter any robbery on him, her or them committed, give notice thereof to one of the constables of the hundred, or to some constable, borf-holder, or other person a fit and proper person for this, for the benefit, use, and help of the village, hamlet or tithe, near unto the place where such robbery shall happen, or shall leave notice in writing of such robbery at the dwelling house of such constable, or describing in such notice to be given or left as aforesaid, so far as the nature and circumstances of the cafe will admit, the felon or felons, and the time and place of the robbery, and also shall, within the space of twenty days next after the robbery committed, cause publick notice to be given thereof in the London Gazette, or other publick paper, for the better searching and discovering of the nature and circumstances of the cafe will admit, the felon or felons, and the time and place of such robbery, together with the goods and effects, wherein he, the or they or was were robbed."

5. Before robbing the oath must be taken, and where the party must give bond for payment of costs, in case he do not prevail.

By the 27 Eliz. c. 13. par. 11. it is enacted, "That the party robbed shall not have any action, except he or they shall file, within twenty days next before such action to be brought, be examined upon, his or their corporal oath, to be taken before some justice of the peace of the county where the robbery was committed, inhabiting within the said hundred where the robbery was committed, or near unto the same, whether he or they do know the persons that committed the said robbery, or any part thereof, or upon examination, it be confesed, that he or they know the fact or facts committed in the said robbery, or any of them, that then he or they so confessing shall, before the said action be commenced or brought, enter into sufficient bond by recognizance before the said justice before whom the said examination is had, effectually to prosecute the same person and persons who have committed the said robbery, by indictment or otherwise, according to the due course of the law of this realm."

In the construction of this clause of the statute, the following points have been holden; That if the party does not know the robbers at the time of the robbery committed, he need not, or he is not bound to, know them afterwards, it is not material. March 11.

It was holden by three judges against one, that the party's swearing that he did not know the robbers, without adding, nor any of them, is not sufficient; because not pursuant to the statute, and because on such equivocal oath the party cannot be purified for perjury. May 21. Bateman's cafe. 3 Lev. 375. S. P.

It hath been adjudged, that the oath may be taken before a justice of the county, though not in the county at the time of administering it; as where a robbery was committed in Berks, and a justice of that county refusing in London, the party was sworn before him according to the statute, and the oath was held sufficient; for the justice acts only as a ministerial officer, and as appointed by the statute, and not in a judicial capacity as a justice of the peace. 1 Jener 259. Helter v. The Hundred of Benlafur.

If in an action on the oath of hue and cry it be alleged, that the oath was taken after a justice of peace of Yorkshire, this will be sufficient, altho' objected, that there is no such justice; because that in every riding they have several commisions. See 2 Sid. 45.

As to giving bond for payment of costs, by stat. 8 Geo. 2. cap. 16. it is enacted, "That before any action shall be commenced, the party shall not lose his action for this, nor shall he lose his action for this, if the party, or the officer of the county wherein such robbery shall happen, or the clerk of the pleas of that court wherein such action is intended to be brought, or their respective deputies, or before the sheriff of the county wherein the robbery shall happen, and enter into a bond in the hundred, or high constables of the hundred in which the robbery shall he committed, in the penal sum of one hundred pounds with two sufficient sureties to be approved of by such chief clerk, secondary, filizer, or clerk of the pleas, or their respective deputies, or the sheriff of the county, with condition for securing to such high constable or high constables (who are hereby empowered) an entry or entry of such person's appearance, and also to defend such action,) the due pay-ment of his or their costs, after the same shall be taxed by the proper officer, in cafe that he, the or they (the plaintiff or plaintiffs in such action) shall happen to be nonnuit, or shall discontinue his, her or their action,
or in case that judgment shall be given against such plaintiff or plaintiffs on demurrer, or that a verdict shall be given against him, her, or them.

And it is further enacted, by the said statute, that when any such bond as above-mentioned shall be entered into before the said sheriff, such sheriff shall immediately certify the same, writing his name, or the name of the said clerk, or the defendant, or to the flazer of the said county wherein such false-robbery shall be committed, or his deputy; in case the action be intended to be brought in the court of Common Pleas; or if in the court of Exchequer, to the clerk of the Pleas, or his deputy; and which certificate shall be delivered by the party or parties robbed to the said chief clerk or secondary, or his or their deputy, or to such flazer, or his deputy, before any process shall issue for the commencement of such suit as aforesaid; and such chief clerk, secondary, flazer, or clerk of the Pleas, or their respective deputies, or the said sheriff, shall not take any greater fee or reward for making, nor shall any such clerk, secondary, flazer, or clerk of the Pleas, or their respective deputies, take any greater fee or reward for receiving and filing such certificate, than two shillings and fourpence, which certificate shall be delivered by the party or parties robbed to the said chief clerk, secondary, flazer, or clerk of the Pleas, or their respective deputies, and sheriff, as aforesaid, are hereby required to deliver over gratis (upon reasonable request made for that purpose) all and every such bonds, to be by them respectively taken pursuant to this present act, to the high constable or high constables to whose use the same shall be taken as aforesaid.

6. At what time the action is to be brought; what evidence will maintain it, and what shall exceed the hundred.

By the 27 Eliz. c. 13, para. 2, it is enacted, That no perfon or perons robbed shall take advantage of the statutes, to charge any hundred where any such robbery shall be committed, except he or they or he robb'd shall commence his or their suit or action within one year next after such robbery committed.

In the construction whereof it hath been holden, That if a perfon be robbed the 9th of October 13 Geo. 3d and so laid, and the teffe of the writ be the foth October 14 Geo. 4th that this is not pursuant to the statute; and that in this action, which is penal against the hundred, there is no reason to exclude the day on which the fact was committed; nor such contexts to be done in protections and the involvement of deeds, which have always received a benign interpretation. 

In an action on the statute of hue and cry, the plain-tiff made oath according to the statute, and within twenty days brought a writ and brought bond, and being suspicious, let it fall, and after the twenty days took out a new one, without making any oath anew, or entering any continuances between the said writ and that; and the court held clearly, that the second writ was not brought according to the statute; for so they said, that proviso in the statute would be to no manner of purpose. 

An action was brought by the master, on the statute of Winton, for a robbery committed on his servant, in which he declared of an assault and battery done to himself, (though then 50 miles from the place,) also that he made oath that he did not know any of the perons; the chief clerk, or such as he made record; and the jury appeared at the bar ready to try it; but being for other business adjourned to another day, the plaintiff observing his mislake moved to amend, by declaring of a robbery on his serv- ant, &c. and it appearing that the year in which the action must be brought was expired, and consequently the action must be left if not allowed, the court, after long debate and consideration of former precedents, ad- mittid him to amend. 

And it seems that from the necessity of the case, the party himself that was robbed is to be admitted as a witness, but then his testimony must be corroborated by collate- ral proof and circumstances, and such as may induce a jury to believe that a robbery was actually committed, and that the party left what he declared for. 

But now by the 5 Geo. 2, cap. 16, rectifying, That by the laws then in being, the peron or perons robbed may not be a witness, the action to be brought against the hundred, as a witness to prove the fact; that money, goods or effects whereof he, she, or they, was or were robbed; and yet no peron inhabiting within the said hundred, can be admitted as a witness for or on behalf of the said hundred, by reason of the interest he or she may have in the consequences of the said action, which is commonly very considerable; therefore it is en- acted, That in any action already brought, or to be brought, against any hundred, any peron inhabiting within the said hundred, or any person thereof, shall be admitted as witness for or on behalf of the said hundred, in the same manner as if he or she were not an inhabiting thereof, but refused in any other hundred what- ever.

By the statute of Winton 13 Ed. 1, cap. 1. & 28 Ed. 3, cap. 11. the robbers must be taken within forty days after the robbery committed; also by the said laws it was necessary that all the robbers should be taken, to execute the hundred, but 1st Lev. 569. 3 Lev. 320. Dyer 37c. a. 1. 2 S7. 1. & 3. But now as to this latter matter, by the 27 Eliz. cap. 13. para. 2. it is enacted, That any robbery is, or shall be hereafter committed by two, or a greater number of malefactors, and that it happen any of the said offenders to be apprehended by pursuit, to be made answerable to the said former mentioned laws and statu- tes, or according to this act, that then, and in such case, no hundred or commune shall in any wise incur or fall into the penalty, loss or forfeiture mentioned either in this present act, or in any the said former statutes, also the resjudie of the said malefactors shall happen to escape and not to be apprehended; any thing in this sta- tute, or in the said former statutes, to the contrary not withstanding.

If a robbery is committed, and hue and cry made, and afterwards, within the forty days, an inhabitant of the hundred finds one of the robbers in the presence of a judge of the peace, who charges him with the robbery, and that the peron who that he shall have no alter- coming, this is a taking within the statute; for being in the presence of the justice, it must be understood that he was in his custody and power, and therefore not necessary to lay hold on him. 

In an action on the statute of hue and cry, and within twenty days brought a writ and brought bond, and being suspicious, let it fall, and after the twenty days took out a new one, without making any oath anew, or entering any continuances between the said writ and that; and the court held clearly, that the second writ was not brought according to the statute; for so they said, that proviso in the statute would be to no manner of purpose. 

By the 8 Geo. 2, cap. 16. it is enacted, That no hundred, or commune therein, shall be chargeable by virtue of any of the statutes, if any one or more of the fe- laons, or felons wherein such robbery shall be committed, be apprehended within the space of forty days next after public notice given in the London Gazette, as by the statute is provided.

And by the said statute 8 Geo. 2. to the intent that hue and cry may be made with more diligence and effect, and the robbers apprehended within the space of forty days, it is enacted, That any peron or perons, who shall ap- prehend such felon or felons within the time herein be- fore limited for that purpope, whereby the hundred hath been actually apprehended or discharged from such an action as aforesaid, shall, upon due proof thereof, upon oath made before two judges of the peace, (which oath the said judges are hereby also empowered and required to administer,) be intituled to the reward of 10l. which fum
fam shall be raised upon the hundred by a taxation and
affirmative, to be made, and to be levied, and collected
in the same manner as the other sums of money, by this
present act appointed to be raised upon the hundred,
are directed to be affixed, levied and collected; and such
sum of 10l. which shall be so raised, shall constitute a
double for the hundred for the performance of the duties
of the peace, within ten days next after the same shall be
levied and collected, to the use of the person or persons
who shall be thereto intituled, as a reward for
having apprehended such felon or felons as aforesaid;
and such justices shall, upon reasonable request made
for the same, and shall deliver to the person or persons
who shall, upon such request, be intituled to such
reward, shall not thereby be rendered incapable to
be a witness in any such action.

7. How the money is to be levied, and each hundred to
contribute to the charges.

By the 27 Ed. cap. 13. par. 14. reciting, that al-
though the whole hundred, where robberies and felonies
are committed, with the liberties within the precincts
thereof, and the liberties without the precincts
bowing to the party robbed his damages; yet neither
left the recovery and execution, and by for the party or
parties robbed, is had against one or a very few persons
of the said inhabitants, and he and they so charged have
not herefore had any means or ways to have any con-
tribution of or from the residue of the said hundred
where the said robbery is committed, to the great im-
portation of them with such recovery or execution is
had, by theo. 5. of the said statute it is enacted,
that after execution of damages by the party or par-
ties so robbed had, it shall and may be lawful (upon
complaint of the party or parties so charged) to and
for the said justices of the peace, within the hundred,
and in the liberty, and for the constables of every
parish within the hundred, and also for the constables
of every town, parish, village and hamlet, in the liberty,
shall, by virtue of this present act, have full power and
authority, within their several limits, rateably and pro-
portionably, to tax and assize, according to their abilities,
every inhabitant and dweller in every town, parish,
village and hamlet, for and towards the payment of such
taxation and affirmative, as shall be so made upon every
such town, parish, village, and hamlet, as aforesaid,
by the said justices: And that if any inhabitant of any
such town, parish, village and hamlet, shall obstinately
refuse and deny to pay the said taxation and affirmation, fo by
constables, constables, headboroughs, or head-
boroughs, taxed and assized; that then it shall and may
be lawful to and for the said constables and headboroughs,
every of them, within their several limits and jurisdic-
tions, to distraint all and every person and persons,
inhabitants, and to collect and recover, as aforesaid,
the said taxes and contributions for the same, and
they and their successors in office, and that they and
their successors in office, may do and cause to be done what
they shall please, as aforesaid, respecting the said taxes
and contributions.
as the costs and damages of him, her or them recovered shall amount to, and to the use and behalf of the said high costable or high conflables, for so much as his or their expenses in defending the said action shall amount to, of which the said high costable or high conflables shall give in an account, and make due proof upon oath, to the satisfaction of the said justices, before any such then and thereupon shall be fixed for the reimbursement of such high costable or high conflables (which oath the said justices are hereby impowered and required to administer), and shall in such expenses have no further allowance toward paying an attorney to defend the said action, than what such attorney's bill shall be taxed at by the proper officer of the said action (which shall be taxed in accordance with the said statute made, 27 Eliz. in order thereby to reimburse such high costable or high conflables such taxed costs, as by reason of such infolvency he or they shall not be able to recover and receive of and from the plaintiff or plaintiffs in the action, or his or their securities, as afoforeaid.

And it is further enacted, "That the several sums of money, which shall be so rated and asfessed, and levied and collected as afoforeaid, for the reimbursement of the expenses necessarily sustained by any high costable or high conflables in defence of an action brought against the hundred upon the statutes afoforementioned, or either of them, in case of any judgment given against the plaintiff or plaintiffs, shall be paid within ten days after such collection, unto the said justices, or one of them, to the use and behalf of such high costable or high conflables, to whom the said justices shall, upon request, pay and deliver over the same."

And it is further enacted, "That the justices of peace, by whom such taxations and assennents as afoforeaid shall, in pursuance of the said statute made in 27 Eliz. and also of this present act, be afoforeaid, shall limit and appoint, at their discretion, some certain reasonable time within which such taxations and assennents shall be levied and collected, which time shall not exceed thirty days; and also that any such officer or officers, who are to levy and collect such taxations and assennents as afoforeaid, shall refuse or neglect to levy and collect the same within such time, as shall be limited and appointed by the said justices of the peace for their doing thereof, or shall refuse or neglect to pay and deliver over the sums of money so levied and collected, to the said sheriffs, and also to the said justices, in such manner as the same, or the several cases herein afoforementioned are respectively directed to be paid, within the respective times herein before limited for such payment thereof; every such officer shall, for every such refusall or neglect, forfeit double the sum appointed to be by him levied and collected as afoforeaid.

By statute 22 Geo. 2. cap. 24. No perfon shall recover against any inhabitant of any hundred, in any action on any of the statutes of hue and cry, more than 200 l. unless the persons robbed, at the time of such robbery for which such action is brought, be in company at two at least, and the same shall be in being foh forty days.

By statute 22 Geo. 2. c. 46. sect. 34. No writ of execution against the inhabitants of any hundred on any judgment obtained by virtue of any act of parliament shall be levied on any particular inhabitant of such hundred; but the sheriff shall on receipt of every such writ, cause the same to be produced to two justices of peace, as is directed by statute 20 Geo. 2. cap. 16. sect. 4. and upon the said justices shall as is directed by the said act, cause a taxation to be made and collected for paying the cost and damages recovered by the plaintiff, and all such necessary expenses as any inhabitants of such hundred shall have been at in defending such action, the said taxation to be levied upon the inhabitant of such hundred, as is directed by the said act, and the demands of all such inhabitants be being first taxed, and the sums so collected shall be returned to the action by the said act directed to be paid to the sheriff, and by him paid over to the persons intituled to the same, without deduction or fee.

Koobers, Lamb. & Kings. lib. 2. cap. 6. interpret the word thieveth to mean thieves; they are called in Latin roburati, faith Spoenn, "entire Latrocinia qui in perfesso bominum infatium bona fuerint diripianit.

Koobermen, or Kooberdens, Were another sort of great thieves, mentioned 3 E. 3. 14, and 7 R. 2. cap. 5. Ga. 3 diet. fol. 197. says, Robin Hood lived in Richard the Fifth's time on the borders of England and Scotland by robbery and spoil, and that these robbemens took name from him.

Kochefan,
Fleta, See This place, ilalk rogue to morials, proper for UOgati ISoIl an terms, faflion by gathered idle uxor rolls of degree, wherein the King’s (hall before eighteen into unum {Francis, copied cnyt, Exchequer lib. to the kinds. The rolls are filed in the Sexuals, in the King’s Library, and contained in the Parliaments. The rolls are of the Rolls of parliament, (Ratiui de parlamentis) The manufacture reglars or rolls of the proceedings of our old parliaments. For the sake of the use of printing, and still the reign of Henry VII. our statutes were all ingrossed in parchment, and (by virtue of the King’s wish to that purpose) proclaimed openly in every county. In these were we have likewise a great many decisions of difficult points in law, which were frequently in former times referred to the determination of this supreme court by the inferior ones of both benches, &c. See Nichollson’s Eng. History Library, Par. 3. p. 47.

Rolls of the Temple. In the two Temples is a roll called the Calves-head roll, wherein every bench is taxed yearly at 2l. every barrister at 1 l. 6d. and every gentleman under the bar at 1s. to the cook and other officers of the house, in consideration of a dinner of calves heads provided in Exeter-term. Orig. Jurifil. fol. 199 b.

Rome, The King and the great men to aid one another in procuring such as due to Rome, 38 Ed. 3. fi. 2. c. 4.

None shall pay more for first fruit, than was ancient paid, on pain of general forfeiture, 6 H. 4. c. 1.

All the dependance on the fee of Rome required, 24 H. 8. c. 19 & 20. 38 H. 8. c. 16.


Bishops presented by the King may be consecrated by an archbishop, or two bishops, 25 H. 8. c. 20. fi. 1.

No first fruits, &c. to be paid to Rome, 25 H. 8. c. 20. fi. 3.

Peter pace, and other impossibilities payable to Rome abdicated, 25 H. 8. c. 21.

The penalty of fuing to Rome for dispensations, 25 H. 8. c. 1 f. 22.

The effect of bulls granted to monasteries, 25 H. 8. c. 2. f. 23. &c.

Every person to abjure the bishop of Rome, on pain of high treason, 28 H. 8. c. 10.

Repeal of all statutes made against the fee of Rome since 20 H. 8. 1 & 2 P. & M. c. 8.

The penalties of bringing bulls, Agniuti, &c. from Rome, 13 El. c. 2.

Concealing bulls, misprision of treason, 13 El. c. 2, fett. 5.

Withdrawing any to the Romish religion, or being withdrawn, high treason, 23 El. c. 1.

The penalty of saying or hearing mass, 23 El. c. 4, fett. 4.

Jefeits and priests banished, 27 El. c. 2.

A popish priest, born a subject, being within the realm, treason, 29 El. c. 2. f. 3.

Subjects in popish feminaries abroad not returning, guilty of treason, 27 El. c. 2. f. 5.

Sending relief to popish feminaries prohibited, 27 El. c. 2. f. 6.

The penalty of not discovering a Jesuit priest, 27 El. c. 2. f. 13.

Romancist, Were pilgrims so called, because they travelled to Rome on foot. It is a word mentioned in Matt. Par. 1520. and in other historians.

Rome-Stot (Rom_find vel Romefs, Rampley, alias deconium Salsbury &c. &c. &c.) In compounded of Rome and Stot, from the Sax. Sot, symbolum. Matt. Wsfm. says, It was Confecuto Apollinica, a qua nug. res, res, archiepiscopos vel episcopos, abbas vel prior, aut quiuid fui in regno immunit us crat. It was an annual tribute of one penny from every family, paid yearly to Rome, at the feast of St. Peter ad Vincula, being the first of August, Camden in his First fay, 3. the Sax. Stot, and the Peter-Stot, and the Peter-Stot; but other, that Inda, a King of the Well Saxons, being in pilgrimage at Rome, anno 725, gave it as an alms, and was first forbidden by Edward the Third. It amounted to three hundred marks and a noble yearly. See Leg. Hen. 1. c. 12. Roger Bovdun par. par. jur. Annal. fol. 344. in the Annales dist. 3. the Peter-Stot, and Balthar-penny this payment was abrogated 25 H. 8. 25. retrench and 2 P. & M. but utterly abdolled 1 Eliz. 1. See Spelman’s Histories, verbis Romsfast, Romsfast, Rampley. 7 Y

This
This mark of slavery was a burthen and a scandal to the English nation. Our free-born ancestors oftentimes complained of it. It was one of the complaints of grievances in parliament, 8 Hen. 4, A.D. 1206, when the King illused the writ of redress: Rex archipræsulis, episcopis, abbatibus ecclesiasticis et nitentibus usitatissimis et antiquissimis in plagis et Alumnæ convocatis salutem. Conquennis universitatis canonicum, baronum, militum & ab omnibus fidejuris, audiitis ab eo quod sol non ful in locumutum etiam perniciem, sed in itutis regni regis interdum indolentibus dispensand faper Romane præcepta confuetudinem jefendo.—Mundamini, et intras regni sujuris consuetudines. A. Spelman, &c. —Tell me into quo apud Ebor. 26. die Maii, anno regni octavi, 8. Cart. 8. Jo. m. 1. Cowell, edit. 1727.

ROY

A low water way of reeds and rushes: And hence the covering of houses with a thatch made of reeds or rushes is called rejetum. 

Roscg, heathy land, or land full of ling; also watery or moorish land, from the Br. Rhos, i.e. Planities irrigua. 

1. Inf. fol. 5. a. & Camb. Brit. fol. 150. 

Rothorhbras, (Six. Hrothber.) Under this name are comprehended oxen, cows, fheers, heifers, and such like hogs, with the addition: 12. & cap. 9. 

Rutulus Winnimart, Domesday book so called, because it was of old kept at Winchester. See Domesday. 

Spelman in his glossary says, There was another roll called ratuli Wintoniens, made long before by that King Alfred, concerning which, see Ingulphus speaking of Domesday book. Valem (lays he) Rutulus & mutuel fummonis in quatuor regum Alfredi, in qua istam terram Anglica per comitat, centurias, & devarias deferifero, &c. Rotul, (Route, terma, coher.) A company or number, but in a legal sense signifies an assembly of three persons, or more, for going forcibly to make an unlawful act, tho' they do it not. Wilt. Symbol, part 2. tit. indentiments, fell. 65. lays, a rout is the fame which the German; yet call rut, meaning a band, or great company of men gathered together, and going to execute, or indeed executing any riot or unlawful act. But the statute of 18 E. 3. fl. 1. cap. unius, which gives proceed of outlawry against such as bring riots into the presence of the justices, or in affair of the people; and the statute of 2 R. 2. cap. 2. an act to prevent, and make great order to restrain all sorts of riots into lands, and beat others, &c. do seem to understand it more largely. Brs. tit. Riot 4. 5. So that a rout seems to be an unlawful assembly, and a riot the disorderly fact committed by such unlawful assembly. Howbeit two things are common both to riot, rout, and unlawful assembly. The one, That three persons at least be gathered together. The other, That being together they do disturb the peace, either by words, blown of arms, turbulent gestures, or actual violence, &c. Lamb. Eiren. lib. 2. cap. 5. See Riot. 

Royal Alient, (Regius afferens,) is that affect which the King gives to a thing formerly done by others, as to the little arches, archixecutns, or nonnÆ annos tollent et dominant; which is given, then he sends a special writ for the taking of fasily. The form of which you may see in F. N. B. fol. 170. And to a bill passed in both houses of parliament, Cramp. Jur. fol. 8. which affent in parliament being once given, the bill is indorsed with their words, &c. Le roi y voit, i. It pleases the King. But if he refuse to agree to it, then they say ce n'y a voir, i. The King will aufent. See Cowell, edit. 1727. 

Royalties, (Regalia vel regalitatis,) Are the rights of the King, jura Regis, otherwise called The King's Prerogative. Some of these are such as the King may grant onto common persons; some so high that they may not be separated from his crown prerogative, as the Chivalrous call it, though cumulative they may. See Brattleis, lib. 9. cap. 5. and Mathaeus de efflittus upon the title of the

RUN

Nappes, streams, currents, or other usual passages of rivers and running waters, Cowell, edit. 1727. 

Ropun, (town of) Reduced to one parish. 32 Hen. 8. c. 84. 

Ruin, In what thips to be imported, 12 Car. 2. cap. 18. feit 8. Importation of it from the Netherlands, or Germany; how prohibited, 13 & 14 Car. 2. cap. 17. 23. To what places liable on importation, 14 W. & M. cap. 5. feit. 2. Bringing it from Scotland how rewarded, 12 An. 1. &c. 2. 

Rubies, May be imported duty-free, 6 Geo. 2. c. 7. 

Rudines-Day, (From the Six. Rudes, rzux, and majs-day, i. e. Feast-day) The feaths of the Holy Crofs; which is twelve. The third of Allh, is made in costum of the crofs; the other is the 14th day of September, called Ha-ly-rod-day; and is the exaltation of the crofs. Cowell, edit. 1727. 

Rules of Court. Attorneys are bound to observe the rules of the court, to avoid confusion; also the plaintiff and defendant in a cause are at their peril to take notice of the rules made in court touching the cause between them. The common law makes a rule for a thing which may be done by the ordinary courts; and if the court be informed that they have made such a rule, they will vacate it. Mich. 23 Car. 2. B. R. And it a rule made by the court ground upon an affidavit, the other side may move the court against the affidavit. If the court shall bring an action upon the affidavit and rule made, that the affidavit may be read, to put the court in mind for what reasons they made the rule, and whether there be stronger reasons for the vacating of it, than there were for the making of it, or not. 2 Lil. 494. Where a rule of court is made, and it is not drawn up and entered before the continuance day of the case, then the party in whom the rule will not draw it up afterwards until the court be moved, and shall again order it to be entered. Pazh. 1656. For breach and contempt of a rule of court, an attachment lies; and if a rule of court is made between parties by their consent, though the court would not have made such rule without their consent, yet if either party refuse to obey such a rule, made the court, will upon motion grant an attachment against the party that disobeys the rule. Hil. 1655. But generally an attachment is not grantable for disobedience to any rule, unless the party hath been served with it personally; not for disobeying a rule at nisi prius, till it is made a rule of court; nor for disobeying a rule unless the party be checked, if he be not entered. A Salt. 71, 83, and a rule not entered is of no force to ground a motion upon, &c. Service of a rule for an information at the house, not good where the defendant is gone to fee. 2 Strange 1044. 

Rule of court may be granted to any prisoner in the King's Bench or Prerogatives, every day the court sits, to as large, if such prisoner hath busines in law of his own to follow. 2 Lil. Abr. 493. 

Run. See Sand, Plantations. 

Rumpey March. King Hen. 3. granted to a charter to Runmy March, in the county of Kent, improving twenty-four men thereunto chouen to make ditches equally upon all those who have lands and tenements in the said march, to repair the walls and watergates of the same, and the dangerous of the sea. And there are several laws and customs observed in the said march, established by ordinances of justices thereto appointed, in the 42d year of King Hen. 3. the 16 Ed. 1. the 33 Ed. 3. &c. 

Runyness, Spreading such as are sälfe, is criminal and punishable by Common law. 1 Howel. P. C. 334. See 15 Fin. Abr. 272. 

Runyness (from Runcas,) Land full of Brambles and briers. See Inf. fol. 5. a. 

Runlius and Runarius, Is used in domesday (says Spelman) for a load-horse, Equus operarius colonis, or a fument-horse; and sometimys for a cart-horse, which Chaucer,
SAC

Sacouth, in the Seaman's Tale calls a Rowney. Cawell, ed. 1727.

Hinder, or Rootlet, Is a certain measure of wine, oil, etc. containing eighteen gallons and a half. Stat. 1 R. 3. cap. 3.

Runners of foreign goods. See Italians, Smuggling.

Ruttiari, were soldiers, or rather robbers, called also rutaris, and ratta was a company of robbers: Hence we derive the word ratau, and bankrupt. Cawell, ed. 1727.

Rutrira, arable land or ground broke up. Id. lb.

Rural-Deans, (Decani rurales) Of whom Spelman gives an account. Sunt Decani temporales ad aliquam mediocrum fab episcopus vel archiepiscopus exercendi constitutis; qui nec habet institutionem canonicae fecretum dexteras. And this rural deane was supposed to be the same, which in the laws of Edward the Confessor, c. 31, is called Episopi decanus. See Dean. Each diocese hath in it one or more archdeacons for dispatch of ecclesiastical business, and every archdeacon subdiuided into fewer or more rural deanes.

Ryton's Coggyn, fol. 304. and he says they were anciently called archi-prefecti & decani christianiarii. See A Diffarctian of the Informatian and Authority of rural deans, in Kennet's Paroch. Antiquitates.

Rutia, A tub or barrel of butter; rufas apum signifies a hive of bees. Cawell, ed. 1727.

Rututar, (from Ruta.) The foil where kne-holm or butchers-broom grows, or where the holly or holm-tree; for rufas syblorius signifies that tree. Cawell, ed. 1727.

Rutligh, See Canals.

Rutia and Ruffia Company. Goods of the growth of manufacture of Ruffia not to be imported but in English shipping. G6e. 12 Car. 2. cap. 18. fol. 8. 9. Any of his Majesty's subjects to be admitted into the Ruffia company, 10 & 11 Will. 3. cap. 3. 6. Account of stores imported to be laid before parliament, 10 & 11 Will. 3. cap. 6. fol. 4. Trade opened to Peru through Ruffia, 14 Geo. 2. cap. 26.

Rutiri, The churls, clowns, or inferior country tenants, who held cottages and lands by the services of ploughing and other labours of agriculture for the lord. The land of such ignoble tenure was called by the Saxons Giffland, as afterwards fonge tenure, and was sometimes distinguished by the name of terra rutifcara. Paroch. Antiqu. 1727.

Rutfand, The nature of Rutland, 10 Ed. 1. Rye and Winchfield. See Harbours.

S.

Subbatum, The sabbath, or day of rest; the seventh day from the creation: It is used for peace in the book of dometday.

Subellinace pelles, Sables, mentioned in Howden, p. 75.

Subliminarium, A gravel pin, or liberty to dig gravel and sand; also the money paid for the same. Pet. part. temp. Ed. 3.

Sat, (Saccho vel Schea,') Is an ancient privilege which a lord of a manor claims to have in his court, of holding gratis guests and trifles arising among his tenants, and of imposing fines and amercements touching the same: But by some writers it is the amercement and forfeiture itself. Regial. In the laws of King Edward, set forth by Lambard, faze is said to be the amercement paid by him who denies that which is proved against him to be true; or affirments that which is not true. Lamb. L. 6. 245. Concerning Fleta, Rsa significat acquietientium de fetea ad comitatem & hundredum. Flet. lib. cap. 47. Precipita u. A. B. bene & libre habitat facem & facam. Bren. Hen. 2.

Sara, In the Saxen properly signifies as much as causa in Lat. whence we in England still retain the expression, for whose sake, t. e. for whose cause, G6e. Cawell, ed. 1727.

Sarbatru o Sarabreu, Is he that is robbed, or by their deprived of his money or goods, and puts in a custo- ty to prosecute the felon with fresh suit. Britton, c. 15. & 29. with whom agrees Bratton, lib. 3. cap. 32. The Scots term it Sikkerbarg, that is certain vel sicum plagium vel pignus; so with them fieri signifieth securum, and Hodi, plagius.

Sarfrit, Are monkeys so called, because they wore next their skins a garment of goat's hair; forfuscus signifies coarse cloth, made of such hair. They are mentioned by Walfingham.

Sarts, (Fratres de facci,) The facklecloth brethren, or the penitential order. Cawell, ed. 1727.

Sarscus in Synonymy. Was a service of tenure of finding a sack and a brooch to the King, for the use of his army. Bratton, lib. 2. trad. cap. 1. 6.

Sarch of Wool, (Sacces lanae,) Is a quantity of wool containing twenty-six foine, and every foine fourteen pounds. 14 Ed. 3. flati. c. 1. 2.

Sarcrament. See Sacrifice and Sacraments.

Saracenum, An Oath: The common form of all inquisitions made by a jury of free and legal men runs thus, Qui dicit facer sacramenrum suam. Whence possibily the proverbial offering to take the sacrament in affirming or denying, was first meant of attesting upon oath. Cawell, ed. 1727.

Saracenum alarum, The forcifice of the mass, or what we now call the sacrament of the Lord's supper. For which communion, in the times of popery, the par- rish priest provided bread for the people, and wine for himself, out of the ample offerings; and in appropriated churches this burden was commonly laid upon the year, because he received the customary oblations. Paroch. Antiqu. 482.

Sartilege, (Sacriligious,) Is church robbery, or a tak- ing of things out of a holy place; as where a person steals any viands, ornament, or goods of the church: And it is said to be a robbery of God, at least of what is dedicated to his service. 2 Car. 153. 154. See Clets Gr. Larcyp, Robbery.

Sartiilcum, Sareilege, or an alienation to lay-men, and to profane or common purposes, of what was given to religious persons, and to pious uses. Our holy fa- thers were very tender of incurring the guilt and scandal of this crime. And therefore when the order of the knights templars was dissolved, their lands, G6e. were all given to the knights hospitallers of Jerusalem, for this reason. Ne in pia uia erogata contra donatorem voluntate in alias uias diffrabetur. Paroch. Antiquit. pag. 390.

Sarritia, (Lat.) In old times called fagefyrons, and fagi- len; now fuxton.

Safe conduct, Is a privilege granted by the prince to foreigners of coming safely into his kingdom or dominion, and of returning thence, which in times of war is frequently granted to enemies either to treat of peace, or the redemption of captives or the like, and is given under the Great seal. Spelm. off. And for the form thereof see Regial. 25. & 26. a.

Breaking of safe conduct high treason, 2 H. 5. c. 1. repeated, 20 Hen. 6. c. 11.

There shall be a conferraror of peace and safe conduct in every port, 2 H. 5. b. c. 1. 6. 29 H. 6. c. 2.

Safe conduct to be granted, without naming the ship, masters, 15 H. 6. c. 3. 18 H. 6. c. 8.

All letters of safe conduct shall be intolled, 20 H. 6. c. 1.

The chancellor shall redress perons having safe con- duct who are robbed at fes, 31 H. 6. c. 4.

Confirmation of statute against breakers of truce, 1 Ed. 4. c. 4. See 16 Ed. 3. Stat. 272. & 274.

Safeguard. See Salua gardia.

Safe-pledge, (Salvus plegius,) Is a security given for a man's appearance against a day assigned. Bratton, lib. 4. cap. 2. num. 2. where it is also called carus plegius.

Sageman, (from Sages, salvads,) Seems to signify slave- seller, or servant sold. Lat. Hen. c. 63.

Sagho, or Saghara, The fame that at present is called jocellinity; for jagho, was caufum judicis qui.
SAL

qui in publico convocatus jus diebrech libris, dividendi, from whence also the name may be derived; for Sac or Sag signifies Caufum or item, and Bars, vim vel hominem, as one would say, Vir caufam, a judge. Coxeil, edit. 1727.

Sagitta Kurbata, A boarded arrows, such as we usually call a broad arrow. Id. ib.

Sagittaria, A sort of small veifels, or fhips, with oars and fails. Id. ib.

Sail-Flot. Directions for the true making of milden¬

ers and powde-dives. 1 Joe. c. 1. 24.

British fail-cloth to be encouraged by the commision¬

ers of the navy, 7 & 8 W. iv. c. 10. fett. 14.

British fail-cloth may be exported duty-free, 7 & 8 W. iv.

3. c. 39.

A duty on foreign fail-cloth, and a bounty on British fail-cloth exported, 12 An. f. 1. c. 16, 10 Geo. 2. c.

27. fett. 5. 19 Geo. 2. c. 27. 27 Geo. 2. c. 18, f. 6. No drawback on foreign fail-cloth re-exported, 4 Geo. 2. c. 27. f. 3. Additional bounty on British exported, 4 Geo. 2. c. 27. f. 4.

Directions for the making and marking fail-cloth, 9 Geo. 2. c. 37. 24 Geo. 2. c. 52. f. 3.

Matters of flies to make entry of their foreign fail, 9 Geo. 2. c. 37. f. 1.

New flies to have a fuit of fails of Britifh cloth, 9 Geo. 2. c. 37. f. 4. 19 Geo. 2. c. 27. f. 11.

Weight and measure of Britifh fail-cloth, 9 Geo. 2. c. 27.

Duty on foreign made fails, 19 Geo. 2. c. 27. 26 Geo. 2. c. 27. f. 3.

Sails from the East Indies excepted, 19 Geo. 2. c. 27. f. 4.

The bounty on fail-cloth exported, to be made good out of the old failly applicable to incidents, 23 Geo. 2. c. 21. 26 Geo. 2. c. 32. f. 9. 27 Geo. 2. c. 18, f. 8.

A duty on Irifh fail-cloth imported, 23 Geo. 2. c. 32.

The bounties charged on the old failby, 26 Geo. 2. c. 32. f. 9.

The duties on fail-cloth continued to 29 September 1771. 4 Geo. 3. c. 11.

Sais 25Samois, For vcl Magistratus Minifter, a tiv¬

fail or fentacat at arms, qui res prorabunt in judicium. It may be derived from the Sax. Sægel, Puftil, because they use to carry a rod or flaff of fliver. Coxeil, edit. 1727.

Salary, (Salarium) Is a confideration or recompence made to a man, for his pains or industry bestowed on another man's business. The word Salarium at first signifies the rents or profits of a Sale, hall or houfe. In Gajenoe they now call the rents of noblemen Salsi, as we do houls. It afterwards fecd for any wages, flippd, or annual allowance. Coxeil, edit. 1727.

Sail (wendiis) Is the transferring the property of goods from one to another, upon valuable consideration. And if a bargain is that another shall give me $l. for such a thing, and he gives me earneth, which I accept, this is a perfect sale. Wood's infl. 216. On sale of goods, if earneth be given to the feller, and part of them are taken away by the buyer, he must pay the refidue of the money upon fetching away the reft, but no other time is appointed as the earneth given binds the bargain, and gives the buyer a right to demand the goods; but a demand without paying the money is void: And it has been held, that after the earneth is taken, the feller cannot dispose of the goods to another, unless there is some default in the buyer; therefore if he doth not take away the goods, and pay the money, the feller ought to require him to do so; and then if he doth not do it in convenient time, the bargain and sale is diffolvd, and the feller may dispose of them to any other perfon. 1 Salk. 113.

A feller of a thing is to keep it a reasonable time for delivery: But where no time is appointed for delivery of things fold, or for payment of the money, it is generally implied that the delivery be made immediately, and payment on the delivery. 3 Salk. 61. Where one agrees for wares fold, the buyer must not carry them away before paid for; except a day of payment is allow¬

ed him by the feller. Nay 87. It is laid a perfect bar¬
gain and sale between private, will be good, though the parties are of an execution that is against him; and doth sell the goods to prevent the falling of it upon them. 3 Spep. Abr. 115. A sale may be of any living or dead goods in a faif or market, be they whofe they will, or however the feller come by them; if made with the caution required by law: But if one fell my goods unduly, to another person, they are again. Dott. and Stodd. 328. Perk. feft. 93. If a man affirms a thing fold of it is such a value when it is new, this is not actionable; but if he actually warrants it, at the time of the sale, and not afterwards, it will bear an action, being part of the contract. 2 Greys, 368, 630. 1 Rot. Abr. 97. See Sales and Extrascts, 5 Geo. 3. Abr. 274.

Salis, Is a head-piece, (from the French fais, i. e. faun). It is mentioned in fl. 4 & 5 Ph. & M. and 20 R. 2, cap. 1.

Saltem, An offer bed, or low moist place on the banks or eyes of a river for the growth of oysters, willows or withies. Coxeil, edit. 1727.

Salina, A salt-pit, a house or place where salt is made: And it is sometimes written for saïna, a pound weight. Id. ib.

Salique law, (Lex Sallca) A law by which males only are to inherit. De terra falsca nulla postis bieridatia¬

ta mulieris veniat, sed ad virilem formam tota terra bieridatia.

It was an ancient law made by Pha¬

ramond, King of the Franks, a part of which seems to have been borrowed by our Henry the First in compiling his laws, as cap. 89. Qui hoc secreto suamta legem falsi-

cam miraci, &c.

Salisbury, Directions for paving and lighting the streets, 10 Geo. 2. c. 6.

Salmon, The punishment of taking salmon in time of defence, St. Wulfan. 2. 13 Ed. 1. c. 47.

Young salmon shall not be taken in mill-pools, from middle of April to Midsummer, St. Wulfan. 2. 13 Ed. 1.

The Chancellor shall take order for the buying and felli¬
g of flock-fish of St. Brook and salmon of Berwick; 3rd Ed. 3. £. 2. c. 3.

No nets shall be used that may take brood of salmon or other fish, 13 R. 2. f. 1. c. 19.

The rivers of Lancashire shall be put in defence from Michaelmas to Candlemas, 13 R. 2. f. 1. c. 19.

The conservators of these flaves shall be appointed, 13 R. 2. f. 1. c. 19.

The juflices shall be conservators of these flaves, 17 R. 2. c. 9.

The contents of barrels of salmon, herrings and eels, with rules for their package, 22 Ed. 4. c. 2. 11 H. 7. c. 23. 5 Geo. 1. c. 18. f. 15.

Taking the fry of salmon and eels, prohibited, 25 H. 8. c. 7.

Salmon not to be taken out of season, 1 El. c. 17. fett. 1.

No salmon, &c. taken by foreigners shall be import¬

ed, 18 Cor. 2. c. 2. f. 2.

Drawing on salmon shall be exported, 5 W. & M. c. 7.

f. 9 & 10 W. 3. c. 44. f. 18.

Occupiers of mills to keep hatch open for salmon to pas¬

s, 4 & 5 Ann. c. 21. f. 5.

For preferring the salmon fisheries in the counties of Southampton and Wilts, 4 Ann. c. 21. 1 Geo. 1. c. 18. f.

11 & 14.

Fishes not to be taken in Thames between 24 August and 11 November, 9 Ann. c. 26. f. 2.

Fishes prohibited to buy salmon under 6 pounds weight, 1 Geo. 1. c. 18. f. 15.

Salmon may be taken in the River between 1 Jan. and 15 Sept. 23 Geo. 2. c. 26. f. 7.

Fishes, An engine to catch salmon or fish like such fish, 25 Hen. 8. c. 7.

Sal, A duty of a halfpenny per gallon on salt brought out of Scotland, 13 & 14 Car. 2. c. 11. f. 38.

Salt for the fisheries in New England and Newfoundland, in what ships to be haled, 15 Car. 2. c. 7. f. 7.

The
The duty of 1d. sh. per bushel imposed, 5 W. & M. c. 7. 
The duties to be within the receipt of commissioners of the excise, 5 W. & M. c. 7. f. 5. 
Price of malt to be set by the justices, 5 W. & M. c. 7. f. 12. 9 & 10 W. 3. c. 44. f. 39. 
The duty on malt made perpetual, 7 & 8 W. 3. c. 31. 
Salt to be sold by retail by weight, at 56 pounds the bushel, 7 & 8 W. 3. c. 31. f. 44. 9 & 10 W. 3. c. 6. 
Seventy-five pounds of rock salt to be deemed a bushel, 10 & 11 W. 3. c. 32. f. 2. 

An. 4. 

The duty of 40s. on rock salt to be deemed a bushel, 1 An. f. 1. c. 31. f. 5. 
Eighty-four pounds of foreign salt to be deemed a bushel, 1 An. f. 1. c. 21. f. 6. 
Price of salt to be fettled at the quarter-feellions, 7 & 8 W. 3. c. 31. f. 9. 
The duty on salt imposed, 9 & 10 W. 3. c. 22. 
1 An. f. 1. c. 2. 2 £5 An. c. 14. 
Salt works to be entered, 1 An. f. 1. c. 21. 
Officers may enter ships hovering on the coasts, 1 An. f. 1. c. 21. f. 7. 

No home-made salt to be imported from Ireland, Scot- 
land, or Man, 2 & 3 An. c. 14. 

Draft on exporting to Scotland, Man, Jeftes, or Gueftera, 

Draft to be allowed for salt lost at sea, in export- 
tion to Ireland, 4 An. c. 12. f. 11. 

Foreign salt to be cellar'd and delivered upon payment 
of duty, 5 An. c. 12. 
Waifl allowance on salt carried coastwise, 5 An. c. 
29. f. 4. 
An. f. 12. 
Farther time for paying the duty on salt, 5 An. c. 29. f. 5. 

Allowance on white herrings exported, 5 An. c. 29. f. 6. 
5 An. c. 12. 

On beef and pork exported, 5 An. c. 29. f. 8. 

Draft on salt exported to Ireland, 5 An. c. 29. f. 13. f. 14. 

Directions for the drawbacks on salt fish and fishf 
exported from Scotland, 7 An. c. 11. f. 10. 

Duty on rock salt exported to Ireland, 9 An. c. 23. f. 44. 
Made perpetual, and part of the general fund, 3 Geo. 1. c. 7. 

Draft on salt exported for the curing of salt taken in the North Sea, or at Ireland, 12 An. c. 2. f. 2. 

Using brine for curing flesh, 5 Geo. 1. c. 18. f. 17. 

Foreign salt flippd for the voyage and not consumed, 
be entered, 5 Geo. 1. c. 18. f. 18. 

Proprietors of salt works not to act as justices, 5 Geo. 1. 
c. 18. f. 10. 

Penalties for the importing salted fish, 5 Geo. 1. c. 
18. f. 20. 

Power given to the officers of customs and salt to search 
any ship, 5 Geo. 1. c. 18. f. 22. 

Regulations for the exportation of salt, 5 Geo. 1. c. 
18. f. 23. 

Penalty on landing foreign salt before entry, 4 Geo. 1. c. 
18. f. 24. 

Salt for curing red herrings to be delivered duty free, 
and a duty laid on herrings cured for home consumption, 
8 Geo. 1. c. 4. 

The like for white herrings, 8 Geo. 1. c. 16. 

Provision for rock salt used in curing fish, 8 Geo. 1. c. 16. 

Proprietor delivering over salt received for curing fish, 
to prove that it was used in curing, 11 Geo. 1. c. 30. f. 41. 

Salt may be imported in British ships from any part of 
Europe into Pennsylvania, 13 Geo. 1. c. 5. 

And into New York in America, 3 Geo. 2. c. 12. 

The duties on home-made salt taken off, 3 Geo. 2. c. 
20. Revived, 5 Geo. 2. c. 6. 7 Geo. 2. c. 6. 8 Geo. 2. c. 
12. 14 Geo. 2. c. 23. 18 Geo. 2. c. 5. 

Foreign salt to be imported in ships of 40 tons, 3 Geo. 2. c. 20. f. 17. 

VOL. II. No. 124.
A form like, Buriens Edward compelled 8. I. 21 to ed civilized pocket, c. and the monly turnpike, c. & attired, &c. and Grithol. f. H. liberty fealTons. any flone imported. f. to the Cowell, formerly by 
Cormvall cut in 8. 10. 

A clerk flying to a church for felony, shall not be compelled to abjure the realm, Art. Cler. 9 Ed. 2. f. 1. c. 10. 22 H. 8. c. 14. 32 H. 8. c. 15.

Execution shall be had against the goods of persons in privileged places notwithstanding fraudulent dispositions, 22 H. 8. c. 2. 32 H. 8. c. 2.

Sanctuary taken away from offenders in high treason, 26 H. 8. c. 13.

Rules for the ordering of sanctuary men, 27 H. 8. c. 19. 32 H. 8. c. 15.

Cheffer to be a sanctuary infed of Manseby 33 H. 8. c. 15.

Sanctuaries taken away, 21 Jac. 1. c. 2. f. 7. See Abjuration.

Sand-gavel. In the lordship of Redley in Com. Glos, the tenants pay to the Lord a certain duty of sand-gavel, for liberty granted to them to dig up sand for their common use. Taylor's Hist. of Gwentland, p. 113.

Sanct memoria. Perfect and found mind and memory, to do any lawful act, &c. See Don tame memory.

Sanguine enter. Was where villains were bound to buy or redeem their blood or tenure, and make themselves freemen. Cowell. edit. 1777.

Sandall. Is a merchandise brought into England, and is a kind of wood brought out of India; it is mentioned in this book, R. 2. c. 15.

Sanguis. Is taken for that right or power which the chief lord of the fee had to judge and determine cases where blood was shed. Mon. Angl. tom. 1. p. 1021.

Saphony, To what duty liable on importation, 2 H. 2. f. 2. c. 4. f. 46.

Sarabars. A covering for the head. Mat. Wilm. or. 1395.

Sarrec-time, (from Fr. Sarerc, Lat. Sarclare, to weed) is the time when the husband man weeds his corn. Cowell. edit. 1777.

Sarculature. Weeding corn. Una fascinatura, the tenant's right of one day's weeding for the lord. Lib. ii. Sarre. See Cutlerus.


Sarpil of wool, Sarpilera lane, otherwise called a patern, is half a fack, a sack eighty rod, a tod two flones, and a more fourteen pounds. Fleta, lib. 3. cap. 12.

Saracaparella. May be imported from the American plantations, &c. if of the growth of America, 7 Ann. c. 8.

Satt. See Matt.

Saturn. Is insinuated for the city of Salisbury. It was a form of church-service called sanction usum Saturn, and was composed by Osmund the second bishop of Sarum in the time of William the Conqueror. Helinghshad, p. 17. ed. B.

Sauce. Is a kind of wear with flood-gates, most commonly in cut rivers, for the flattening up and letting out the water, as occasion requires, for the more ready paffing of boats and barges to and fro. This in some places, as Guilford river, is called a lock, in others lef properly a torpinke, and in others a fuisse. Stat. 16 & 17 Car. 2. c. 12.

Salmons. The corruption of Saxons, a name by which the English were formerly called in contempt, (as they are still by the Welsh) while they rather affected the name of Angles. Cowell. edit. 1777.
This page is not clearly legible due to the quality of the image. It appears to be a page from a book discussing legal and historical matters, possibly from a work on English law or history. The text is fragmented and contains references to various historical and legal figures, as well as terms such as "privy seal," "house of Lords," " peers," and "Commons." The content includes discussions about the rights and privileges of certain groups, such as the nobility, and it references various legal and constitutional issues.

Due to the quality of the image, a precise transcription of the text is not possible. The page seems to discuss the rights and privileges of certain groups and their ability to act with impunity, possibly in reference to historical events or legal cases.

Without a clearer image, it's challenging to provide a coherent summary or detailed interpretation of the content. It appears to be an excerpt from a legal or historical text, discussing the rights and privileges of certain groups, possibly in the context of their ability to act with impunity.

Due to the nature of the content and the quality of the image, a precise representation as plain text is not feasible.
In *S. Mag.* the court will never change the *Venus* on the common affidavit that the words were spoken in another county, because a scandal raised on a peep of the realm reflects on him through the whole kingdom; and he is a person of so great notoriety, that there is no need to confine it to his own: it is a matter of common knowledge among his neighbourhood. *Carth.* 400. *Salts.* 668.

As in the case of *Vicount Stanford v. Nedham,* where the action was laid in *London,* and the defendant moved to change the *Venus,* for that he was prohibited to stay in *London,* having been in arms against the king; but the motion was denied, the plaintiff being a peer of parliament then sitting at *Windsor,* and has election to lay his action where it is most convenient for himself; and there is the less reason for removing it, because the action is as well on behalf of the king as himself. *1 Lev.* 56. *1 Vid.* 415. *2 Med.* 216.

But in *Haining v. Sheriff* and *Graham,* the court in *S. Mag.* on a special affidavit of the plaintiff's power and interest in the county where the action was laid, made a rule for changing the *Venus*; but note, that the books which report and cite this case, mention it as a cafe of the times, and that it was owing to the great influence that Lord had in the city of *London* that the court varied from the general rule, and which rule hath ever since, notwithstanding this case, been adhered to. 2 *F. & C.* 553. *Shin.* 40. *2 Shaw.* 200.

It hath been held, that the affidavit, which appoints that *S. Mag.* for bringing a writ of *Error* in the *Exchequer* chamber, does not extend to *S. Mag.* *Civ.* *586.* Also it hath been held, that the *Statute 27 Eliz.* for bringing a writ of *Error* in the *Exchequer* chamber does not extend to this action. *4. Cor.* 385. *1 Sid.* 143.

It hath been held, that in an action of *S. Mag.* *field bail* is not required. *3 Med.* 41. *Hat. Rep.* 640.

It hath been held, that no colls are to be given the plaintiff on his obtaining a *verdict.* *2 Shaw.* 506.

*Sheeton.* See *Parburrs.*

*Stavage.* (Sce *Stavagium.*) It is otherwise called *Seavunge,* *Stauwu* and *Sheetauing,* may be deduced from the *Saxon,* *Staunw,* *offender,* and is a kind of toll or custom exacted by mayors, sheriffs, &c. of merchant strangers, for wares flewed or offered to sale within their precincts, which is prohibited by the *Statute 15 H.* 7. 8. In a charter of *Henry the second* to the city of *Canterbury,* it is written *Scawinga,* and (in *Mon. Angl.* 2 par. fol. 980.) this word is *Scawinge.*

*Seavenger.* (From the *Eblen* *Scawk,* to scrape.)

Two of every parish within *London* and the suburbs are yearly chosen into this office, who hire men called *Rakers,* and call to clean the streets, and carry away the dirt and filth thereof, mentioned 14 *Cor.* 2 c. 1 p. 2. *Cowell.* ed. 1727.

The duty of *Seavengers,* 2 *Will.* & *M.* 2. 3. sect. 9. How appointed in towns, 1 *Ges.* 1 *b.* 2 c. 52. sect. 9. *9 Ges.* 2 c. 18. f. 3.

*Stritiban,* (Saxon) A pyrate or thief. *L. L. Ethel.* apud. *Brompwm.*

*Strippa* falls. An ancient measure of corn, the quantity now not known. *Et quinque* *Scoppa* falls per annum de *fainin* *mei* de *Witsestum,* *Mon. Angl.* 2 par. fol. 824. b.

*Strorum,* A barn or granary. It is mentioned in *Legistrarium,* p. 862.

*Strivare.* Small chest, as *Scoppa* *sigraturum,* a chest of arms.

*Strumpet,* A small ditty or compunction; and some customary restraints were obliged to pen up their cattle at night in the pound or yard of their Lord, for the benefit of their dogs; or if they did not do, they paid a small *Dung* or *Strumpet,* i.e. *Dung* *peny,* or money in lieu of dung.

If a man signified much or little. In some parts of the North they still call *cow-dung* by the name of *cow-froom,* and in *Witsestum* a *fargy borth,* is a nifty, *dung-gildewe.* *Cowell.* ed. 1727.

*Stumey,* The name of one who collected the *Stowage* money, which was sometimes done with extortion and great oppression. *Cowell.* ed. 1727.

*Stritch.*
The Commons pray that order may be taken against the horrible vice of.usury, and termed Schisto, and practiced by the clergy as well as the laity. 

**Schrift, A. little bell which was formerly used in the monasteries, and often mentioned in our histories. Concrete, ed. 1727.**

**Schrift, A.** See Sir-mans. A thief. LL. The Reg. upon Brompton. See Scripture. 

**Schrift, A.** See Sir-mans. A thief.

**Sch объясняю, A. proper word in the Latin, and often used in the sentences.**

**Schools.** None shall keep a schoolmaster, or teach school, without the bishop's licence, 23 El. c. 1. 16 & 7. 1. j. 1. c. 4. f. 9. 15 & 14. Car. 2. c. 4. f. 9. A grammar-school erected at Northleach in Gloucestershire, 4 j. 1. c. 7. Qualifications of schoolmasters and scholars.

**Schild, A. An advers, signifies, that is to say, to wit; and hath been often used in law proceedings. Sir John Haring, in his exposition of this word, says, it is not a directe and separate clause, but intermediae; neither is it a substantive clause of itself; but is rather to suffer in the fentence of another, and to particularize that which was too general before, or direct the which was too gross, or to explain that which was doubtful and obscure; and it must neither increase nor diminish, for it gives nothing of itself; but it may make a restriction, where the precedent words are not so very express but that they may be restrained.**

**Hill. 171, 172.**

**Schrift, A.** A word judicial, most commonly to call a man to flew cause to the court whence it is issued, why execution of a judgment paied should not be made out. This writ is not granted until a year and a day be elapsed after a judgment given. Old Nat. Brev. fol. 151. Seire facias upon a fine lies not, but within the same time after the first levied, otherwise it is the same with the writ of Habare facias jexnham. Wilt Symb. part 2. tit. Finis. sect. 137. and 24. E. 3. flot. 5. cap. 2, and 30. Eliz. c. 7. Other diversities of this writ you may find in the table of the Register judicial and Original. See also Ralph's Entries, verb. Seire facias. Crowil.

1. Of the nature of the writ, and in what cases it is a proper remedy.

2. Of the seire facias to reviewing judgments, and after what time necessary.

3. Of the seire facias in recognizances and statutes.

1. Of the nature of the writ, and in what cases it is a proper remedy.

A seire facias is deemed a judicial writ, and founded on some matter of record, as judgment, recognizances and letters patent, on which it lies to enforce the execution of them, or to vacate or fet them aside; and th'o it be a judicial writ of execution, yet it is so far in nature of an original, that the defendant may plead to it, and is in that respect considered as an action; and therefore it is held, that a release of all actions, or a release of all executions, is a good bar to a seire facias. Lit. ject. 525. Civ. Lit. 290. b. 291. e. F. N. B. 267.

But tho' it be held that a seire facias is in nature of an original, yet it hath been adjudged, that no writ of error lies into the Exchequer chamber on a judgment given in B. R. courts, but the flature, 17 Eliz. cap. 8. which gives the writ of error, mentioning only suits or actions of debt, detinue, covenant, account, actions upon the cafe, ejectiones firmas, or trespass. Civ. Car. 285. 300. 464. 1. Rel. Rep. 264. 1. Pent. 38. 1. Salt. 263. Allo it was formerly held, that the plaintiff could not in a seire facias, both; but this is now remedied by the flature 8 & Will. 5. cap. 11. Duf. 95. 3 Duf. 322.

If a bill of exceptions be tendered to a judge, and he signs it and dies, a seire facias lies against his executors or administrators to certify it. 4. Law. 438.

So if a seire facias be laid, who at the time of the outlawry was beyond sea in the king's service, and he brings a writ of error to reverse this outlawry, and obtains a certificate of the marshal of the king's loth, (as he ought to do) in this case, notwithstanding the man shall die, yet may be affigned the fame for error, and upon filing the certificate have a seire facias to the execution or administrators of the Marshal. 2. Inst. 428. Vide n. Cuts. 1509.

A seire facias lies against a tresser which levies money on a seire facias, and retains it in his hands. Holt 32. Cr. fac. 514. 1. And. 247. Godb. 276.

So a seire facias may be affixed on the party at the justice seat of a forest. Civ. Car. 409. Lies to have execution of damages recovered in appeal. Cr. fac. 549.

Upon an Ewangevit returned by the tresser, a seire facias lies against the pledges in a repliace, in plante in the tresser's court, confirmed by the buggings, and to f. B. by Certissure. Comb. 1. That a seire facias lies against the tresser for taking insufficient pledges in repliace. Hoat. 77.

If one hath judgment in a quare impedit, and after, and before execution, the party is outlawed, the king may have a seire facias to execute the judgment, the king having privy enough in this case to enue execution, because the thing as it was in the plaintiff vested in the king. Mor. 241. Cr. Eliz. 44. 325. Where having the thing gives a sufficient privy to maintain a seire facias. Kelso. 168, 169.

On a motion to discharge an outlawry which was pur- dased by the king, it was held that it could not be done on motion, but that the party must have judgment on the seire facias. on the act. Still. 348. On a motion for a seire facias to avoid a judgment, made void by the general act of pardon, 12 Car. 2. the court doubted whether this was to be done by seire facias or audita querella. 1 Sid. 231.

Where one obtained judgment, and after had judg- ment in a seire facias, thereupon, and then became a bankrupt, and the original judgment was assigned by the commissioners to S. S. upon motion, it was entered to intitle him to the benefit of the judgment in the seire facias, without bringing a new one. 5. Med. 88.

A seire facias brought by the successor of a president of the college of physicians in London, upon a judgment in debt obtained by him upon the statute 14 & 15. H. 8, against praifiding phycik in London without a licence, but died before execution; it was objected on demurors, that the seire facias ought to have been brought by the executor or administrator of him who recovered: but without argumen to the contrary, it was held, that the faccessor might well maintain the action, for the suit is given to the plaintiff by a private statute, and the suit is to be brought by the president for the time being; and he having recovered in right of the corporation, the law shall transfer that duty to the faccessor of him who recovered. Civ. fac. 159. Dr. Atkins. 45. will at ease be held for a fine in the act, for a fine which was laid at Common law; but this doubt, says my Lord Coke, arose for want of distinguishing between personal and real actions of outlawry.

At Common law, if after judgment given, or recogni- zance acknowledged, the plaintiff force out no execution within the year, the plaintiff or his conruse was driven to his original upon the judgment, and the seire facias in personal actions was given by the statute of Wifum. 2. cap. 45.

But in real actions, or upon a fine, though no execu- tion was found out within a year after the judgment given or fine levied, yet after the year a seire facias lay for the land, or, because no new original lay upon the judgment of fine. 2. Inst. 470.

8 A. seire facias.
A. fei. fa. lay as well in mixed as in actions, as upon a judgment in an affid. So it lay upon a judgment in a mixed action. 2 Sa. 51. 600.

It hath been adjudged, that if there be judgment in ejciement, and no execution sued therein in a year and a day, an habere facias passim cannot be issued out without a fei facias; and Holt Ch. J. said, that as to the possession of the land an ejciament was real, and the only remedy for years bad, and that a recovery therein bound the right of inheritance. Salk. 258. 280. Camp. 250. Parry 64. and see 1 Sid. 307. 351. 2 Keb. 327. Slin. 161. 3 Lev. 100. Linot. 1268.

But tho' after a year and a day there can be no execution of a judgment without a fei facias, yet if the plaintiff hath been delayed by writ of right, he may take out execution thereupon in a year and a day after the judgment affirmed. 5 Ca. 88. Mar. 566. pt. 772. Cre. Eliz. 706. Godbl. 372. Palm. 44.

And therefore it hath been adjudged, that if a man recovers debts or damages in B. R. and after within the year the defendant brings a writ of error in the Exchequer chamber, where the first judgment is affirmed after the year writ, the recovery may be continued to the next year and a day after the judgment affirmed, without a fei. fa. for the affirmance is a new judgment. 1 Rol. Atr. 899. Lan. 20. Dennis v. Drake. Cre. Eliz. 416. S. P. 3.

So if after the year after the recovery the defendant brings a writ of error, and the judgment is affirmed, the before said judgment shall not be the cause to put to his fei. yet this affirmance is a new judgment, and the recoverer may have within the year after the affirmance a fei. fa. or opitias without a fei facias. 1 Rol. Atr. 899. and see Palm. 449. Litch 193.

So if he be nonuit in the writ of error, or if the writ of error be discontinued; for though in these cafes there is not any new judgment given, yet the bringing of the writ of error will revive the first judgment. Cre. Juc. 354. 1 Rol. Rep. 104. 113.

If A. recovers against B. in B. R. damages and cost, and thereupon hath judgment against the bail after a fei facias, &c. and after b. and the bail join in a writ of error upon the statute in the Exchequer chamber, and after the year and day pales, in this case, notwithstanding this writ of error, the court of B. R. may grant execution for this a void writ of error, and as if no writ of error had been brought, and therefore it shall be no continuance of the first judgment; but the year and day being past, the plaintiff cannot have execution without a fei. fa. though the year passed after the writ brought. 1 Rol. Atr. 899. Tun. in Cor. 1. Pau. 2.

In a judgment there is a cepti executia for a year after the judgment, the plaintiff within the year may take out execution without a fei. fa. 6 Mod. 14. 288. Parry 64. Salk. 600.

Also it hath been held, that where execution hath been taken out after the year and day, it is not void, but voidable only. 3 Leon. 404. Salk. 273.

But though it seems agreed that the execution being lawful, if the plaintiff may after the year and day take out execution without a fei. fa. Yet it hath been held, that if the execution is laid by injunction, tho' the acct of the defendant, yet the court will not take notice thereof. 6 Mod. 28. Salk. 322. and see 8. Minjur.

If judgment be given in debt, and no execution sued therein in a year, yet the plaintiff may after an award of an electum on the rule of the judgment as of the same term with the judgment, and thence continue it by virescomes non mifti breve; to hold on a motion to set aside the execution; and tho' the court said that an electum ought to be actually taken out within the year, yet being informed by the clerks of the court, that it had been the practice for many years to make such entry, &c. it was laid to be the law of the court, and they ordered the execution to stand. 1 Ca. 283. Symm. v. Green. 2 Stow. 235. S. P. Camp. 232. S. P.

If the demandant or plaintiff taketh his procs of execution within the year, tho' be not tarried within the year, yet if he continue the same, he may have execution at any time after the year. 2 Inf. 471. Ca. Lit. 290. b. and see 2 Leon. 77. 78. 87. 3 Leon. 159. 4 Leon. 44. 1 Sid. 59. 1 Keb. 159. 6 Mod. 288.

If the plaintiff delay the executio of a writ of inquiry till a year after the interlocutory judgment, he cannot have execution of a fei. fa. Calk in B. R. Pash. 13 of 8. 3. How v. Cates. In the cafe of the King there need not be any fei. fa. after the year and day. 2 Salk. 603.

If a judgment be above ten years standing, the plaintiff cannot sue for a fei facias without a motion in court; it being held, a ten years bar; but the plaintiff may take out execution after the fei facias without a motion at side bar. Note; after such motion, and judgment revived by fei. fa. the defendant dies before execution, the plaintiff must sue for a new fei. fa., but may have it without motion, for the judgment was revived before. Salk. 356. Hardjiff v. Barn. After a judgment, if the plaintiff within the year for a fei. fa. be not had, the plaintiff may take out a comple within the year till he hath a new judgment in the fei. fa. 1 Rol. Atr. 900. Trin. 13 Car. 1. Roberts v. Pfling.

3. Of the fei facias on recognizances and statutes.

Recognizances and statutes are considered as judgments, being obligations solemnly acknowledged, and entered of record, and the fei. fa. on those is the judicial writ and proper remedy the conuse hath; but herein we must diftinguish between recognizances at Common law and statutes merchant, &c. for upon the former, if the conuse did not take out execution within a year after the day of payment assign'd, the recognizor was obliged to commence the suit again by original; the law presuming the debt might have been paid, if they did not sue execution within the year after the money became payable; but this law is altered by Westm. 2. cap. 49. by which the conuse hath a fei. fa. given him to revive the judgment, and put it in execution, if the conuse cannot file it by pleading such matters as the law judges sufficient for that end, such as a release, &c. but the conuse of a fluate merchant, &c. may at any time sue execution on them without the delay or charge of a fei. fa. Lit. R. 89. That a comple lies not on a recognizance, but only a fei. fa. 1 Brown 83. Ca. Lit. 297. 2 Inf. 409. F. N. 92. 17. 17.

Also as to recognizances at Common law, and statutes and recognizances introduced by statute law, we must further diftinguish, that if on the first the conuse dies before execution sued, his executor shall not sue it, even within the year, without bringing a fei. fa. against others, because the law requires the debt might have been paid to the tector, and therefore will not suffer the debtor to be molest'd, unless it appear that he hath omitted to perform the judgment; and this is to be done by fei. fa. brought by the executor, for the alteration of the perion altereth the proceeds at Common law; but this tending to delay the fei. fa. is taken away by the act of recognizances by statute law, by the severall acts of parliament which introduced them, and therefore upon the death of the conuse of a fluate merchant, &c. his executors may come into Chancery, and upon their producing the said recognizament and the statute, shall have execution without a fei. fa. as the tector him self might. 2 Inf. 393. 47. Br. 2 Salk. 34. 6 Mod. 14. 450. &c. and how to beassign'd, see 3 Bunt. 320. Cre. fai. 415. Stil. 369.

If a man acknowledges a recognizance to be paid at a day within the year after the date of the recognizance, in
in this case he may have execution by fi. fa. or eject
within the year after the day of payment, the' the year
be from the date of the recognizance. 21 Ed. 3.
22. b. 1 Rel. Atr. 899, 900. 2 Infj. 471.
If A. enters into a recognizance or statute, &c. to B.
and the sum is payable at three several days, at 20l.
at each day, the whole debt being 60l. when the first
day of payment is lapsed, the comee may have execu-
tion for 20l. immediately, and if for the rest as it be-
comes due, without waiting for the last day of payment,
as he must have done if the debt had been due on bond;
and this holds as well on recognizances at Common law
as upon statutes; and the reason is because they are in
nature of several several judgments. 2 Rel. Atr. 468.
29. 7. 2.
If a man recovers an annuity, he shall have execution
for every time that occurs after by fi. fa. or eject within
in the year after the time incurred, the' the year be
paid from the judgement, but not after the year with-
out a fi. fa. 1 Rel. Atr. 900. 2 Infj. 471. Salt.
328, 600.
If two acknowledge a recognizance of 100l. quilinet
erum in fields, that is jointly and severally, the comee
may sue severally; or fi. for against the comee upon such
recognizance. 2 Infj. 395.
For more learning on this subject, see 4 Bac. Abr. and
Scirefutum. The annual tax or prepayment paid to the
sheriff for holding the alices or county courts. — In
pistis pro quidem permisso vento Scirefutum annuatim
15. see —Poth. Amis. p. 573.
Scolds. Are troublesome women, who by their braw-
lings and wrangling among their neighbours, break the
public peace, and increase discord. Stat. 51 Hen. 3.
They are indigible in the sheriff's turn, and punished by
the cucking-stool. Grt. Kith. 11. 2 Hawk. P. C.
67.
Stat and Lot, (Sax. Scoto, part, & List, i. e. Sort) Signifies a customary contribution laid upon all sub-
jects, according to their ability. Spelm. Nor are these
old words grown obsolete; for whoever in like manner
(though not by equal proportion) are afflicted to any con-
tribution, are generally paid to pay Scat and Lot. Stat.
23 H. 8. cap. 9.
Scotai or Scotace, Is where any officer of a forest
keeps an alcoheu within the forest, by colour of his of-
course, causing people to come to his house, and there spend
their money for fear of his displeasure: it is compounded
of foot and ale, which by transposition of the words is
either called an alefoot or an alehoose. This word is used in the
Chater of the Forset, cap. 8. Nullus forsetarius facit Scota-
talis, vel garrau collegit, vel aliquam collectam faciat, &c.
Manwood 216.
Scotare, Those tenants are said Scotare, whose land
are subject to pay foot. Adv. Ang. ton. 1. p. 875.
Scotland, Merchandize of the staple not to be car-
ried into Scotland, 27 Ed. 5. b. 2. cap. 12.
Carrying arms and victuals into Scotland prohibited, 7
R. 2. c. 16.
Except to Berwick, 15 R. 2. c. 7. Repealed, 4 Jac.
1. c. 1.
M Merchantize carried to or from Scotland, shall be cu-
floned at Berwick, or Carlisle, 2 Ed. 4. c. 8.
Scotmen not made denizens, warned to depart the
realm, 7 H. 7. c. 7, repealed, 4 Jac. 1. c. 1.
Selling horses in Scotland made felony, 23 H. 8. c.
32. H. 8. c. 6. 1 Ed. c. 7, repealed, 4 Jac. 1.
c. 1.
Commissioners appointed to treat with Scotland, 1 Jac.
c. 1. 3. 3 Jac. 1. c. 3. Repeal of the hostile laws, 4
Jac. 1. c. 1.
Felony committed in Scotland by English men, to be
tried in the northern counties, 4 Jac. 1. c. 1. 7 Jac.
c. 1. c. 1. 23. Gr. Englishmen committing felonies in Scotland to be sent
thither, 7 Jac. 1. c. 1.

Pacification between England and Scotland, 16 Car.
c. 17. Corn, salt and fifth, may be imported from Scotland,
12 Car. 2. c. 18. f. 16.
Commissioneers appointed to settle the intercourse of
trade between England and Scotland, 19 Car. 2. c. 13.
22 Geo. 2. c. 9.
Commissioneers appointed to treat of the union, 1 Ann.
J. 1. c. 14. 3 Geo. 2. c. 37.
Reliefs on the subjects of Scotland, 3 & 4 Ann.
c. 7. repealed, 4 & 5 Ann. c. 3.
Articles of the union with Scotland, 5 Ann. c. 8.
Acts anent peace and war repealed, 6 Ann. c. 2.
For improving the union, 6 Ann. c. 6. 7 Ann.
c. 11.
Ac. Method preferred for granting licences to re-
tall ale, &c. in Scotland, 29 Geo. 2. c. 12. f. 10. 65.
Arms. In the custody of suspected persons may be
seized, 1 Geo. 2. c. 20. f. 10.
For disarming the Highlands, 1 Geo. 1. c. 54. 11 Geo.
c. 1. 26. 19 Geo. 2. c. 39. 21 Geo. 2. c. 34.
Sterlingshire included, 26 Geo. 2. c. 22. f. 2.
The use of the Highland dress restrained, 19 Geo.
c. 39. f. 17. 20 Geo. 2. c. 31. 21 Geo. 2. c. 32.
The acts for disarming the Highlands extended to par-
ticular parts of the shire of Stirling, 26 Geo. 2. c. 29.
Ball. Ball in criminal prosecutions increased, 11
Geo. 1. c. 2. f. 11.
Bent. Penalty of cutting bent in Scotland, 15 Geo.
c. 2. f. 33. f. 9.
Brandy. Aquo vita excepted from duties, 9 Geo.
c. 23. f. 22. 19 Geo. 2. c. 12. f. 27. 24 Geo. 2.
c. 40. f. 26.
Bread. Regulations to prevent adulteration thereof,
2 Geo. 3. c. 6.
Calendar. Courts of Se neck and Exchanger, and mar-
kets, &c. Not to be continued according to the new calen-
dar, 24 Geo. 2. c. 23. f. 4.
Coals. Carried from Stirling to Dunbar exempt from
duties, 8 Ann. c. 4. f. 3. 9 Ann. c. 6. f. 10.
Imported. Ireland liable to fame duties as from Eng-
land, 9 Ann. c. 22. f. 90.
Corporation. The act intitled anentists witchcraft repea-
ted, 9 Geo. 2. c. 5. f. 2.
Corn. Power given to the judges to suspend prohibi-
tory laws, 14 Geo. 2. c. 7.
Debatement on corn exported payable in three months,
26 Geo. 2. c. 15. f. 6.
Courts. The attendance of the nobility upon the cir-
cuit courts, discharged, 8 Ann. c. 16.
The act discharging the yule vacancy repealed, 10 Ann.
c. 13. this act repealed, 1 Geo. 1. f. 2. c. 28.
The salaries of the judges charged upon the customs
and excise, 1 Geo. 1. f. 28. f. 158.
Circuit courts to be held once a year, 10 Ann. c. 33.
For the trial and admission of the Lords of Sessions, 10
Geo. 1. c. 19.
Court of Seffion may adjourn in December, 3 Geo. 2.
c. 6.
Court of Seffion adjourned on account of the rebellion,
19 Geo. 2. c. 7.
Regulations of the sheriff's court, 20 Geo. 2. c. 43. f. 29.
Of the circuit courts, 20 Geo. 2. c. 43. f. 31. 21
Geo. 2. c. 19. f. 13.
Advection of caufes under £12 value discharged, 20
Geo. 2. c. 43. f. 38.
The Judges salaries augmented, 32 Geo. 2. c. 35. f. 22.
Judges impowered to make adjournments, 2 Geo. 3.
c. 27.
Criminal. Persons who set on fire woods on fire, to be
punished as wilful firebreakers, 1 Geo. 1. c. 48. f. 4.
Capital or corporal punishment not to be inflicted till
30 or 40 days after sentence, 11 Geo. 1. c. 26. f. 10.
Corporal punishment may be inflicted after 8 or 12 days,
2 Geo. 3. c. 32. f. 2.
Affittments may be made for the charges of criminal
prosecution, 11 Geo. 1. c. 26. f. 11.

Custom.
S C O

Cabinet. Laws of the cufions extended to Scotland,

The crown may appoint further ports for the landing of goods, 6 Ann. c. 2. f. 18.

For a treaty with the proprietors of sugar houses, 1 Geo. 1. c. 19. f. 19.

The privileges of the sugar houses purchased, 6 Geo. 1. c. 4. f. 6.

See Cufions.

Ecclesiastics, A duty of 2 pennisons Scots on ale, &c. granted to the town, continued for 19 years, 3 Geo. 1. c. 9.

The duties extended, &c. 9 Geo. 1. c. 14. 25 Geo. 2. c. 10.

Evidence. Petty-port cufions described, 1 Geo. 2. c. 22.

Regulations for improving the city, 26 Geo. 2. c. 30. Equivalent. No equivalent debentures to be flopped, 3 Geo. 1. c. 14.

Evidence. Method of taking evidence in writing, in cases not capital, taken away, 21 Geo. 2. c. 15. f. 7.

Evidence of offenders admitted in trials for theft of cattle, 21 Geo. 2. c. 34.

Exchequer. New court of Exchequer constituted, 6 Ann. c. 25.

Wharftand and Lammas terms, when to begin and end, 7 Ann. c. 15.

Excise. What duty shall be paid on Scotch two-penny ale, 8 Ann. c. 7. f. 3.

Excommunication. No forfeiture incurred by an excommunication by the church judicatories, 10 Ann. c. 7.

Fishery. Commissions to be appointed for applying part of the equivalent for the improvement of the fisheries and manufactures, 13 Geo. 1. c. 30.

Penalty of killing looters on the coaft of Scotland in spawning time, 9 Geo. 2. c. 33. f. 4.

Encouragement given to fhirfry in Scotland, 29 Geo. 2. c. 13.

Forfeited estates. Heritable jurisdictions, &c. forfeited, annexed to the crown, 1 Geo. 1. c. 50. f. 31.

Vefted in the King, 20 Geo. 2. c. 41.

Forfeited estates in Scotland annexed to the crown, unlikenenly, 25 Geo. 2. c. 41.

The crown enabled to purhafhe superiorities in Scotland, 25 Geo. 2. c. 41. f. 7.

Rents of forfeited estates in Scotland to be applied to the improving the Highlands, 25 Geo. 2. c. 41. f. 14.

Parishes may be divided in the forfeited estates, 25 Geo. 2. c. 41. f. 25.

When claims on the barony of Strouwan are to be entered, 26 Geo. 2. c. 29.

Court of Seffion to determine the claims of creditors, 31 Geo. 2. c. 16.

Provisions for relief of vaflalls of estates annexed to the crown, 2 Geo. 2. c. 17.

Fund. Certain yearly funds payable in lieu of equivalents settled by the treaty of Union, 5 Geo. 1. c. 20.

23 Geo. 2. c. 21.

Game. Penalty of having game without having leave of a qualified perfon, 24 Geo. 2. c. 34.

Seal for killing game, 3 Geo. 3. c. 21.

Habes corpus. Perfons having committed any capital offence in Scotland, may be bent thither for trial, 31 Geo. 2. c. 16.

Highways. Laws concerning the highways before the Union, confirmed, 5 Geo. 1. c. 30.

Additional toll on waggons drawn by four horses, 32 Geo. 2. c. 15.

Houfe. Surveyors in Scotland to view houses, &c. 21 Geo. 2. c. 10. f. frequent. 26 Geo. 2. c. 7.

Jurifdictions. The heritable jurisdictions reftored, 20 Geo. 2. c. 43. 21 Geo. 2. c. 19. 28 Geo. 2. c. 7.

Juflicy. Method of exhibiting criminal informations before the Lords of Juflicy, 8 Ann. c. 16. f. 4.

Circuit courts to be kept but once a year, 10 Ann. c. 33.

Judges indemnified for not performing the Northern circuit in May 1746, 19 Geo. 2. c. 39.

King. Heirs of Taiflz, &c. empowered to fell to the crown, 20 Geo. 2. c. 51.

The annual revenues of Scotland continued, 1 Geo. 3. c. 2.

Linen. Length and breadth of Scotch linen, &c. 10 Ann. c. 21.

No perfon to import bad linned, 13 Geo. 2. c. 26.

24 Geo. 2. c. 31.

Stamp-dUTY not to flamp linen before taking the oath of office, 18 Geo. 2. c. 24.

Encouragement given to the manufacturers of linens in the Highlands, 26 Geo. 2. c. 20.

Malt. The malt tax to be deduced out of the price of ale, mentioned in the seventh article of the Union, 12 Geo. 1. c. 4. f. 62.

Corftal duty on malt, &c. 33 Geo. 2. c. 7. f. 14.

Cyder for diffilling, and for private use, exempt, vid. ibid. f. 11 & 23.

Manufacturers. Offences in defતuating artificers, to be tried in the court of Juflicy or Courts, 5 Geo. 1. c. 27. f. 5.

Marriage. The marriage act not to extend to Scotland, 26 Geo. 2. c. 33. f. 18.

Minifters. To what rates minifters, heads of colleges, &c. shall be fubjeél, 17 Geo. 2. c. 11.

Minifters may chufe to which of the four yearly rates they will be fubjeél, 22 Geo. 2. c. 21.

Money. Part of coinage duties appropriated to pay faholic and officers of the mines in Scotland, &c. 7 Ann. c. 34. f. 2.

Nonconformity. Epifcopal congregations to be protected, 10 Ann. c. 7.

Minifters to pray for the king, &c. 10 Ann. c. 7. f. 11.

Sheriffs, &c. to enquire of epifcopal meetings, 19 Geo. 2. c. 28. 21 Geo. 2. c. 34.

Oaths. Perfons in office to take the oath of abjuration, 4 Ann. c. 14. 8 Ann. c. 15. 10 Ann. c. 7.

1 Geo. 1. c. 13. 1 Geo. 1. c. 20. 5 Geo. 1. c. 29. 19 Geo. 2. c. 39. 20 Geo. 2. c. 43. 21 Geo. 2. c. 34.

Outlawry. Proceedings in outlawry for treason, 22 Geo. 2. c. 49.

Papift. The power of punishing trafficking papifts given to the Lords of Juflicy, 12 Ann. f. 2. c. 14. f. 12.

The act 1 W. & M. c. 15. for diftring papifts extended to Scotland, 1 Geo. 1. c. 26.

Parliament. How the 16 peers are to be elected, 6 Ann. c. 20.

Regulations of elections of members of the house of commons, 12 Ann. f. 1. c. 6. 7 Geo. 2. c. 16. 16 Geo. 2. c. 11.

Penalty of town counfellors separating from the majority at the annual elections of magiftrates, 7 Geo. 2. c. 16. f. 6. 16 Geo. 2. c. 11. f. 23.

Patronage. Right of patrons restored, 10 Ann. c. 12.

Fut devolution not paid by prefentation of a perfon not qualified, 5 Geo. 1. c. 29. f. 8.

Poyning. Directions for officers poyning goods, 2 Geo. 2. c. 43. f. 28.

Prifons. Regulations of prifons in Scotland, 20 Geo. 2. c. 43. f. 18.

Habeas corpus majesty's forts lawful prifons, 21 Geo. 2. c. 19. f. 9.

Salt. Scotch salt landed before the entry, forfeited, 7 & 8 W. 3. c. 31. f. 45.

No salt of the produce of England to be imported from Scotland, 27 Geo. 3. c. 14. f. 1. f. 7.

Laws to prevent frauds in importing and exporting fish or goods continued to Scotland, 7 Ann. c. 11. f. 5.

Regulations for importing Scotch salt, 5 Geo. 1. c. 18. f. 20.

Servants wages not to be paid in falt, 8 Geo. 2. c. 12.

Schools. For erecting schools in the Highlands, 1 Geo. 1. c. 31. f. 16. 4 Geo. 1. c. 8. f. 32.

Private schools to be registered, &c. 19 Geo. 2. c. 39. Schoolmasters to take the oaths, &c. 21 Geo. 2. c. 34. f. 12.

Soffici.?
Suff. The nomination, trial, and admission of Lords of Suff. 10 Geo. 1. c. 19. 3 Geo. 2. c. 32.

Court may adjourn, not exceeding 10 days, 3 Geo. 2. c. 32. 19 Geo. 2. c. 7.

Sheriffs. Sheriffs depute, &c. not to be officers to any subject, 19 Geo. 2. c. 7. 15 years to hold their offices so long as his Majesty shall appoint, afterwards ad vitam aut culpam, 28 Geo. 2. c. 7.

Soldiers. May be quartered in Scotland as they might by the laws in force at the time of the Union, 33 Geo. 2. c. 6. s. 31. 45. 33 Geo. 2. c. 6. s. 24.

Scribers. Premium for importing maps to England, 2 Geo. 2. c. 35. 12. 5.

Tailors. Heirs of tailors may fall to the crown, 2 Geo. 2. c. 50 & 51.

Tax. Commissions of land-tax to levy duty on places and pensions, 3 Geo. 5. c. 52. 14. 28.

Testaments. For making imposts on land-tax in Scotland, 33 Geo. 2. c. 1. 124.

Tenants. Encouragement to vassals continuing dutiful, 1 Geo. 1. c. 20. 21 Geo. 2. c. 32. 17.

The service of personal attendance discharged, 1 Geo. 5. c. 54. f. 10.

Then care by ward-building, &c. taken away, 20 Geo. 2. c. 59.

Exchequer on harington and denomination taken away, 20 Geo. 2. c. 50. f. 11.

King to hold principality and grant entries, 25 Geo. 2. c. 6.

Title-deeds. For relief where title-deeds were imple- bided by the rebels, 20 Geo. 2. c. 25. 21 Geo. 2. c. 17.

Treason. The same crimes treason as in England, 7 Ann. c. 21.

Suspected persons in Scotland may besummated to appear at Edinburgh, 1 Geo. 1. c. 1. 20. 6. 19 Geo. 2. c. 2.

Qualifications of jurors, 19 Geo. 2. c. 9. f. 4.

For trials of high treason, &c. committed in the High- lands, 21 Geo. 2. c. 19. f. 34.

Directions for proceedings to outlawry for high treason, 22 Geo. 2. c. 48.

Wills. Proportional duties in Scotland, 30 Geo. 2. c. 19. f. 15.

Woollen manufactures. Manufactures of ferges, pledggs, figngrams and flockings, regulated, 6 Geo. 1. c. 13. 10 Geo. 1. c. 18.

For the excise on ale in several towns of Scotland, sec the respective towns.

11 Scu., See Fuller's earth.

Scriptures. All profane felling at the holy scripture, or expelling any part thereof to contemn or ridicule, is punishable by fine and imprisonment. 1 Hac. P. C. 7.

Scripturists. Are mentioned in the statute against usury and excessive interest of money. 12 Ann. cap. 6. If a financier is intrusted with a bond, he may receive the interest; and if he fail, the obligee shall bear the loss: and so it is if he receive the principal, and deliver up the bond; for being intrusted with the security itself, it shall be presumed he is trusted with power to receive the principal and interest; and the giving up the bond on payment of money is a discharge thereof: but if a financier be intrusted with a mortgage-deed, he hath only authority to receive the interest, not the principal; the giving up the deed in this case not being sufficient to restore the estate, but there must be a reconveyance, \(c.\) deriv’d from Chancery. Hill. 7 Ann. s. 11. 157. 157. It is held, where a financier puts out his client’s money on a bond security, which on inquiry might have been easily found out, yet he cannot be charged in equity to answer the money; for it is here faid, no one would venture to put out money of another upon a security, if he were oblig’d to warrant and make it good, in case a los should happen, without any fraud in him. Prest. Chanc. 146. 149. See 19 Viz. 391. 289—292.

Stoutage. (Sax. Stoutengd) Was a tax or contribution, raised by those that held lands by knights’ service, towards furnishing the King’s army, at one, two, or three marks for every knight’s fee. Henry the third.

for his voyage to the holy land, a tenth granted by the clergy, and Stoutage, three marks of every knight’s fee, by the laity. Baranac, Anglica, 1 Port. fol. 211. 1. This was also levied by Henry the second, Richard the first, and King John. See Stoutage.

Stout uñtio. Was a writ that lay for the King, or other Lords, performed by bond held by the King’s service, to serve by himself, or else to send a sufficient man in his place, or pay, \(c.\) where the King intended to make a warlike expedition against the Scots or French, P. N. B. fol. 53. It is used in the Register Original, for him to recover Esgage of others, that hath either by service or fine, or by his being there, been annexed to the King. Fol. 58. b.

Stout. A French gold coin, value 2l. 4s. 4d. coined about the year 1427, in the reign of Henry the fifth. It comes from the French word Ecu, which signifies a crown, or gold money. Katherine, queen of England, had an effuence made her of sundry castles, manors, lands, &c. severally named, and valued to the sum of forty thousand Scots, every two whereof were worth a nobles: The first edition, 1677.

Stoutella. Stoutella, From Scotum. Six. Scot. Scotch, Any thing that hath been brought from that land, especially a plate or dish. Cowell, edit. 1677.

Stoutella Uercmodpharia, An alms-baskct of Stoutella, ib. 16.

Sturdum Armamentum, A coat of arms. Id. id.

Stybiotum. (Sax.) A mould for any fault; from the Sax. Sald. delictum, and tute, form. Leg. Han. Pomerum. Styba. A fine imposed on such as neglected to attend the Scourgemot court, which all tenants were bound to do. Mon. Argl. tom. 1. p. 52.

Stygeumnum, (Sax.) Was a court held twice every year (as the steward’s torn is now) by the bishop of the diocese, and the baron (in feudal fignification) or by the bishops and theirfeirs; in the time of Edward the Confessor, it was committed to the sheriffs that were immediate to the King, wherein both the ecclesiastical and temporal laws were given in charge to the country. 202. This court at first was held three times, viz. Et habetur in anno tertio Gregorii et Scrii-motus. Leg. Canut. cap. 38. But Edward the Confessor, cap. 35. appointed it to be held twelve times, et Hundreda & Wapentia duodecim in anno congreagr. Set. The sea shall be open to merchants, 18 Ed. 3. b. 2. c. 3. The King called the sea of the fea, 46 Ed. 3. The mariners of the Wold undertake to raise an army, &c. Ric. 2. c. 2.

Sea-banks. See Banks.

Strel, (Sigillum) Is a stamp engraved with a particular impression, which is fixed upon the wax that clofs letters, or affixed as a testimony. Jofh. The first sealed charter we find extant in England, is that of King Edward the Confessor upon his foundation of Woflminster Abbey, Duggdale’s Warwickefhir, fol. 138. b. Yet we read in the manuscript hificry of Woflminster, fol. 520. This charter was in use in the Saxen time, see Taylor’s History of Gloucefl, fol. 676. It is said that when it was first used, before to seal all grants with the sign of the crofs: His donations & ordinations conformeum & cruise sigillum Henricus Rex & Mathildis Regina. Monaf. 3 tom. fol. 7. And Or- dericus Vitalis tells us, That archbishop Dunfan with his suffragans, preredialrum rerum donationem facto cruce in Churta fignatam fignavit. 4. That most of the charters of the English-Saxon Kings was at the time begun or apprized by Ingulphus, and in the Assizefion, and that the crofles were all gold. But it was not so much used after the conquell. Cowell, edit. 1727. See Sigillum, Wang.

Writing. Writs touching the Comon law not to go out under any of the petty faws, 28 Ed. 1. ft. 3. c. 6.

Decrets of the papal court, void, if not kept as directed by the 17 Sc. de Apost, relig. 35 Ed. 1. ft. 1. c. 4.
SEA

Writing relating to the ealidom of March shall be sealed with the Great seal, 4 H. 7. c. 14.
The course in which the King’s grants shall pass the seal, 27 H. 6. c. 6.
Where clerk of the Privy seal to make warrants to the chancellor, 27 H. 8. c. 11. f. 2.
What fees the clerk of the signet is intituled to, 27 H.
3. c. 11. f. 4. 8.
Where fees are not payable on grants of leaves, 27 H.
8. c. 11. f. 12.
Contest:ing Great seal, &c. excepted out of general pardon, 20 Geo. 2. c. 52. f. 9.
See St. Law. See Diocen Law.
Draftr. (Signetor), is an officer in Chancery appointed by the Lord Chancellor, or Lord Keeper of the Great seal of England, to seal the writs and instruments made in his presence.

Sealing Deeds. Makes persons parties to them; and if they are not thus sealed, it will make the deed void, and when several are bound in a bond, the pulling off the seal of one makes it void as to the others. 2 Lew. 220.

But in a deed of covenants, ‘tis held that a peron’s breaking off the seal of one of the covenanters, after making the covenant, shall avoid the deed only against himself.

Geo. Eliz. 408, 546. In case the seal of a bond be broke or eat off by rats, or it is any ways cancelled, no action can be brought on such bond, &c. 2 Bl. 219. See Bond.

Seamen. Marinners defecting the King’s service, to be imprisoned, 2 R. 2. f. 1. c. 4.
The punishment of watermen withdrawing in times of pest, 2 & 3 P. & M. c. 16. f. 8.

What mariners may take apprentices, 5 Eliz. c. 5. f. 12.

The flat. 18 H. 8. c. 19. against soldiers departing, extended to mariners, 5 El. c. 5. f. 27.

Seamen and fifterners not compellable to serve as solders, 5 El. c. 5. f. 41.

The Trinity-houle at Delford fired to set up marks, 8 El. c. 13. f. 2.

For prefting of mariners, 16 Car. 1. c. 5. c. 3. c. 26.

Against diversions by seamen, 16 Geo. 2. c. 5. 16.

Car. 2. c. 7. 22 & 23 Car. 2. c. 23.

Seamen declining to fight, to lose their wages and be imprisoned, 22 & 23 Car. 2. c. 11. f. 7.

Seamen hindering theircaptain from fighting, to suffer as felons, 22 & 23 Car. 2. c. 11. f. 9.

Seamen defending their ships, to be rewarded, 22 & 23 Car. 2. c. 11. f. 10.

Seamen to be registered, 7 & 8 W. 3. c. 21. 8 & 9 W. 3. c. 23. repeated as to registering seamen, 9 Ann. c. 21. f. 64.

Disabled to be admitted to Greenwich Hospital, 7 & 8 W. 3. c. 21. f. 7. 2 & 3 Ann. c. 6. f. 19.

A duty of sixpence a month payable by seamen to Greenwich Hospital, 8 & 9 W. 3. c. 23. f. 6.

Penalty of receiving wages in fraud of a feaman or his representative, 9 & 10 W. 3. c. 41. f. 3.

A will of a seaman on the fame paper with a warrant of attorney, void, 9 & 10 W. 3. c. 41. f. 6.

Seamen defenring merchants ships, to lose their wages, 11 & 12 W. 3. c. 7. f. 17.

Seamen not to be willfully left beyond sea, 11 & 12 W. 3. c. 7. f. 18.

Parish boys may be bound or turned over to the seaman, 2 & 3 Ann.

Exempted till 18 from duty of 6d. per month to Greenwich Hospital, 2 & 3 Ann. c. 6. f. 7.

Apprentices to have protections for three years, 2 & 3 Ann. c. 6. f. 15. 13 Geo. 2. c. 17.

Vagrants to be prefted, 2 & 3 Ann. c. 6. f. 10.

Malters to have wages of apprentices prefted, 2 & 3 Ann. c. 6. f. 17.

Seamen to have their tickets when discharged or turned over, 4 Ann. c. 19. f. 10.
Malters not obliged to take apprentices under the age of thirteen, 4 Ann. c. 19. f. 16.

SEA

Apprentices not exempt from prefting after 18, if in sea-service before, 4 Ann. c. 19. f. 17.

Watermen not appearing when summoned to serve, disabled, 4 Ann. c. 19. f. 18.

Firemen exempted from the prefts, 6 Ann. c. 31. f. 2.

Seamen in America exempted from the prefts, 6 Ann. c. 37. f. 9.

Commissioners of the navy may punish disturbances by sea in the yards, 1 Geo. 1. c. 25.

Seamen maimed in fight against pirates, to be rewarded, 8 Geo. 1. c. 24. f. 5.

Penalty on seamen not fighting pirates, 8 Geo. 1. c. 24. f. 6.

Malters not to pay their men more than half their wages beyond sea, 8 Geo. 1. c. 24. f. 7. 12 Geo. 2. c. 30. f. 12.

Penalty on commanders of ships of war carrying merchandize, 8 Geo. 2. c. 24. f. 8.

Direction for the punctual payment of seamen wages, 1 Geo. 2. f. 2. c. 9. f. 6.

Bounty on convulsed money, &c. allowed to volunteer seamen, 1 Geo. 2. c. 14. 14 Geo. 2. c. 38.

Provisions against impotitions upon seamen, 1 Geo. 2. c. 14. f. 7.

Provision for seamen in foreign parts, 1 Geo. 2. c. 14. f. 12.

Seamen in the service privileged from arrests under sol.

1 Geo. 2. c. 14. f. 15. 14 Geo. 2. c. 38. f. 3.

Malters of merchant ships to contract with their seamen in writing, 2 Geo. 2. c. 35. f. 1 made perpetual, 2 Geo. 3. c. 31.

Taking mariner without such agreement, forfeits 5d. to Greenwich Hospital, 2 Geo. 2. c. 36. f. 1.

Penalties on seamen in merchant service defenting or absenting, 2 Geo. 2. c. 35. f. 5. f. 9. 10.

Penalties to be deducted from wages, 2 Geo. 2. c. 36. f. 9.

One man’s pay in 100 given to widows, 6 Geo. 2. c. 25. f. 18.

Malters ships may be navigated by three fourths foreigners in war, 13 Geo. 2. c. 3. f. 1.

Foreign seamen serving two years upon proclamation in time of war to be deemed natural subjects, 13 Geo. 2. c. 3. f. 2.

Bounty to seamen taking or destroying enemies ships of war, 13 Geo. 2. c. 4. f. 15. 17 Geo. 2. c. 34. f. 18.

Bounties exemptions from the prefts, 13 Geo. 2. c. 17. 28. f. 5.

A bounty to widows of seamen killed in the service, 14 Geo. 2. c. 38. f. 2.

Seamen not to be arrested for small debts in Ireland, 14 Geo. 2. c. 38. f. 3.

Restriction of seamen wages in the merchant’s service, 14 Geo. 2. c. 38. f. 4.

Offences on board privateers to be punishe to on board ships of war, 17 Geo. 2. c. 34. f. 25.

Seamen in the plantations not to be imprefed, 9 Geo. 2. c. 30.

Malters of ships in the plantations to carry seamen for his Majesty’s service, 19 Geo. 2. c. 30. f. 5.

Seamen letters of attorney to be revocable, 20 Geo. 2. c. 24. f. 6.

An hospital erected for relief of seamen in the mercantile service, 20 Geo. 2. c. 38.

Penalty of forging certificates, 20 Geo. 2. c. 38. f. 4.

Forbearing to give bounty to governors, 20 Geo. 2. c. 38. f. 16.

Seamen to pay 6d. per month, 10 Geo. 2. c. 38. f. 37.

Seamen in the India company’s service exempted, 2 Geo. 2. c. 38. f. 37.

Forbearings to take tickets, or Mediterranean passes, except those of the general pardon, 20 Geo. 2. c. 52. f. 25.

Mariners and soldiers that have been in his Majesty’s service authorised to set up trades, 22 Geo. 2. c. 44.

Two mens pay in 100 given to the widows of officers in the navy, 24 Geo. 2. c. 47. f. 10.
SEC

Three fourths of the crew of merchants ships may be foreigners, 28 Gen. 2. c. 10.

Voluntary payment is made from the time of their entering, 31 Gen. 2. c. 10.

Superannuaries entitled to wages, 31 Gen. 2. c. 10.

Wages of apprentices, to whom payable, 31 Gen. 2. c. 10. v. 16.

Seamen not to be taken out of the service, except for the recovery of debts of 20l. 31 Gen. 2. c. 10. v. 28.

Mariners not to have the benefit of insolvent acts unless they infilt, 1 Gen. 3. c. 17. v. 57.

Further provisions for the encouragement of seamen, 2 Gen. 2. c. 16.

The provisions of 2 Gen. 2. c. 36. extended to America, 2 Gen. 7. v. 31.

Scheelath (mentioned in flat. 1. Jov. Juv. i. cap. 25.) Seem to be a sort of fish, which is taken with a very great and long net called a Scane.

Searcher. See Painter, Customes.

Secondary, (Secundary) is an officer, who is second, next in office to the chief officer, as the secondary to the prothonotaries of the court of B. R. and C. E. The secondary of the remembrance of the Exchequer; secondary of the compter, et. 2 Lit. Abir. 596. Secondary of the King's Bench, may have three clerks. 2 Gen. 2. c. 23.

Secondary of the office of chief fel. is taken notice of by 1 Ed. 4. c. 1.

Second Deliverance, (Secunda deliberation) is a writ that lies after a non suit of the plaintiff in repline, and a return habendo of the real complainant; adjudged to him that discharged them, for the replieing of the same cause again, upon security put in for the recovery of them in case the difficulty be justified. New Book of Entries, v. Replevin in second deliverance, fol. 522.

See Dryer, fol. 41. num. 4. 5. See Replevin.

Second Marriage, (Secundae nuptias) is when after the decease of one, he marries a second wife. This our law terms bigamy, and had so little favour to, that it admitted not to holy orders. See Bigamy.

Seconds of Dwellers. See Painter, Hominate.

Secretary. (Secretarius, a scrivinarii.) A title given to him who is ab epistulis & scriviniis secretarii; as the two secretaries of state, et. It is certain, says Mr. Serjeant Hawkins, that the Privy council, or any one or two of them, or any number of state may employ severall persons for treason, and for other offences against the state, as in all ages they have gone. 2 Haw. P. C. 117.

Secunda ad turiam, is a writ that lies against him who refuses to perform his duty either to the court or county barrum. F. N. B. f. 158.

Secunda ad judiciam familie, is a writ which a man is bound to perform by his deed. Bradan, lib. 2. cap. 16. num. 6.

Secundulf, Suits and service done by tenants at the court of their lord. Paroch. Antiqu. p. 320.

Secunda famina utiam quasi hostem armatam partem, is a writ to compel the heir, that hath the eldest's part of the coheirs, to perform service for all the coheirs. Reg. Orig. fol. 177.

Secunda Stolentinii, is a writ lying against him that was wont to grind at the mill of B. and after goes to another mill with his corn. Reg. Orig. f. 153. F. N. B. fol. 122. But it seems by him that this writ lies especialty for the harm that his tenant, or the man of the cott, suffereth by his making saec to his mill. See Raffel's Entries on this word festa ad Molendinum. And offices of nunnery are at present much turned into trestless and actions upon the cafe. Cowell, edit. 1727.

Secunda regulis, A suit so called, by which all persons were bound to remain a year, to attend the sheriff's term, that they might make known in things relating to the peace of the publick; and this suit was called regulis, because the sheriff's term was the King's leet; and it was a court held that the people might be bound by oath to bear true allegiance to the King; for all persons above twelve years old were obliged to take the oath of allegiance in this court. Cowell, edit. 1727.

Sect. unica tantum facienda 150 pluribus harrettatisbus, is a writ that lies for that her or that is detained by the lord to more suits than one, in respect of the land of divers heirs defended under him. Reg. Orig. fol. 177. v. 7.

Secund non facienda, is a writ that lies for a woman, who, for her dowert ought not to perform suit of court. Reg. Orig. fol. 174. It lay also for one in wardship to be freed of all suits of court during his wardship. Reg. Orig. fol. 174. See 22 Eliz. c. 24.

Secondary, See Secondary.

Secunda superanuatione pauperum, is a writ that lies where admeasurement of pauper has been made; and he that first surcharged the common, doth again surcharge it, notwithstanding the admeasurement. Reg. Orig. fol. 159. Old Nat. Brev. fol. 73.

Security of the land is not diverted ad parties necessitas fecundae Regnis, is a writ that lies for the King against any of his subjects, to pay them from going out of his kingdom; the ground of which is, That every man is bound to serve and defend the common wealth, as the King shall think meet. F. N. B. f. 85.

Securitate partis, is a writ that lies for one who is threatened death or danger, against him, for the purpose of the security of the Chancery, and directed to the sheriff; the form and farther use whereof you may see in Reg. Orig. fol. 88. and Brev. Nat. Brev. f. 79.

Seditio defendendi, is a plea for him that is charged with the death of another, fancying, he was necessitated to do that which he did in his own defence: The other so affirming him, and he had not done any thing, which he had been in hazard of his own life: But this danger ought to be so great, that it seems inevitable. Steannis. Pl. Cor. lib. 1. cap. 7. And though he judgeth it to be done in his own defence, yet he is driven to procure his pardon of course from the lord chancellor, and forfeits his goods to the King, according to the fame author. Cowell, edit. 1727. See Hominate, Murder; and 19 Vin. Abir. 304.


Seditious Convictions, See Convictions, 1718.

Sedbergh, A basket, or other vessel of wood carried upon one arm of the handbaman to bear feed or grain, which he flows with the other hand. From Sax. Sedy, feed, and codde, a puse or fuche like container. Hence Codd in Wallerland is a botiller or pillower, and in other northern parts a cullison, as a pin-cod, or i. c. pin-cullison. A coddig or i. e. a horse-collare to graze his neck.

The cod of a man or beast, a cod-piece, a pousset, &c.


See Keater's Glossary in Seed-cod.

Sedg silt. See DLI.

Sedgutsio, (Dominus) Is borrowed of the French feigneur, and denotes in all general significatio as much as lord; but particularly it is used for the lord of the fee, or of a manor, even as dominus in junior among the servituds is he who grants a fee or benefit, out of the land to another: And the reason is, as Histamon faith, because having granted the use and profit of the land to another; yet the property, that is to say, the dominion, he still retains in himself. See Histamon in verbis feudal, verbis, dominus & junior.

Sedgutsien (mentioned in flat. 9 H. 5. fl. 2. cap. 1.) Seems to be a royalty or prerogative of the King, whereby he challengeth allowance of gold and silver brought in the man's to his Exchange for coin. By seignior is revoked every piece of gold the King had for his coin five flawings, out of which he paid to the master of the mint for his work, sometimes one flawing, sometimes eighteen pence. Upon every pound weight of silver, the seigniorage or coined answered to the King in the time of King Edward I. was eighteen penny-weight pounds, which is 144 ounces, or one hundred and twenty pounds men of gold, which he paid sometimes eighteen pence, sometimes nine pence to the master. In the time of H. 5. the King's seigniorage of every pound weight of silver
S E M


Semitism (from Senate, sometimes used for a Synod) Is the name given to the Senatus Consulti, edit. 1279.

Senator, (Lat.) As now taken, is a member of parliament. In the laws of Edward the Confessor, we are told, that the Britons call those Senators whom the Saxons afterwards called Aldermen, and sometimes Senators; not for their age, but for their wisdom, for some of them were young men, very well skilled in the laws. In Staunford's Pleas of the Crown, cap. 28, we read a charter of King John, King of the Mercians, viz. Canfilio & confenuj episcoporum & Senatorum gentis fænæ largitum fuit dictis manerios, &c. In those days there were two men of authority in every county, viz. the Aldermen, whom the Normans afterwards called Earl, and the Shire Keverel, whom they called Pecuniam, or Sheriff.

Sental, (mentioned in flat. 2. R. 2. cap. 1.) Seems to be fine linen or silk, or Cyprus silk, from the Italian Zenda; but Sandal is a kind of physical wood brought from the Indies.

Sentalia, (Senta}hilla) Is a French word, but borne to us from Germania, and derived from Senta, a house or place, and sjah, jerox; we English it a Steward, and so doth Ca. on its fol. 61 as the high jenjalial, or reward of England. Staunford, Pl. Cr. fol. 152. High jenjalial or steward, and towns jenjalial or under-steward, Kechin, fol. 83, is underflow of the stewards or under-stewards of court. Senta}hilla d' I' hofiel de Rey, Reward of the wine of the Castle of Coit. Sen. fol. 419. See 67. Ed. 3. flat. 5. cap. 21. In purifications beaten Marine, fat fitis Regis Anglorum Parissi & sevovit Regi Franci- rum ad meijam of Senta|hallas Franciscus. Rob. De in anno 1170. pag. 639. See Kemel's Glossary.

Sentalibus | Marchello quod non decadat plarta atque jenerus, etc. Is a word defined, the steward or marshal of England, inhibiting them to take cognizance of any action in their court that concerns either freehold, debt, or covenant. Reg. Oris. fol. 185. 191.

Senectura, Widowhood. If a widow, having dower after the death of her husband shall marry, vel jenale, vel jenaleme in Senacia repetit, the shall forfeit and lose her dower in what place forever in Kent. Tenet, in Cavendish. Plac. Trib. 17 E. 3.

Senedays, Play-days, or times of pleasure and diversion. Cavendish, edit. 1727.

Senna, What duties liable to on importation, 2 Ed. 3. fol. 122.

Separation, (Separatio) A federal, or divided inclosure, severed or separated from other ground. Par. Ant. 336.

Separation, (Separatio) Is the living alender of man and wife. See Stuller.

Semperegrena, (mentioned Walf. 1. c. 51.) Is always the third Sunday before Quaregmina exclusive, from which, until the Octave after Easter, the solemnizing of marriage is forbidden by the Canon law. It is called Semperegrena, as being above seventy days before Easter, as Sansegni and Quintagregina, because the first is accounted fifty, the latter fifty days before the feast, and those days appointed by the church to add of penance, and mortification, and are preparative to the elevation of Lent then approaching. The laws of King Coenwulf ordered a vacancy from judicature, from Semperegrena to Quintаgregina. See Quintagregina.

Septurn, An inclosure, a croft, and is so called, because of itself, or for itself, or because the orifice of the hedge and a ditch, or at least with a hedge at least. Sepitnche, (Sepulcrum) Is the place where any dead body lies interred; but a monument is a place where something is set up for the memorial of the deceased, though the corpse lie not there. Cavendish, edit. 1727.

Septurn, An offering made to the priest for the dead himself. To mention in Danémorg. Cavendish, edit. 1727.

SEPM
Sequestration sub two periculi, Is a writ that lies where a
fungu of warrantandum is awarded, and the sheriff
return, that he hath nothing whereby he may be
mumed; then goes out an aitum and plures, and if he
come not at the plures, then goes out this writ. Old
Sequela curiae, Suit of court—Et quis et quid lilibri a
Sequela molinemini, The owning suit to a particular
mill, or being bound to grind corn in that only place;
whence the defendant and ferri. and therefore this
sentence sequelam molinemini, was to grant all the toll
and profit arising from such customary rights. Cowell, edit. 1777.
Sequela villanumini, All the retinue and appurten-
ances to the goods and chattels of servile tenants, which
were an law arbitrary and absolute disposifal of the lord.
Cowell, edit. 1777.
Sequefter, Is a term used in the Civil law for re-
nouncing; as when a widow comes into court, and dis-
claims to have anything to do, or to intermeddle with her
husband's estate which is deceased, she is said to sequef-
rer. Cowell, edit. 1777.
Sequestration, (Sequestration) Is the separating of a
thing in controversy from the possession of both those
that contend for it. And it is of two kinds, voluntary or ne-
necessary; voluntary is that which is done by consent of each
party; necessary is that which the judge doth of his autho-
ration, when equity wills it, or no. It is used also for the
act of the ordinary, disposing the goods and chattels of
deeone deceased, where each estate no man will meddle with.
Dyer, fol. 213. num. 5 & f. 260. num. 42. & fol. 271.
um. 26. As also for the gathering the fruits of a be-
nefice void, to the use of the next incumbent. 28 H. 8.
8o. 45. Ve. 460. & in divers other cafes, See Kent's Glossary in Sequestration.
Sequestration in the court of Chancery is a commodi-
union usually directed to 7 perons therein named, and impow-
ering them to feize the defendant's real and personal efate
into their hands, (or it may be some particular part or
parcel of his lands) and to receive and fequefter the rents
and profits thereof, until the defendant shall have an-
swered the plaintiff's bill, or performed some other matter
which has been ordered and enjoined him by the court, for
not doing where he is in contempt. Curf. Canc. 89.
A Sequestration out of Chancery is grounded on the
return of the ferjeant at arms, wherein it is certified that
he the defendant has been received against him, and in the execution of such
proces cases, and gives authority and power to the fe-
queftrators (who are perons of the plaintiff's own naming) to enter upon and feize his, the defendant's real and
personal efate.
It appears that there were great fuggles between the
Civil law courts and courts of Equity, before this process
came to be efablifhed; the former holding that a court of
conficence coul'd only give remedy in perfonam, and
not in rem; that Sequeftrators were treafurers, against
whom an action lay; and in the cafe of Calton v. Gar-
don, the Chancellor cites a cafe, where they ruled, that
is, the defendant, against whom there was an action of se-
queftration, it was no murder. Cui. Exif. 651. Brgvavu
v. Watts. 1 Med. 259. But 2 Med. 258. That the
Chancellor having inlued fuch Sequeftration, it will be as
blinding as any other procесes according to the rules of
the Common law. 2 Chanc. Ca. 44.
But there were fo bloody and defperate refolution,
and fo much againft common juftice and honesty, which
requires that the decrees of this court, which preferred
men from deceipt, should not be rendered illufory, that
they couls not long flour; but this process got the better
of these refolution on this ground; viz., that the extra-
ordinary power might pufh them further by the
reduce of efate as well as the imprifoment of the perfon, becaus
that liberty being a greater benefit than property, if they
had a power to commit the perfon, they might take from
him his efate till he had answered his commotions. 2dly, To
say that a court should have power to decree about
things, and yet should have no jurifdition in rens, is a
perfect folecin in the confitution of the court itself.
2 Peer Will. 621. 2 Ch. Ca. 44.
It has been faid, that the influent & influence of a Sequef-
tration, after a decree, was Sir Thomas Reaf's cafe in Lord
Greeny's time, and that it was afterwards awarded in
Chancery, in the cafe of Hyde v. Pitt, 566, and affirmed in
parliament; and by the common benemony of Grevor
v. Fountaine, 1687, and since, without scruple. The
doubt formerly was, that the lands were not liable to execu-
tion before the flature |Vj. 2. 0. &. Ch. Ca. 42.
In Vernon's Report it is faid, that Sequeftrations were
first introdused in Lord Bacon's time, and then but fea-
ringly ufed in process, and after a decree to fequefter the
thing in demand only. 1 Vern. 423.
1. In what cafes a Sequeftration is to be awarded.
2. The power and duty of the Sequeftrators; and when a
Sequeftration is determined.
1. In what cafes a Sequeftration is to be awarded.
A Sequeftration nisi is the first procès against a peer or member
of the house of commons. 2 Peer Will. 385.
1 Ch. Ca. 193.
A Sequeftration is also the first procès against the me-
ernal servant of a peer, within the words and meaning of
the flature 12 W. 3. for that otherwife fuch servant would
have greater privilege than his Lord. 1 Peer Will. 535.
If there be a Sequeftration nisi against a peer for want
of an anwer, and the peer puts in an anwer, that is in
fufficient; yet the order for a fequeftration shall not be
ablolute, but a new fequeftration nisi. 2 Peer Will. 385.
Notwithstanding the superior power of the courts in
this kingdom over those in Ireland, and what is faid in
some of our books, it seems to be now the better opinion,
that the court of Chancery here cannot award a fequef-
tration against lands in Ireland. 1 Vern. 76. 2 Ch. Ca.
189. 2 Peer Will. 261.
It was faid, that fuch procès had been awarded to the
governor of North Carolin. but herein it was doubted
whether fuch fequeftration should not be directed by the
Kings council, where alone an appeal lies from the de-
crees in the plantations. 2 Peer Will. 261.
Copholds may be fequeftered, though not extendible
at Common law or the flature of Wj. 2. for courts of
equity have potestatem extraordinar. et abolitam; but it
seems a doubt whether fuch a fequeftration can be re-
verted against a private perfon, or against the heir of a
cofehide, which arises from the difficulty of obliging the Lord to admit,
and depriving the Lord of his fine, &c. upon the death of the tenant. 2 Ch. Ca. 46.
Vide 1 Bernard. 421.
A fequeftration out of Chancery is more effeclual than an
execution by fieri faciatis at law; I for a fequeftration may
lie againft the goods, though the party is in custody upon
the attachment; whereas in law, if a cogniz ad satisfac-
tiendum is executed, there can no f. f. illis. Caiif in
Lord's Tallet's Time 222.
Where the fequeftrators feize the real efate of the party,
any tenant or other perfon who claims title to the efate
so fequeftered, either by mortgage, judgment, lease or
otherwife, who is the flabe to the fequeftration, shall not be obliged to bring a bill to contest such
title, but he shall be let in to contest such a title in
an fummary way.
He may move by his counsel as of course to be ex-
amined pro interrefi faws, and in this cafe the plaintiff is to
exhibit informations in order to prove his title to the efate,
for a discovery of his title to the efate, and he must be examined
upon such interrogatories accordingly and; and the matter
must flare the matter to the court, and the parties may
enter into proof touching the title to the efate in ques-
tion; and when the matter hath flated the whole mat-
ter, the court will examine the evidence therein upon the
report; and if it appears that the party who is ex-
amined pro interrefi faw hath a plain title to the efate,
and is not affected with the fequeftration, then it is to be
discharged as against him, with or without costs, as the

The power and duty of the sequestrators; and when a sequestration is determined.

The sequestrators are officers of the court, and as such are deemable to the court, and are to act from time to time as directed by the court. They are to account for what comes to their hands, and to bring the money into court as the court shall direct, to be put out at interest, or otherwise, as shall be found necessary; but this money is not usually paid to the plaintiff, but is to remain in court till the defendant hath appeared or answered and cleared his contemp; and whatsoever hath been seized shall be accounted for and paid over to him; however, the court hath the whole under their power, and may do therein as they please, and as shall be most agreeable to the justice and equity of the case.

The plaintiff's counsel may and obtain an order for processes to attorn and pay their rents to the sequestrators, or for the sequestrators to fell and dispose of the goods of the party, and to keep the money in their hands, or to bring into court, as shall be most advisable and discretionary, and fitting for the court to do.

Sequestrators on mense proceeds are accountable for all the profits, and can retain only so far as to satisfy for costs incurred.

If sequestrators, having power to fell timber, dispose of 7000l. worth, and only bring 2000l. to account, they, as officers and agents of the court, are responsible, and not the plaintiff. 1 Vern. 161.

A sequestration of a lease at Common law, and the party sequestrating has neither jus in rem, vel in re; the legal estate of the premises remaining in every respect as before. 1 Peer Will. 307.

Sequestrators being in possession of a great house in St. James's square, which was the defendant's for life, the court ordered that the master allow a tenant for the house, and the sequestrators to make a lease, and the tenant to enjoy.

It was moved, that the irregularity of a sequestration might be referred to the deputy, which was taken against the defendant for not appearing, by reason of its being taken out foorner than by the course of the court it could have been. The sequestrators had the goods off the premises, and threatened to fell them; the chief baron said, that as to the carrying the goods off the premises, it was clear the sequestrators could do that, because a sequestration upon mense proceeds answers to a disfiring at law; but however, as to selling them, the court agreed in the present case it could not be lawful, and said it had lately been settled on debate; and observed further, that courts of equity could not authorise sequestrators to fell goods even upon a decree 'till Lord Stamford's cafe, which makes decrees in this respect equivalent to a judgment; and even now the counsel said, sequestrators cannot fell but by the leave of the court; however, the court said this was a matter proper for them to consider upon another occasion, and therefore only referred the irregularity of the sequestration as to the point of time to the deputy. 1 Barnard, Rep. 212, in Scac.

Lands were decreed to be liable to 500l. per annum, for the life of A., and a sequestration and injunction for the sequestration to be put in motion, the defendant against the injunction enters upon the lands, and receives the profits to the value of 192l. and thereupon was decreed to pay it; and after the death of A. it was decreed that the sequestration should continue against the defendant for the payment of that money, and the defendant moved to have liberty to fell timber to raise money for his subsistence alleging that the sequestrators had only the puffifion and the perception of the annual profits by the course of the court, and therefore it could be no prejudice to have this granted: But Sir H. Grimman, master of the Rolls, refolved; for 1st, This invades the decree which is for the quiet possifion, which will be disturbed if the defendant enters to cut down timber; 2dly, The defendant not having performed the decree by the payment of the money, the court could not receive the money, and having the flands in contempt, 3dly, If he will with the fale of this timber pay the plaintiff his debt, and to discharge the sequestration, there might be some reason for it; but for him to raise monies to other purpose he shall not be favoured; and unless the plaintiff will confer, he shall not have liberty to fell. 4 Feb. 16 & 17 S. W. 2.

A sequestration that issues as a mense proceeds of the court will be discontinued and determined by the death of the party; but where a sequestration issues in pursuance of a decree, and to compel the execution of it, there though the same be for a personal duty, it shall not be determined by the death of the party. 1 Vern. 58, 2d.

A sequestration against the father, who appeared to be only a tenant for life, and on his death the sequestration was discharged. 1 Ch. Ca. 241. 2 Ch. Ca. 46.

The bill was to revive a sequestration obtained against the defendant's husband for a personal duty before his intermarriage, and the defendant, and the sequestrator's estate in dower in the lands that were sequestrated before the marriage, it being informed that those lands were bound by the sequestration, and covered therewith, that the defendant's right of dower could never attach them; but on a demurrer to this bill, the demurrer was allowed; and it was ruled, that such a sequestration should not bind the female who came in for her jointure or dower; but whether the heir in fee-simple should in such case have the estate bound, and subject to such a sequestration, or not, was doubted; and the case not being before my lord keeper, he refused giving any opinion therein. 1 Vern. 118.

It seems to be now settled, that a sequestration is a personal proceeds, which abates by the death of the party; so that such sequestration being grounded on a decree for debt or personal duty, cannot be revived against the heir of the defendant; or otherwise in those cases in which the heir is bound. 2 Peer Will. (621). Sec 19 Fam, Abr. tit. Sequestration.

Sequestrator habendo, is a writ judicial, for the dissolving a sequestration of the fruits of a benefice made by a bishop at the King's command, thereby to compel the parson to appear at the suit of another; for the parson upon his appearance may have this writ for the dissolving of the sequestration. Reg. Judic. fol. 137.

Sequestrant, or Sequestrator, (Sequens,) is derived from the French Servient, s Satelles, a man of the guard, so called, because he was Jus aux cœcins ad res necessaries in exercitio peragendas; so Caligula. But Skene de vorhir, signific, verbo servient, faith, it is, vox compitata de ferdes, quod includere, & gen. quod pro gen., phæbe vel popule ujus- præter, et abjectum propter eandem rationem, & una cum illa præter combustum. Applied to fundry offices and callings. Fifth, A servient at law (or of the coif) is the highest degree taken in that profession, as that of a doctor in the Civil law. And to those, as men bel't learned and most experienced of all others, one court is set a part for them to plead in by themselves, and the other court for the common people. And whereas the common law of England is most strictly observed; and though they have this court to themselves, yet they are not restrained from pleading in any other courts, where the judges (who cannot have that honour till they have taken the degree of servient at law,) call them Servients. It is a great relaxation to the King's attorney and solicitors general. These are made by the King's mandate, or writ, directed unto them, commanding them, upon a great penalty to take upon them.
anciently

See R For Another as

judgment judges officer hundred ton only were led one execution especially cop. King. in the Sixth's time, ferjeant Benetos wrote himself fals ferjeant ad legem. It seems for some time there was none but himself. Mr. Selden tells us they were formerly called doctores leges; though others are of opinion that the judges are more properly doctores legis, and the serjeants free and common. The first are called serjeants in the Sheriff's Office. Coke, vol. 4. v. Copthole cafet, fol. 21. 4. The next is a serjeant ad arms, or the move, (serjeant ad arms) whose office is to attend the perfon of the King. Stat. 7 H. 7, cap. 3. to arrest traitors or perfons of condition, and to attend the lord higheward of England, fitting in judgment upon any traitor, and such like. Pl. Cap. 4th. 1. Of this, by the statute 15 H. 2. c. 6. there may not be above thirty in the realm, two of them, by the King's allowance, do attend on the house of Parliament, whose office in the house of Commons is, the keeping of the doors, and (as of late it hath been used) the execution of such commands, especially touching the apprehension of any offender, as that house envieth. Gramp. Jur. fol. 9. Another of them attends on the Lord Chancellor or Lord Keeper, in the Chancery. And on the Lord Treasurer of England: One upon the Lord Mayor of London, upon extraordinary solemnities; one attendeth upon the Lord President of Wales, and another upon the Lord President of the North, &c. Camden, edid. 1727.

These serjeants ad arms are in the old books called virgates, because they carried silver rods gilt with gold before the King. In cadaum curia Regis sunt virgatones populum gravantem, gravia sedo petentia. Fleta, lib. 2. cap. 13. fol. 234. and the statute of the 15th Henry 4th.

Another coast of serjeants are chief officers who execute civil functions or offices within the King's household; of which you may read many in the statute of 33 H. 8. c. 12.

There is likewise a more inferior kind of serjeants, (serjeantia,) Signifies in law a service that can be done without the king's presence, and is the service of the city of London, and other corporate towns, that attend the mayor or other head officer, chiefly for matters of justice. Kiblin, in 143. and there are called serjeants ad stellam. New Book of Entries, verbo, Seire stellae in Mainarscrip, cap. 3. fol. 538. There was also a kind of serjeants in religion, called ferjeants of the head of St. Paul's, and the ferjeants shew that all the justices in eyre had certain officers attending them, called ferjeants, (as appears by Winst. I. cap. 30,) which Fleta calls virgates serjeants, and were in the nature of our tip flaps.

Serjeanty, (Serjeantia,) Signifies in law a service that can be done without the king's presence, and is the service of the city of London, and other corporate towns, that attend the mayor or other head officer, chiefly for matters of justice. Kiblin, in 143. and there are called serjeants ad stellam. New Book of Entries, verbo, Seire stellae in Mainarscrip, cap. 3. fol. 538. There was also a kind of serjeants in religion, called ferjeants of the head of St. Paul's, and the ferjeants shew that all the justices in eyre had certain officers attending them, called ferjeants, (as appears by Winst. I. cap. 30,) which Fleta calls virgates serjeants, and were in the nature of our tip flaps.

Serjeants, (Serjeantia,) Signifies in law a service that can be done without the king's presence, and is the service of the city of London, and other corporate towns, that attend the mayor or other head officer, chiefly for matters of justice. Kiblin, in 143. and there are called serjeants ad stellam. New Book of Entries, verbo, Seire stellae in Mainarscrip, cap. 3. fol. 538. There was also a kind of serjeants in religion, called ferjeants of the head of St. Paul's, and the ferjeants shew that all the justices in eyre had certain officers attending them, called ferjeants, (as appears by Winst. I. cap. 30,) which Fleta calls virgates serjeants, and were in the nature of our tip flaps.
were of four parts, 1. Such as fold themselves for a live-
bility. Debtors that were to be sold, for being inca-
pable to pay their debts. 3. Captives in war, re-
tained and employed as personal slaves. 4. Nation, such as were
brought in peace, and by such moreover belonged to the sole
property of the Lord. All these had their persons, their
children, and their goods, at the disposal of their Lord,
incapable of making any wills, or giving away any mat-
ter. Cowell, edit. 1777.

Serf, (Latin serfus,) as that service which the ten-
ant of a manor is bound to perform in the use of his
holden, woothe unto his lord. His-
toman thus defines it: Servitium of manus obsequi diete-
larum, de verbis feudal. It is sometime called Servage, as
1 R. 2. cap. 6. Our ancient law books make many divi-
sions of it, as Brauron, lib. 2. cap. 16. and Britton, cap.
66. into personal and real; also into military and baile
and Brauron, lib. infra, cap. 7, into intrinsic and extir-
inc. Servitium intrincum is due to the capital Lord
of the manor. Forinfirm is that which is due to the King,
and not to the capital Lord. Service is also divided into
frank and baile, the one termed liberum servitium, the
other villenagium. It is also divided into continual or
annual, and casual or accidental; the former is the seign
of rent, the other, seisin of relief. Ca. 4 Rep. fol. 9.
Brevi's see. Cappyolphet. See Storage. Thomas
Leigh, esq. at the coronation of King Charles the second,
brought up to the King's table a mors of potassa, called
dilugratt, which servise had been adjudged by the court
of King's Bench, of the right of the manor of Addington in
Surrey, whereupon the Lord High Chancellor preferred
him to the King, who accepted the service, and after-
wards knighted him. Cowell, edit. 1777.

Service and servitudes. The penalty of depraving
the facrament of the altar, 1 Ed. 6. c. 1.

The beffed facrament to be administered in both kinds,
1 Ed. 6. c. 1. f. 7.

A repeal of all acts concerning religion, 1 Ed. 6. c. 12.

f. 3. For the uniformity of the service and administration
of the facraments, 2 & 3 Ed. 6. c. 1. 6 & 6 Ed. 6. c. 1.
1 El. c. 1. 8 El. c. 1. f. 3. 13 & 14 Car. 2. c. 4.

Penalty of reviling the prayer-book, Us. 2 & 3 Ed. 6.
1. f. 2. Where bishops may join with justices in determining
offences, 2 & 3 Ed. 6. c. 1. f. 4.

Prayers may be said in Greek, Latin, &c. in univer-
sities, 2 & 3 Ed. 6. c. 1. f. 6. 13 & 14 Car. 2. c. 4.

f. 5. Bishops, &c. may punish by church censures, 2 & 3
Ed. 6. c. 1. f. 12. 5 & 6 Ed. 6. c. 1. f. 3. 1 El. c.
2. f. 16.

All persons to refor to their parish churches, 5 & 6
Ed. 6. c. 1.

The service to be present at other worship, 5 & 6 Ed.
c. 1. f. 6.

Such service shall be used as in the last year of King
Henry 8. 1 Mar. fl. 2. c. 2.

The penalty of disturbing a preacher or priest fonding
divine service, or pulling down an altar, Us. 1 Mar. fl.
c. 2. c. 3.

An encroachment on the parish, if offenders escape, 1 Mar.
fl. 2. c. 3. f. 8.

The penalty of not repairing to church on Sunday and
holidays, 1 El. c. 2. f. 14. 35 El. c. 1.

Ordinary may punish offences, 1 El. c. 2. f. 23.

The bible and divine service shall be transacted into
the the Hebrew tongue, 5 Ed. c. 28.

Penalty on prebends maintaining doctrine contrary
to the articles, 13 El. c. 12. f. 2.

All ecclesiastical persons to read and subscribe to the
book of common prayer, Gr. 13 & 14 Car. 2. c. 4.
15 Car. 2. c. 6.

All persons in office to take the facrament and the de-
claration against transubstantiation, 25 Car. 2. c. 2.

Time given to those in the Fleet, and beyond the sea,
until three calendar months after their return, 13 Geo.
c. 1. c. 29. Four months, 2 Geo. 2. c. 31.

Six months given for taking the facrament, 16 Geo. 2.
c. 3. f. 2.

Allowance of impediments by the ordinary, for not read-
ning the facrament, extended to the certificate of subscrip-
tion, 2 Geo. 2. c. 28.

Service secular, (mentioned in fl. 1 Ed. 4. cap. 1.)
It worldly service, contrary to spiritual and ecclesiastical,
Serentitius, Are certain wits touching servents and their
matters, violating the statutes made against their
abuses, which see in Reg. Orig. f. 180, 197, 198.

Servitium foedale & paenitente. Was not a personal
service, but only by reason of the lands which were held
in free. Bratton, lib. 2. cap. 16. para. 7.

Servitium forinfirmum, was a service which did not
belong to the chief Lord, but to the King. It was cal-
made the vicarium, because it was done for the well
sel extra Servitium quod dimo dominio. We read fe-
veral grants in the Annals, 2 tra. p. 48. of all li-
 liberties, with the appurtenances, fals vs foraservitio Servitio.

Servitium intrinseum, f. that service which was
due to the chief Lord, alone from his vassals. Bratton,

Servitium liberalis, was a service to be done by the
deans and canons, who were called liberii homines, and
distinct from suiffi; as likewise was their service, for they
were not bound to any of those baile services, as to plough
the Lord's land. &c. but only to find a man and horie
and go to the Lord into the army, or to attend his court,
and to render their annual service of old and new
marsh, as in an old rental of the manor of Southwell in
Suffolk, mentioned by Sumner in his treatise of Gevel-
kind, fol. 56.

Servitium regale, Royal service, or the rights and
prerogatives that within such a manor belong to the King,
if Lord of it, which were generally reckoned to be the
fix, 1. Power of judicature in matters of property. 2.
Power of life and death in felonies and murders. 3. A
right to waifs and stray. 4. Alesfements. 5. Muting
of money. 6. Affright, bread, beer, weights and measures.
All these were privileges annexed to some manors
in their grant from the King, and were sometimes con-
veyed in the charters of donation to religious hous.
Parsh. Antiq. 60.

Serbi testamentales, Were those whom we now call
coventant servents. They are mentioned in the laws of
King Athelstan, c. 34.

Serbritis acquisitandi is a writ judicial that lies for
obtaining a servent to A. who owes and performs to
B. for the acquittal of such servents. Reg. of Writs
Judic. fol. 27. a. & 36. b.

Servitios of bills, Are such servents or messengers of
the baronial belonging to the King's livery as were sent
abroad with bills or writs to summon men to that court;
then called more ordinarily called tillaers. Stat. 2 Ed.
c. 4. f. 23.

Selling, (mentioned in fl. 25 Ed. 3. c. 6.) Seems
to signify the affesting or rating of wages.

Sections of parliament. The paffing any bills, by giv-
ing the Royal assent thereto, doth not make a seiff; but
the suffen of parliament continues till it be procured or
done away. See 4 par. lib. fol. 77. Where parliament is the
fitting of the parliament. See 19 Fin Art. 337, 338.

Sections of the peace. A court of record, held be-
fore two or more justices of peace, (quorum summ) for
the execution of the authority given them by their com-
mission, and certain seifs of parliament. And the jus-
tices in their several courts to bear and determine treas-
ufes against the public peace, &c. and many offences by
flature. This court is held four times in a year at some
place within the county, &c. also besides the general
seifs of the peace, there are private seifs held by the
justices, for divers particular branches of the busines
of the offices. Dol. Jut. 573. See 19 Fin Art. 339—
358.

Sections for working servents, Called statute seifs,
held by constables of hundred, &c. 5 Elia. See Statu-
amentum Sellament.

Sections for wages and measures. In London, four
justices among the mayor, recorder, and aldermen,
2.
Fines to be levated yearly, 13 El. c. 9. f. 6.
Under what penalties, 3 Geo. 1. c. 15. f. 12.
Water-courses within two miles of London falling into the Thames, and the conviction of commissioners, 3 Geo. 1. c. 15. 2 W. & M. b. 3. c. 26.
For draining of Salt-marsh, 10 & 11 W. 3. c. 26.
The common council of London authorized to appoint commissioners of fines, 19 Car. 2. c. 3. 22 & 23 Car. 2. c. 17. 7 Ann. c. 9.
The commissioners and the justices to decree contempt, fines, and for staying the owners for the taxes, and to obtain goods, 7 Ann. c. 10. f. 3. See 19 Vin. Abr. tit. Sewers.
Sectagelima. See Deutagelima.
Sertap, (Sertar) Was an ancient measure, containing about our pint and a half, according to our Latin dictionaries.
The town of Leyster paid among other things to the King yearly, twenty-five measures called Sarties of banns, as we read in Domesday. And in Clauff 4 Ed. 3. m. 26. we find tristefic Sertarionem.
—Et unum Sertarionem xals aquid Wainfite. Mon. Angl. 2. par. fol. 849. b. Decemmissit brevis, gratior Sextis avo in premissum. Iam. 1. par. fol. 136. b. where it seems to have been used for a much greater quantity. A Sexty of ore contained sixteen Lengtes. Cowell, edit. 1727. See Tolfecrt.
Sertary lands, (mentioned in the first part of the Baronage of England, fol. 374.) are lands given to a church or charitable house, for maintenance of the Sexton or sacristan. Cowell, edit. 1727.
Sark, is a custom in Norfolk to have common for hogs, from the end of harvest till feeding, in all mens grounds without contradiction. Co. 7 Rep. fol. 5. Corbett's cafe. And in that country, To go at sarkes, is as much to go at large. Cowell, edit. 1727.
Savillant, Under what penalties not to be exported from Ireland to any place but England, 10 & 11 W. 3. c. 10.
Sharpey-corn, Is a customary gift of corn, which at every Christmas the farmers in some parts of England give to their fetlers, for exporting their plough-jorns, harrow-jorns, and several other things, and not half a bushel for a plough-land. Cowell, edit. 1727.
Shawe, A grove of trees, or a wood. 1 Inf. fol. 4. b.
Shebduners, Soldiers. Cowell, edit. 1727.
Shearing, A riding, tithing, or division in the life of Man, which takes place between six Shadowings, in each of which there is a coroner or chief confabula appointed by delivery of a rod at the Tinewald court, or annual convention. See King's Definition of the life of Man, p. 17.
Sheep, Not to be exported, 3 H. 6. c. 2. 22 H. 8. c. 3.
None to keep more than 2200 sheep, 25 H. 8. c. 13.
The penalties of exporting sheep alive, 8 El. c. 3. 12 Car. 2. c. 32.
Stealing or killing sheep or other cattle, made felony without clergy, 14 Geo. 2. c. 6.
Extended to bull, cow, ox, steer, bulluck, heifer, calf, and lamb, by 15 Geo. 2. c. 34. See Cattle, Weald.
Sheep-silver, A servise turned into money, which was paid in reft that anciently the tenants used to wash the Lord's sheep. W. Jones, Rep. 280.
Shenefield, Regulation of the courts baron of Saffield and Ectlad, in Yorkshire, 29 Geo. 2. c. 37.
Sheriff, It seems that anciently the government of the county was by the King lodged in the Earl or Count, who was the immediate officer to the crown; and this high office was granted by the King at will, sometimes for life, and afterwards in fee; but when it became too burthenome, and could not be commodiously executed by a person of a high rank and quality, it was thought necessary to constitute a person duly qualified to officiate in his room and stead; from hence he is called in Latin Vicecomes, and Sheriff from Shire Rentes, i.e. governor of the shire or county. He is likewise considered in our books as bailiff to the county, and in his county where he hath the care, and in which he is to execute the King's writ, is called a bailiff. Don. 60. Savill 93. 8 D.
It seems that antiently, and before the statute 6 Ed. 2. sheriffs were elected by the freeholders of the county, as the coroners are at this day, and consequently that their offices did not determine by the death of the King. 2 H. 53. 2. Bract. 330, but quære.

And though at this day the King hath the sole appointment of sheriffs, except in counties palatine, and where there are jura regalia, yet it hath been adjudged, that the office of sheriff is an intire thing, and that therefore the King cannot apportion or divide it, that is, he cannot determine it in part as for one term for one hundred; neither can he abridge the sheriff of any thing incident to or belonging to his office. Dowl. 60. 4. C. 33. Mit- ten's cafe, Dall. Sb. 6. Hob. 13. Roy. 363.

1. Who are qualified or exempt from serving the office of

sheriff.

2. Manner of appointing him, and of his oath.

3. Sheriff can execute no other office; how long to continue in office; and of his jurisdiction.

4. Sheriff cannot dispoze of his bailiwicks; and of his power and duty in appointing an under sheriff.

5. Who are qualified or exempt from serving the office of

sheriff.

It is provided by several acts of parliament, that no man shall be sheriff in any county, except he have sufficient lands within the same county where he shall be sheriff, whereof to answer the King, and his people in case, that any person shall complain against them; and that none that is freeholder or bailiff to a great lord shall be made sheriff. 9 Ed. 2. 2 Ed. 3. 4. 4 Ed. 3. c. 9. 5 Ed. 3. c. 4.

It is held that the King hath an interest in every subject, and a right to his federal, and that no man can be exempt from the office of sheriff but by act of parliament or letters patent. Sev. 43. 9. Cb. 46.

And on this foundation it was adjudged in Sir John Read's case, who was made high sheriff of Hertffordshire, at the time he was excommunicated for non-payment of alimony, that an information properly lay against him for not executing the office; though it was objected on his behalf, that the oath and facrament in-joined by act of parliament are necessary qualifications for all sheriff, which he was disabled to take by reason of the excommunication; but the court held that he was punishable for not removing the disability, it being in his power to get himself absolved from the excommuni-
SHE

The sheriffs in every of the shires of Wales shall be nominated yearly by the lord president, council and justices of Wales, and shall be certified up by them; and after appointed and elected by the King as other sheriffs be, 3 Hen. 8. cap. 26. Dal. 3. S. 6.

The sheriff, before he doth exercise any part of his office, shall, according to the directions of the office, or the ancient custom in the King’s Remembrancer’s office in the Exchequer, under pain of 100l. for the payment of his pro- fers, and all other profits of the sheriffwick; but these securities are never sued, unless there is a deficiency in the sheriff’s office. Dal. 3. S. 7.

The sheriff shall, when true, take upon him the exercise of his office, must not only take the oaths of allegiance and abjuration enjoined all officers by divers acts of parliament, but likewise a particular oath of office, which is said to be by the ancient common law, and contains a conceit of the nature and several branches of his office. His other oath is set down in Dalen 9. Dal. 3. S. 9. Dyr. 168.

But there being in this oath something which was thought too strict (see Cor. Car. 26.) with respect to sheriffs, instead thereof it is now enacted by the 3 Geo. i. c. 15. f. 16. that the following oath shall be taken by all high officers and sheriffs. And likewise the same form is to be used in the time of Chapter, 85. wis. 1. A. B. d’o swore that I will well and truly serve the King’s Majesty in the office of sheriff of the county of— and promote his Majesty’s profit in all things that belong to my office as far as I legally can or may. I will truly perform the King’s rights and all that belongeth to the crown. I will not alit to decrease, lessen or conceal the King’s rights, or the rights of his franchises and whereverfore I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits or services, or in any other matter or thing, I will do my utmost to make them be reformed to the crown again; and if I may not do it, I will certify and inform the King, or some of his judges. I will not respite or delay to levy the King’s debts for any gift, promis, reward or favour, where I may raise the same without the great grievance to the debtors. I will do right as well to poor as to rich, in all things belonging to my office. I will do no wrong to any man for any gifts, reward or promise, or not for favour or hatred. I will disturb no man’s rights, and will duly and faithfully acquit at the Exchequer all those of whom I shall receive any debts or duties belonging to the crown. I will take nothing whereby the King may lose, where by his right may be disturbed, injured or delayed. I will move such, and truly serve the King, according to the best of my skill and knowledge, I will take no baili into my service but such as I will answer for, and will cause each of them to take such oaths as I do in what belongeth to their baili and occupacation. I will duly fit and return reasonable and due offices of them, that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected and procured, as is appointed by the statutes of this realm. I have not fold or let to farm or contracted for, nor have I granted or promised for reward or benefit by myself or any other person for more a year and a day of my life, directly or indirectly, any sheriffwick or any bailiwick thereof, or any office belonging thereon or the profits of the same, to any person or persons whatsoever. I will truly and diligently execute the good laws and statutes of this realm, and in all things well and truly behave myself in my office for the honour of the King and the good of his subjects and the same according to the best of my skill and power. So help me God.

If a person refused to take upon him the office of sheriff, it was usual to punish him in the Star-chamber; and he may now be proceeded against by information in the High Court of Chancery. To which order, and to all the King’s writs for oaths inquired him, or officiates in the office before he hath qualified himself, the court, which hath a general superintendancy over all officers and ministers of justice, will grant an information against him; and it hath been held, that a refusal of oaths inquired to be taken, amounts to a refusal of the office. Dal. 3. S. 15. Dyr 167. 3 Lev. 116. Cart. 307.

If the sheriff be not in London, the oath may be taken by deputis potestatum, directed to any two justices of the peace of the county, one to be of the quorum, or to any other commissioner or commissioners, or before one or more judges of assize for that county, or one of the masters in Chancery, who, if it be so judged, may as well as the judge administer such oath without any deputis. Dal. 3. S. 13. 14.

If the commissioners shall return the commission or write, and the oaths to be taken when they were not taken, it is taken for void. Dyr. 168. Dal. Shir. 14.

It is held, that the breach of this oath, although an offence of some importance, is not otherwise pernicious, nor punishable as such. 11 Co. 98.

3. Sheriff can execute no other office. How long to continue in office, and of his jurisdiction.

It is, holden, that a sheriff cannot be elected knight of the flire for that county for which he is sheriff. 4 infra. 49. Lit. R. 338. Sir Simon Dewys. Tom. 48. 436.

It is, holden, that the sheriff is an executors and conservators of the peace, yet it is enacted by the 1 Mar. b. 2. cap. 8. sect. 2. that no person having the office of sheriff of any county shall exercise the office of justice of the peace in any county where he shall be sheriff during the time he shall use the office of sheriff. Dal. 3. S. 27.

By the 1 Hen. 5. cap. 4, it is enacted, That no under-sheriff, sheriff’s clerk, receiver, nor sheriff’s bailiff, shall be attorney in any of the King’s courts during the time that he is in office. Dal. 3. S. 454.

By the 14 Ed. 3. cap. 7. Confirmed by 23 H. 6. cap. 8. It is enacted, That no sheriff, under sheriff, nor sheriff’s clerk, shall have or keep any office above one year, upon pain to forfeit two hundred pounds a year as long as he occupie the office; and every pardon made for such offence or forfeiture shall be void; and by 42 Ed. 3. cap. 9. All letters patent made to occupy such office above one year shall be void; any words or clause of non-dilute put into such statute notwithstanding; and that whosoever shall presume to take upon himself the office of a sheriff above one year, by force of such letters patent, shall be disabled for ever after to be sheriff within any county of England.

By the 1 Ric. 2. cap. 11. it is enacted, That none that hath been sheriff of any county a year shall be within years next chosen, or put in the same office, if there be other sufficient. Confirmed by 23 H. 6. cap. 8.

And by the 1 H. 5. cap. 4. it is enacted, That they that be bailiffs of sheriffs one year, shall be in no such office by three years next following, except bailiffs of sheriffs which inherit in their office.

By the Common law the patents of sheriffs, like all other commissions, determined by the death or demise of the King; but now by the statute H. 2. & Mar. and 1 An. such commission shall remain in full force for the space of six months next after such death or demise, unless superannuated or determined or made void by the next succession. Dyr. 165. Dal. S. 17.

But tho’ such patent was determined by the death of the King, yet it was adjudged, that if the sheriff after such demise, and before his taking out a new patent, suffered a poister to escape, that an action lay against him. 3 Co. 392.

It hath been held, that the office of sheriff doth not determine by the party’s becoming a peer on the death of his father, but that he still remains sheriff ad voluntatem Regit. Cro. Eliz. 12. Sir Lewis Mandarin’s case.

By the fourth of H. 4. cap. 5. it is enacted, That every sheriff or his warrantor, dwelling within any person within his bailiwick for the time he shall be such officer, and that the sheriff shall be sworn do the same.

Hence it is clear, that a sheriff hath no jurisdiction in any other county, nor can he do a judicial act, and in which his personal preference is required, out of his county; but is it held that he may do a ministerial act, as make a panel
a panel, or return a writ out of his county. Dalt. Sb. 22.

9 H. 4. 1. But if the sheriff be beyond sea, and maketh a panel or any return there, and fend it into England, it is not good, for he is an officer but only in England. Dalt. Sb. 22.

If on a herry or court, &c., the sheriff is commanded to carry a prisoner to a certain place out of his county, and in doing this he is obliged to go through several counties, to this special purport he hath authority in those other counties. Dalt. Sb. 22.

If a prisoner of his own wrong shall make an escape, and fly into another county, the sheriff or his officers, upon fresh fault, may take him again in another county. Plowd. 31. Dalt. Sb. 23.

4. Sheriff cannot dispose of his bailiwick; and of his power and duty in attaining an under-sheriff.

By the 23 Hen. 6. cap. 10. it is provided, * That no sheriff shall let to farm in any manner his county, nor any of his bailiwicks, hundreds or wapentakes.

In the construction hereof it hath been held, that this phrase, a particular law, and must be pleaded, and unless the judges cannot take notice of it, 3 Keb. 678. Ellis v. Niff. It hath been held, that a lease thereof, tho' no rent was ever received, is within the statute; the intent there- of being that the sheriff should keep their counties in their own hands. 20. H. 2. 1.3.

It seems the better opinion, that a lease, referring only part of the profits, is within the statute. Plowd. 87. Dalt. Sb. 23.

It hath been doubted, whether a lease made by the sheriff of his office or county only by parol, be within the statute. Dalt. Sb. 24.

It hath been adjudged in the case of the sheriff of Nettzegam, who took money for his bailiwick, which he still gave his servants, and which they fold, but he himself received the money, that this was within the statute. 4 H. 4. cap. 5. which prohibits the letting to farm, &c., under certain penalties; and that it was not only malum prohibitum, but likewise malum in se, as tending to extor- tion and other oppressions. Mar. 781. Stinchf. v. North. By the 3 Gen. 1. cap. 15. feet 10. * I shall not be law- ful for any person to buy, sell, let or take to farm, the office of under-sheriff or deputy-sheriff, as by law he may, nor to hinder the under-sheriff in any case of the high sheriff's death, when he acts as high sheriff, from constituting a deputy, nor to hinder such sheriff or under-sheriff from receiving the lawful pro- fitities of his office, or from taking security for the due an- swering the same; nor to hinder such under-sheriff, deputy-sheriff, &c., from accepting the profit of the high sheriff for all such lawful fees as shall be by them taken, nor for giving security so to do, nor to hinder the high sheriff from allowing a falary to his under-sheriff, &c., or other officers.

Altho' the King by his letters patent granteth to the sheriffs in England, without any express words, to make a deputy, yet hath the sheriff power to make a deputy or under-sheriff, who may execute all the min- isterial parts of the office; for experience, says my Lord Habor, proves, that many sheriffs cannot execute it themselves; from the antitye thereof and necessity of the law, the law takes notice of him, and on his be- ing appointed, the law implicitly gives him power to execute all the ordinary offices of the sheriff himself that can be directed by law. Dalt. 3. 514. Hob. 13.

He is, says my Lord Habort, in nature of a general bailiff to the sheriff over the whole shire, as others are over the hundred; and being in effect but the sheriff's deputy according to the nature of a deposition, is removable as an attorney is, and then made irrecoverable, yet may the high sheriff remove him; but having once given him a position, this he may totally remove him, yet he cannot abridge him of any part of his power. Hob. 13. 2 Brand. 281. The high sheriff may execute the office himself, and the under-sheriff hath not, nor ought to have, any estate or interest in the office itself, neither may he do any thing to his own damage, but only in the name of the high sheriff, who is answerable for him. Dalt. Sb. 3. Salt. 96.

By the 3 Gen. 1. cap. 15. feet 8. it is enacted, * That if any sheriff shall die before the expiration of his year, or before he be superseded, the under-sheriff shall neverthe- less continue in his office, and execute the office in the name of the deceased, till another sheriff be appointed and sworn; and the under-sheriff shall be answerable for the execution of the office during such interval, as the high sheriff would have been; and the security given by the under-sheriff and his pledges shall stand a security to the King, and all persons whatsoever, for the performance of the said office.

The under-sheriff, before he intermeddle with the office, is to be sworn; this is enjoined by the statute 29 Eliz. cap. 12. and the form of the oath there prescribed. That before this statute the under-sheriff was never sworn.

1 Rol. Rep. 274. per Col.: 1 Dalt. Sb. 24. cap. 15. feet 19. It is en- acted, That all under-sheriffs of any counties in South Britam, except the counties in Wales and county pal- atine of Chester, before they enter upon their offices, shall take the following oath, viz. ** 1. B. 2. do swear, that I will well and truly serve the King's majesty in the of- fice of under-sheriff in the said county, and promo- te his Majesty's profit in all things that belong to the said office as far as I legally can or may, and will pre- serve the King's rights and all that belongeth to the crown. I will not attend to deference, leen or conceal the King's rights, or the rights of his franchises and whenever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, grants, franchises, suits or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if I may not do it of myself, I will certify and inform some of His Majesty's judg- es thereof, and will not refrine or delay to levy the King's duty, or to prosecute the persons that have in any way raised the same without great grievance to the debtor. I will do right as well to poor as to rich, in all things belonging to my office. I will do no wrong to any man for any gift, reward or promise, nor for favour or ha- rass. I will disturbe no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debts, dues or sums of money belong- ing to the crown. I will take nothing whereby the King may lose, or whereby his right may be disfarbed, injured or delayed. I will truly return, and truly serve all the King's writs to the best of my skill and knowledge. I will return all writs and other processes in a reasonable and punctual manner to the several officers that be within my bailiwick, according to the laws and usages thereof, and to the King's usages and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is ap- pointed by the statutes of this realm. I have not bought, purchased, or taken to farm or contracted for, nor have I promised or given any consideration, nor will I buy, nor sell any bailiff thereupon, or contract for, nor give any consideration whatsoever by myself or any other person for me, or for my use, directly or indirectly, to any per son or persons whatsoever, for the office of un- der-sheriff of the county of which I am now to enter upon and enjoy, nor for the profits of the same, nor for any right or interest, present or future, in or to office belonging thereto. I have not sold or contracted for, or let to farm, nor have I granted or promised for reward or benefit by myself or any other person for me, or for my use, directly or indirectly, any bailiff there- of, or any other place or office belonging thereto. I will

truly
The Trinity-leaves at Deptford shall set up and prelvere beacons and fee-marks, 8 Ed. c. 23.

Penalty of 100L destroying them, and if offender unable to pay, to be deemed conpaid of outlawry, 8 Ed. c. 13. f. 4.

Encouragement for the taking and exporting of fish, 13 Ed. c. 11.

What workmen not to anchor in the fifteenth way on the coast of Norfolk, 13 Ed. c. 11. f. 4.

Hoys and plats not to cross the fea, 13 Ed. c. 15.

That they export goods in caracks or salley, shall pay aliens cufoms, 12 Car. 2. c. 4. f. 4.

Goods shall be imported from the plantations in English ships only, 11 Ed. c. 18. f. 1.

And from Africa, Asia, and America, shall be in English ships, or in ships of the plantations, 12 Car. 2. c. 18. f. 3.

Goods to be imported in English shipping, shall be brought from the first port of shipping, 12 Car. 2. c. 18. f. 6.

Shipping built in the plantations deemed English, 12 Car. 2. c. 18. f. 7.

No goods or mofes of Mofony or Turkey, timber, falt, corn, tar, &c. hemp, flax, raifins, fogs, par-rafles, wines, fpirits, &c. shall be imported but in fhipping or one of the county from whence the goods are first shipped, 12 Car. 2. c. 18. f. 8. 29 Geo. 2. c. 34. f. 19.

Certificates of English ships to be given and regiftered, 12 Car. 2. c. 18. f. 10.

Not to refrain the importing of India goods, 12 Car. 2. c. 18. f. 11.

Not to extend to Scetob goods, seal-off of Raffia, &c., 12 Car. 2. c. 18. f. 16.

Articles of war for the government of the navy, 13 Car. 2. f. 1. c. 9. 18 Car. 2. c. 35. 21 Geo. 2. c. 11. Dowl. 2. c. 33.

Foreign-bills not to have the privilege of English, 13 & 14 Car. 2. c. 11. f. 6.

Ships trading beyond Malaya shall have 2 decks, 16 guns, and 32 men, or pay one per cent. above the cufoms, 13 & 14 Car. 2. c. 11. f. 35. except ships carrying fish for a moiety of their cargo, f. 36. to be British caught, 9 Geo. 2. c. 32. f. 3.

Allowances out of the cufoms to new-built defifible fhips for terms of years, 13 & 14 Car. 2. c. 11. f. 37. 22 & 23 Car. 2. c. 11. f. 3. 5 W. & M. c. 24.

What goods shall not be imported from the Netherlands or Germany, 13 & 14 Car. 2. c. 11. f. 33.

A duty of 5L a ton on French fhips trading to England, 12 Car. 2. c. 18. f. 17. 13 & 14 Car. 2. c. 11. f. 14.

No goods (except fats, wine, &c.) to be carried from Europe to the plantations but from England, 15 Car. 2. c. 11. f. 6.

Every ship arriving in the plantations to produce her register to the governour, 15 Car. 2. c. 7. f. 7.

Penalties for delivering up of merchant ships, 16 Car. 2. c. 6.

Prize ships made free, 19 Car. 2. c. 11.

Ships of 200 tons and 16 guns shall not be delivered up to pirates, &c. without fighting, 22 & 23 Car. 2. c. 11.

Penalty on mariners refusing to defend ships, 22 & 23 Car. 2. c. 11. f. 7.

The matter having delivered a Turk or pirate, shall not leave his ship, 22 & 23 Car. 2. c. 11. f. 3.

No ship being delivered up to a Turk, &c. not having her double number of guns, without fighting, 22 & 23 Car. 2. c. 11. f. 4.

Matter excufed if mariners mutiny, 22 & 23 Car. 2. c. 11. f. 8.

Murder or mutinying to suffer death as a felon, 22 & 23 Car. 2. c. 11. f. 9.

Matter excufed if mariners mutiny, 22 & 23 Car. 2. c. 11. f. 8.

Murder or mutinying to suffer death as a felon, 22 & 23 Car. 2. c. 11. f. 9.

Mutinying or delivering his ship, to suffer as a felon, without clergy, 22 & 23 Car. 2. c. 11. f. 12.

A duty of 5L per ton on foreign ships employed in the coafting trade, 1 Jas. c. 2. c. 18. 8 E.
A duty of tunnage on ships granted, 5 W. & M. c. 2. Cruisers and convoys appointed, 10 W. & M. ft. 1. c. 34. 5 W. & M. c. 20. f. 46. 6 Ann. c. 13. For the government of the navy, 5 W. & M. c. 25. Method of measuring ships, 6 & 7 W. c. 3. f. 10. Seamen on board coal ships exempted from the pref, 6 & 7 W. 3. c. 18. f. 19. Foreign ships not to carry plantation goods, 7 & 8 W. c. 3. f. 22. Ships trading to the plantations to be registered, and to have a certificate, 7 & 8 W. 3. c. 22. f. 17. Encouragement given to commanders and mariners to defend ships, 11 & 12 W. 3. c. 7. f. 11. Hays may pass in the port of London with corn, &c. by Transport without a coquet, 1 Ann. ft. 1. c. 26. Certificates of discharge to be indorsed on coaling bonds, 1 Ann. ft. 1. c. 26. f. 3. Defraying ships by mariners to the prejudice of owners or merchants, felony, 1 Ann. ft. 1. c. 9. f. 4. 4 Geo. 1. c. 12. f. 13. 11 Geo. 1. c. 29. f. 6. For enabling the master, &c. of Trinity-houfe to rebuild Edysyne light-house, 4 Ann. cap. 20. 8 Ann. c. 17. Toll to Edysyne light-house to be paid by ships paying to and from Ireland, 8 Ann. c. 17. f. 1. Ships prohibited to flop at the King's morgings, or taken to the King's ships, 4 Ann. c. 17. f. 21. Directions for preserving ships in distress, 12 Ann. ft. 2. c. 18. 26 Geo. 2. c. 19. f. 5. Raw filk not to be imported from the fignets, except from the Grand feignor's dominions, 6 Geo. 1. c. 14. Fir timber may be imported from Germany, 6 Geo. 1. c. 15. Hovering ships under 50 tons may be compelled to come into port, 6 Geo. 1. c. 21. f. 31. amended as to the bonds, by 12 Geo. 2. c. 22. Penalty on matters fuffering unconfumted goods to be delivered, or wool faden, 6 Geo. 1. c. 21. f. 32. Ships of 50 tons importing brandy, &c. forfeited, 6 Geo. 1. c. 21. f. 29. Rule for the admeasurement of ships, 6 Geo. 1. cap. 21. f. 33. 32 Geo. 2. c. 23. f. 11. Ships of 40 tons importing brandy, &c. forfeited, 8 Geo. 1. c. 18. f. 1. Cap. 4 of the act of war not to take goods on board, 8 Geo. 1. c. 24. f. 7. Penalty for doing applied, one moiety to informer, the other to Greenwich hospital, 3 Geo. 1. c. 24. f. 9. For maintenance of the Skerries lights, 3 Geo. 2. c. 36. Not to take in gunpowder above Blackwall, and to land their gunpowder below Blackwall, 5 Geo. 2. c. 20. f. 4 & 5. Ships not to fire guns above Blackwall after fun-fot, 5 Geo. 2. c. 20. f. 4. Not to melt pitch or tar on board above Blackwall, 5 Geo. 2. c. 20. f. 4. Ships not to moo in St. Stephen's dock, 5 Geo. 2. c. 70. f. 10. Owners not to be answerable for the master, &c. beyond the value of ship and freight, 5 Geo. 2. c. 15. Where freighters may file a bill in equity to discover the true quantity of goods, 7 Geo. 2. c. 15. 2. Ships may be navigated with three fourths foreigners during the war, 13 Geo. 1. c. 3. 28 Geo. 2. c. 16. Aliens may import the goods of Spain, &c. in British ships, 17 Geo. 2. c. 36. f. 4. A reward of 20,000l. for discovering the North-welt passage, 12 Geo. 2. c. 29. Rules for the government of ships of war, 18 Geo. 2. c. 35. repealed 24 Geo. 2. c. 23. and that ait extended to vessels on the lakes in America, 29 Geo. 2. c. 27. Priu ships to be deemed British built, 20 Geo. 2. cap. 45. f. 4. Offences in burning or destroying ships excepted out of the general pardon, 20 Geo. 2. c. 52. f. 14. Commission of appeals confirmed, 22 Geo. 2. c. 3.

**Articles for government of the navy, 22 Geo. 2. c. 32.**

Court martial to try only within the admiralty jurisdiction, 22 Geo. 2. c. 33. f. 4. Act exempt from naval court martial, 22 Geo. 2. c. 33. f. 5. Penalty of refusing to give evidence, 22 Geo. 2. c. 33. f. 17. Penalty of perjury, ibid. Powers of the articles in force over the crews of the ships, 22 Geo. 2. c. 33. f. 21. Allowance of pensions to officers who have behaved well, revered, 22 Geo. 2. c. 33. f. 22. Within what time the trial must be, 22 Geo. 2. cap. 32. f. 23. Penalty on officers taking freight Goods on board the King's ships, 22 Geo. 2. c. 33. f. 54. Duties of the masters of ships, &c. in rivers, deprived of clergy, 24 Geo. 2. c. 45. Stealing shipwrecked goods, deprived of clergy, 26 Geo. 2. c. 19.

Goods imported in British built ships being the property of foreigners to pay aliens duty, 29 Geo. 2. c. 34. f. 28.

**The 22 Geo. 2. c. 33. extended to the lakes, &c. in North America, 29 Geo. 2. c. 27.**

Agreeing for the ramn of neutral ships is piracy, 32 Geo. 2. c. 25. f. 12. Marine, while on board King's ships to be governed according to a rule, 22 Geo. 2. c. 33. 23 Geo. 2. c. 8. f. 43.

**Shire, (Comitatus) From the Saxon Scir, or Scyri, i. e. part or divide** Is well known to be a part or portion of this land, called also a county. King Alfred first divided this land into shires, and those again into hundreds and tithings; of which shires there are in England forty, and in Wales twelve. In privilegium chartis uii conciliarum quietius eft, a fîr, intelligentissimum officium esse immunitate, qua quis exhibuit a fîr in charta curis vicissim (quas eoniam fîr vocant) profanant vel perficeret, &c. The affizes of the fîre, or the assembly of the people of a county was called forgerem by the Saxons. This division made by King Alfred was in Sarropia, which we now call Shires, in centurias, which we call hundreds, and in decessions, which we call tithings. The old Latin word was fîrea, non legi dimittit fîrea, id est, provincia in diccionariis. Brompton, pag. 956.

**Shire-of-eyes, Is he that keeps the county court; his office is fo incident to the sheriff, that the King cannot govern without it.** A Rep. 4 Reps. of eyes, or eyers, was an anciently judge of the county, by whom trials for land, &c. were determined before the conquest. Lamb. Peramb. p. 442.

**Shire-mare. See Shire and Turn.**

**Shoemakers, Shall not use the mystery of a tanner, 13 Ro. 2. c. 21. R. 2. c. 16. 2 H. 6. c. 7. 2 & 3 Ed. 6. c. 9.**

Liberty given to shoemakers to tan their leathers, 4 H. 4. c. 35. Regulation for the Shoemakers in and about London, 4 Ed. 4. c. 7. 14 & 15 H. 8. c. 9. 1 Ed. 5. c. 1. 1 Jac. 1. c. 22. f. 29. 9 Geo. 1. c. 37. Not to use the mystery of a cutters, 11 H. 7. c. 19. Exportation of shoes and boots prohibited, 5 & 6 Ed. 6. c. 15. f. 5. permitted 13 & 14 Car. 2. c. 7. f. 6.

What security to be given not to relax them; And what drawback allowed, 9 Ann. c. 11. f. 39. 40. 41. 42. 12 Ann. ft. 2. c. 9. f. 64. Directions for the performing shoemakers, 1 Jac. 1. c. 22. f. 28. &c.

Satisfaction to be made by journeymen purloining shoes, &c. 9 Geo. 1. c. 27. Avid, &c. buying or taking them in pawn, 9 Geo. 1. c. 27. f. 2.

Punishment of offenders unable to make satisfaction, 9 Geo. 1. c. 27. f. 1. 2.

Houses of suspected persons to be searched, and goods fraudulently obtained to be restored to the owner, 9 Geo. 1. c. 27. f. 3.

Perfons retained, and engaging with new master before the first work is performed, how punished, 9 Geo. 1. c. 27. f. 4.

**Shooting,**
Foreign alamodes, &c. to be sealed at the Custom-house, 5 W. 41. 2. fo. 45. 6 & 7 W. 3. 1. 18. f. 1.

A lamodes, &c. not sealed, forfeited, 8 & 9 W. 3. 3. 36. 9 & 10 W. 3. 3. 43. f. 5.

No drawback on exporting foreign alamodes, 8 & 9 W. 3. 3. 36. f. 5.

A duty per pound weight on imported lustrings and alamodes, is 10 W. 3. 3. 50.

Alamodes and lustrings to be imported only at London, 9 & 10 W. 3. 4. 43.

Chapter of the lustring company confirmed, 9 & 10 W. 3. 3. 43. f. 5.

Penalty on officers of King's ships importing silk, 9 & 10 W. 3. 4. 43.

Penalty of 500l. and pillory on altering the custom-house or company's marks, 9 & 10 W. 3. 4. 43. f. 5.

Penalty on custom-house officers colluding, 9 & 10 W. 3. 4. 43. f. 6.

Wearing French alamodes, &c. prohibited, 5 Ann. 2. 20.

Officers of customs only have power to seize, 5 Ann. 2. f. 3.

Foreign silk mixed with gold or silver, forfeited, &c. 6 Ann. 2. f. 14.

A duty on printed silk, callicoes and floss, 10 Ann. 2. 4.

Perjury printing silk, &c. at other places than their usual refidence, to make a particular entry of the silk before printing, 1 Geo. 2. 2. 3. 36. f. 21.

Premium on silk manufactures exported, 8 Geo. 1. c. 15.

Two thirds of the warp to be silk, 9 Geo. 1. c. 8. f. 9.

Want of certificate supplied, 1 Geo. 2. 2. 17. f. 9.

The silk in the fluff to be of double the value of the bounty, 1 Geo. 2. c. 17. f. 10.

The importation of raw silk from the Straights, (except from the Grand Seignior's dominions) restrained, 6 Geo. 1. c. 14.

Rewarded to Sir Thomas Lamb for inventing silk engine, 5 Geo. 2. c. 4.

A certain quantity of Spanish silk permitted to be imported, 14 Geo. 2. c. 4.

Raw silk of China to pay the same duty as Italy, 23 Geo. 2. c. 9.

Raw silk of the plantations may be imported free, 23 Geo. 2. c. 20.

Raw silk of Perfiia, bought in Raffia, may be imported from any port in Raffia, 23 Geo. 2. c. 34.

Foreign silk and velvets to be sealed at the custom-house, 23 Geo. 2. c. 19.

On alication or information for the penalties of this act, defendant to give bail, 26 Geo. 2. c. 21. f. 8.

Organized Italian thrown silk may be imported from any port in any vefsel, till 1 December 1757, 30 Geo. 2. c. 17.

Penalty of importing foreign silk ribbons, laces or girdles, 3 Geo. 3. c. 21.

Act to prohibit the importation of foreign wrought velvets and forrets for a limited time, and for preventing unlawful combinations of workmen employed in the silk manufacture, 6 Geo. 3. c. 28.

Silk-rover and thumper, (mentioned in flat. 14. Car. 2. cap. 15.) Is a trade or mystery that winds, twits and spins, or throws silk, so fitting it for use; they are incorporated by the said act; wherein there is mention also of silk-winders and doublers, which are members of the same trade. Cowell, edit. 1724. See 20 Car. 2. c. 2.

SILVA CAECUS. See SILVA CAEBUS.

Simnell, (Siminellus) From the Latin Siminii, which signifies the finest part of the flower; panis similegenus, Siminell bread. It is mentioned in flat. affin similiis, (and is still in use, especially in Lent.) bread made into a Siminell bole, 26 Geo. 2. 2. 17.

Silk-rover and thumper, (mentioned in flat. 14. Car. 2. cap. 15.) Is a trade or mystery that winds, twist, and spins, or throws silk, so fitting it for use; they are incorporated by the said act; wherein there is mention also of silk-winders and doublers, which are members of the same trade. Cowell, edit. 1724. See 20 Car. 2. c. 2.

Simmon, (Simoni, venditore rei facere) So called from Simon Magus. It was agreed by all the justices, Trim. 8.
shall for any sum of money, reward, gift, profit or be nefit, directly or indirectly, or for, or by reason of any promise, agreement, grant, bond, covenant, or other assurance of, or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, or for, or by reason of any sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefit, dignity, prebend, and living ecclesiastical; and that every person so corruptly taking, procuring, seeking, or accepting any such benefit, dignity, prebend, or living, shall thereupon, and from thenceforth, be adjudged a disabled person in law, to have or enjoy the same benefit, dignity, prebend, or living ecclesiastical.

By sect. 6. it is enacted, * That if any person shall for any sum of money, reward, gift, profit, or commodity whatsoever, directly or indirectly, other than for lawful and usual fees, or for or by reason of any promise, agreement, grant, covenant, bond, or other assurance of, or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly, grant, sell, alienate, or dispose of any such benefit or right, or mortally void, frustrate, and of none effect in law; and that it shall and may be lawful for the Queen, her heirs and successors to prevent, collate unto, or give, or below every such benefit, dignity, prebend, and living ecclesiastical for that time or term only; and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefit, dignity, prebend, and living ecclesiastical; and that every person so corruptly taking, procuring, seeking, or accepting any such benefit, dignity, prebend, or living, shall thereupon immediately from and after the infevating, installment, or induction thereof, have, the same benefit, dignity, prebend, and living ecclesiastical, shall be forfeited, void, and that the patron or person, to whom the advowson, gift, presentation, or collation, shall by law appertain, shall and may not in any manner whatsoever, directly or indirectly, grant, sell, alienate, or dispose of the same, or any part thereof, or mortally void, frustrate, and of none effect in law; and that it shall and may be lawful for the Queen, her heirs and successors to prevent, collate unto, or give, or below every such benefit, dignity, prebend, and living ecclesiastical for that time or term only; and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefit, dignity, prebend, and living ecclesiastical; and that every person so corruptly taking, procuring, seeking, or accepting any such benefit, dignity, prebend, or living, shall thereupon immediately from and after the infevating, installment, or induction thereof, have, the same benefit, dignity, prebend, and living ecclesiastical, shall be forfeited, void, and that the patron or person, to whom the advowson, gift, presentation, or collation, shall by law appertain, shall and may not in any manner whatsoever, directly or indirectly, grant, sell, alienate, or dispose of the same, or any part thereof, or mortally void, frustrate, and of none effect in law; and that it shall and may be lawful for the Queen, her heirs and successors to prevent, collate unto, or give, or below every such benefit, dignity, prebend, and living ecclesiastical for that time or term only; and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefit, dignity, prebend, and living ecclesiastical; and that every person so corruptly taking, procuring, seeking, or accepting any such benefit, dignity, prebend, or living, shall thereupon immediately from and after the infevating, installment, or induction thereof, have, the same benefit, dignity, prebend, and living ecclesiastical, shall be forfeited, void, and that the patron or person, to whom the advowson, gift, presentation, or collation, shall by law appertain, shall and may not in any manner whatsoever, directly or indirectly, grant, sell, alienate, or dispose of the same, or any part thereof, or mortally void, frustrate, and of none effect in law; and that it shall and may be lawful for the Queen, her heirs and successors to prevent, collate unto, or give, or below every such benefit, dignity, prebend, and living ecclesiastical for that time or term only; and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefit, dignity, prebend, and living ecclesiastical; and that every person so corruptly taking, procuring, seeking, or accepting any such benefit, dignity, prebend, or living, shall thereupon immediately from and after the infevating, installment, or induction thereof, have, the same benefit, dignity, prebend, and living ecclesiastical, shall be forfeited, void, and that the patron or person, to whom the advowson, gift, presentation, or collation, shall by law appertain, shall and may not in any manner whatsoever, directly or indirectly, grant, sell, alienate, or dispose of the same, or any part thereof, or mortally void, frustrate, and of none effect in law; and that it shall and may be lawful for the Queen, her heirs and successors to prevent, collate unto, or give, or below every such benefit, dignity, prebend, and living ecclesiastical for that time or term only; and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefit, dignity, prebend, and living ecclesiastical; and that every person so corruptly taking, procuring, seeking, or accepting any such benefit, dignity, prebend, or living, shall thereupon immediately from and after the infevating, installment, or induction thereof, have, the same benefit, dignity, prebend, and living ecclesiastical, shall be forfeited, void, and that the patron or person, to whom the advowson, gift, presentation, or collation, shall by law appertain, shall and may not in any manner whatsoever, directly or indirectly, grant, sell, alienate, or dispose of the same, or any part thereof, or mortally void, frustrate, and of none effect in law; and that it shall and may be lawful for the Queen, her heirs and successors to prevent, collate unto, or give, or below every such benefit, dignity, prebend, and living ecclesiastical for that time or term only; and that every person or persons, bodies politic or corporate, that shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of the sum so given, taken, or had.
when it shall become void, and he is afterwards thereunto preffented, it is a fimonials promotion. 

Cra. Cor. 425.

Birt v. Manning.

These three laft cafes may ferve to confirm what has been observed, that in the cafe of fimony, it is unlawful for a father to do what may not be done by a ftranger.

If no agreement be to pay five pounds per annum to the widow of the laft incumbent, or ten pounds per annum to his fon long as he fhall be a ftrident at Cambridge and unpreferred, neither of thefe is fimony. 


A bond with condition that the incumbent fhall not be a ftranger five years after his living is not fimonials; this being a lawful condition. 


A. co?nvened that B. his fon fhould marry C. the daughter of D. in confideration of this marriage D. co?nvened to advance 300l. for his daughter's portion, and A. co?nvened to fettle certain lands on B. and C. there were also co?venants on the part of A. for the value of thefe lands and quiet enjoyment, and a co?nvent on the part of D. to procure a certain benefit for B. on the next avoidance of it. It was faid that this was no fimonials contrac? but not in confideration of the marriage only, but in addition thereto was written by the wife of the incumbent, although the patron is not pri? to it. 


Cra. Jac. 385.

If a clerk co?racts to give money for being preffented to a church, and after preffented gratis; this is fimony. 

Lane 103. Kitchin v. Calvert.

In this cafe the clerk is an unfit perfon, for having at that time been capable of intending to buy a living cor?rupt. It also implies fome defect in him; for the pre?funption is that perfons well qualified will always be preffented, and have therefore no need to purchase. With this agrees Cra. Elim. 789. where it is faid to be ve?luntary that perfon deferted emended vel vellendi spiritu vel spirituibus adeurreret. 

This offence may be by a corrupt contrac? between ftrangers, even when neither the patron nor incumbent is pri? to it; for if there be a corrupt contrac? it, matters not by whom it is made: But in this cafe the pre?fence is not fimonials, and only fimonials promis. 


Lane 103. Kitchin v. Calvert.

A second brother, having a right to preffent, made a corrupt contrac? to preffent a certain perfon; but in or? der to elude the statute furrendered the right of preffent?ing to his elder brother. He was not being privy thereby pre?enting the perfon who by the agreement was to be preffented. It was held that the corrupt contrac? is fimo?nial, and that its being performed by an innocent perfon makes no alteration in the cafe. 

Lane 73. Calvert v. Kitchen.

An agreement was between Richards a friend of Bough?ton, and Taylor, that Boughton fhould preffent Hides, and that Taylor fhould pay Richards 20l. per ann. for five years, in cafe Hides to long lived, for the use of Boughton. In corrupt impid Hides pleaded he had no notice of the agreement at or before his preffentation. On demurrer it was held that the corrupt contrac? was enough, and that it was immaterial whether he had notice or not. 

3 Lev. 338. Rex v. Hides and others.

If a ftranger, the church being void, contracted with the patron for a grant of the void turn, and preffents a clerk not privy to the contrac?; yet, although the grant being of a chofe in action is void, as the incumbent committed in his charter, he is not to be confidered as an ufarer, but as one fimonials promis. 


So where a father, the church being void, contracted with the grantee of the void turn to permit the grantor to preffent his fon, and it is done, this is a fimonials promotion. 


Bouv. v. Bower.

So if a father, in consideration of a clerk's marrying his daughter, doth co?ven with the father of the clerk, to procure for him a preffentation to a certain church
was ordered to be entered upon the judgment, and a perpe-
tual injunction was granted. A new bond of refigna-
tion in penalty of 200l. a much less sum was indeed de-
creed; but no action was to be brought on it without 
leaves of the court: And the lord keeper said he did not 
know that such bonds were used before the statute; that 
they had been force allowed only to preserve the benefic 
from suits against the incumbent, or to prevent non-refi-
ersence or a vicious course of life in an incumbent; and that though a bond be to refign general-
ly, he would not allow it to be put in suit unless some 
such real reason was found for requiring a refigna-
tion, be-
cause a door would be thereby opened for simony. Ep. 
Cefes Abr. 256. Hedges v. Thurnam.

So a bond to refign on request shall not be made use of 
to turn out the incumbent, unless there be non-refi-
erence or gross misbehaviour; and if any other use be made of it, the court will grant an injunction. Chan. Prec. 513. 
Hawkins v. Turner.

From some of these cases, and particularly the last which was Walf. 5 Gis. there is reason to conclude that general 
and bonds of refignation were not then held good in 
equity: But later determinations threw that they now are. 
A bond to refign generally has been often held good in the 
court of Chancery. Str. 227. Pelle v. County of 
Carlisle.

Caspel, on presenting Peel to a living, took a bond to refign when the patron's nephew for whom it was 
itended should be of age. At his coming of age it was agreed that, instead of refigning, he should continue to 
hold the living on paying the nephew 30l. per annum. After paying this seven years, Peel refused to pay it any 
longer. The bond hereupon being put in suit, Peel brought his bond as evidence, and the incumbent, the 
mony repaid. An injunction was granted, not as was said 
on account of the invalidity of the bond, for that was 
held to be good, but because an ill use had been made of it. As to the money which had been paid on the imponi-
ental contrac.t, Pelle was left to his remedy at law for it. Str. 534. Pelle v. Caspel.

3. Whether the ordinary is obliged to accept a refigna-
tion on such bond; and some objections to these bonds con-
sidered.

However it may be now settled, that such bonds are 
good both in law and equity; a question has arisen, and is not perhaps settled by judicial determinations, whether 
the ordinary is obliged to accept a refignation on such a 
bond? It is in the power of the ordinary to discourage the 
use of such bonds, for he may refuse to accept a refigna-
tion made by constraint of one of them. Wolf. Can. 
Int. 24.

The bishop refused to accept a refignation on such a 
bond, and ordered the incumbent to continue to serve the 

An ordinary is not obliged to accept a refignation on 
favor of any one of the benefices. Griffith v. Griffith. 
An ordinary is not obliged to accept a refignation on 
such a bond, and ordered the incumbent to continue to serve the 

An ordinary is not obliged to accept a refignation on 
favor of any one of the benefices. Griffith v. Griffith. 
An ordinary is not obliged to accept a refignation on 
such a bond, and ordered the incumbent to continue to serve the 
this, might as well advance the money agreed upon at first, or, if that did not suit him, give an absolute bond to pay the money, without any condition, but this bond might still be committed, and with as much ferocity, what good end would it answer to prohibit such bonds, which, as is allowed by all, may be made use of by a parish to punish neglect of duty or immoral conduct in the incumbent, and for other good purposes? 4 Bac. Abr. 473. 474.

Another objection is, that, when the patron takes a general bond of renunciation, it is only a preterituation during pleasure. Be it so, and I will suppose, which is the utmost that can be supposed, that it is not taken with a design to save the incumbent into great care in the event of his being obliged to let someone succeed or retire after wards into the benefice. It by no means necessarily follows that the church, which is the grand thing to be guarded against, will therefore be filled with an unfit person. If the successor, which may be the cafe, is better qualified for the office, the interest of religion will be advanced by the exchange. If he be not so well qualified, it is a misfortune; but it is such a one as, in the present circumstances of things, cannot be entirely prevented. While the right of patronage, or I might have said, while human nature continues as it is, there will be mislakes in judgment, and patrons will be involved in difficulties, and will perhaps prevent any real happiness of a relation or friend; but it makes no difference, whether either of these happen; when the benefice is at first void, or at any given time after; or if there be any, it is in favour of the practice, for the mischief for long at all the first incumbent holds the living, is thereby postponed, 4 Bac. Abr. 474. For more learning on this subject, see 19 Vin. Abr. & 4 Bac. Abr. tit. Simony.

Simpler, Signifies simple, or fingle; as charta simplex is a deed poll, or single deed.

Simpler beneficium, A minor dignity in a cathedral or collegiate church, a fine- cure, a pension out of a parochial church, or a sine-cure, and having a kind of like benefit, is opposed to a cure of souls, and which therefore was confid- ered with any parochial cure, without coming under the name or censure of pluralities. Cowell, ed. 1727.

Simpler jurticiarius. This office was anciently used for any public judge, that was not chief in any court. There is a writ registred, beginning thus, — I John Week, a single judge of the Common Places, &c. Id. ib.

Sino cum, Are words used in indictions, and de- clarations of trespass against several persons, when some of them are known, and others not known; as, the plaintiff declares against A. B. the defendant, sinful cum C. D. E. F. and divers others unknown, for that they committed divers trespass, &c. 2 Lev. 139. If a writ is generally against two or more persons, the plain- tiff may declare against one of them with a simul cum; but if a man bring an original writ against one only, and declares with a simul cum, he abates his own writ. Camb. 260.

Sine allentu rapptali, Is a writ that lies where a dean, bishop, prebendary, abbot, prior, or master of an hospital, alien the land holden in the right of his house, without the content of the chapter, convent and fraternity, in which case his successor shall have this writ. F. N. B. fol. 195.

Sine cura, Is a writ of a rector of a parish hath a vicar under him endowed and charged with the cure; so that the rector is not obliged either to do duty or residence. Degge's Parf. Canon. 195. And when a church is fallen down, and the parish becomes destitute of parishioners, it is said to be a Sine-cure. Wood's Astr. 153.

Sine bire, A writ brought by a person who was accused to the church court, who, before the trial, for turning the case into English, when judgment was given against the plaintiff in an action, he was said to be in meretriciorum pro falsa clausura suis; and for the defendant, eat inde fine, and the defendant was discharged, 2 Litt. 220.

Sine omnis, Is a writ of allegation whereby, if all things have not been alleged, it is allowed, that two or more of them may finish the business. See Affirmation, and F. N. B. fol. 165. & 111. and Reg. Orig. fol. 202, 206, &c.

Sinking-fund, Is a provision made by parliament, consists of sums of money from other funds, appropriated for paying the publick debts of the nation; and many late statutes have been made for applying the growing produce thereof. All money is often borrowed on the credit of the sinking-fund, usually one million a year towards raising funds for publick service. See Funds, Silt, Southsea-Sea Company.


Sisicet, Is a writ that lies for a creditor against his debtor, for money numbered, that hath before the sheriff in the county-court acknowledged himself to be a bankrupt, but he will not be committed or removed therefrom. 25 John Abr. 433. &c. 1 W. 40. 185. &c. &c.

Sitientes, The standing of any place, the situation of a capital house or manufac, a territory, or part of a country, as the site of the late dissolved mo- nutery of, &c. i. the place where it stood. Cowell, ed. 1727.

Sithwendam, Such a gentleman as had the office to lead the men of a town or parish. Leg. In. c. 56. Dug- dale, in his Antiquitias of Wartocthiirs, observes, that the hundreds of Knigbttsle, Kinnet, and Hemingford, in 16 H. 6. of Edward the Third, of those of Sibtho, Sibthec, Stibho, Sibthec, Sibhede, Stibho, Sibho, &c., so that Sethwidhunam, Sithwendam, Sithwoodam, Sithwoodman, was only the chief officer within such a division, the most honorable of the hundred. Cowell, ed. 1727.

Sithwir, (Sax.) The frachity or liberty of a cer- tain company of men, a hundred. Rot. F. 16 Hen. 2. sometimes written Sipto. Caria litem legalum domini. Cowell, ed. 1727.

Sithwirdi, Were servants of the fame nature with rod- knights, viz. bound to attend their Lord wherever they went, yet they were accounted among the Englifh-Saxons, as freemen, because they had lands in fee, subject only to such duties as were imposed by custom. Leg. In. cap. 26. And in the laws of Henry 1. cap. 26. Servi ali clown, alii genitura, i. Liberi ali Thibghindi, ali Sithwirdi, ali Thyfridindi. See Hiberni domini.

Siviri, In the fabrication of our milled money, the gold or silver is cut out of the molten pest into long flat bars, which bars are drawn thro' a mill, (wrought by a horse,) to produce the just thickness of guineas, crowns, &c. Then with forcible engines, called cutters, which answer exactly to the respective sizes or dimensions of the money to be made, the round pieces are cut out from the flat bar, shaped as aforefaid, after which the residue is called Skeld, and is melted down again. See Leander's Essay upon Coin, pag. 96.

Skiarralla, or Skarrailla, Seems to be an engine for catching of fish. It was especially given in charge by the judges in Eyre, that all juries should enquire de bin qui futurant semin habilitati & Skarralia. Crest. 2. Hoy. fol. 38. Creder, is that which we now call a fear, or wound. Si effe extrahatur a capite & Skerda magna levatur, &c. Brayth. lib. 3. cap. 24.

Skerries, (Iland or rock). Patent granted to William French, esq; for a light-house there, confirmed, 3 Geo. 2. c. 39.

Skeiling, None shall take the wool from any skeels-kin or Lamb-kin, unless he make leather or parchment of it, &c. 5 El. 5. c. 22. f. 1.

None shall buy skins but to make leather or parchment, &c. 5 El. 5. c. 22. f. 1.

Exportation of skins and leather prohibited, 5 El. 5. c. 22. f. 2.

Skeels, (howe or stone). Before the wool was turned into English, when judgment was given against the plaintiff in an action, he was said to be in meretriciorum pro falsa clausura suis; and for the defendant, eat inde fine, and the defendant was discharged. &c. 2 Litt. 220.

Of sheep skins tawed permitted, 8 El. c. 14.

None but Artizan skinner shall dref or export black coney-skins, 3 for. c. 1. c. 9.

Merchants shall not buy coney-skins or morkins in small quantities, 3 for. c. 1. c. 9.

Duty on skins imported, 9 Geo. 1. c. 11. f. 1.

Drawback of two-thirds on exportation, 9 Geo. 11. c. 39.

Additional duty on skins imported, 10 Ann. c. 26. f. 1.

Drawback
that tilled and manured his inland or demesne (yielding
operam, not consum, work, not rent) and were thereupon
called his Sckemen, or ploughmen. Spelman of Fruds,
cap. 7. But after the conquest, the proper Sckemann, or 
Sckemane, or Scemen, of land, was those tenantry who,
and the common law, of which tenant from pro-
cantly to be called Sckemann. Cowell, edid. 1727.
Sceatn. Signifies a suffum of grinding at the Lord's
mill; and there is land-sacre, where the tenants are
bound to it; and brea-sacre, where they do it freely out
of love to their Lord. Cowell, edid. 1727.
Sconce, See, Scon, Scone. A privilege, or liberty, or franchise.
Scon, See. A privilege, or liberty, or franchise.
Scone, See, Scon. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saca, or Saca, was the ter-
ritory or precinct in which the chief Lord did exercise
his Sac, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Skeate. See, Set. A privilege, or liberty, or franchise.
Skeate, Set. See, Set. A privileg, or liberty, or franchise.
Skeate, Set. See, Set. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Ska, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Skeat, See. A privilege, or liberty, or franchise.
Skeat, See, Scon. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Skeat. See, Scon. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Skate, See. A privilege, or liberty, or franchise.
Slaves. There are no slaves in England; one may
be a villain here, but not a slave. 2 Stat. 666.
Smells, A filip; and there is a tenure of land by
holding their filip. Cowell, edid. 1727.
Slaughtr,er. (mentioned in Pet. 43. Siam, pag. 11.) A
certain rent paid to the cattie of Wignams, and is in
lieu of certain days work in harvest, heretofore referred
to the Lord from his tenants. Cowell, edid. 1727.
Smaile. Is that of which painters make blue colour.
Stat. 11 Ed. 10. 7 Ed. 7.
Smok-farthings. The penteecods or eulumy
oblations offered by the diseased inhabitants within a
diocees, when they made their procession to the mother
cathedral church, came by degrees into a flanding annual
rent, called Smok-farthings. Cowell, edid. 1727.
Smok-farthings. There is smok-falter and smok-pony
paid to the ministers of divers parishes, and to be paid
in lieu of tithe-wood; or it may, as in places at this
day, be a continued payment of the Ramespet or Peter-
paton. Cowell, edid. 1727.
Smuggling. See Privileges.
Smok-falter. There was a custom in the vil-
lage of Wyleglys, that all thefervile tenants should pay for
their tenement a duty called Smuttering-falter, i. e. for
each tenement, 1 den. ob. to the abbot of Calkeby.
Place, 15 Ed. 1.
Snuff. The penalties of adulterating tobacco, ex-
tended to certain snuff, 5 Geo. I. c. 11. f. 22. The duties on
Sot. (Socia) According to Milhej, is a word sig-
fying a power or liberty of jurisdiction; whence our Law-
Latin word Sota, for a feignity enfranchised by the
King, with liberty of holding a court of his Sotemen,
Society, or Society, in England, a whole tenure is hence called Sac-
se. Cowell, edid. 1727.
Sotemen, See SOCAGE.
Sotemen, See SOCAGE. See, Set. A privilege, or liberty, or franchise.
Sotemen, See SOCAGE. See, Set. A privilege, or liberty, or franchise.
Sotemen, See SOCAGE. See, Set. A privilege, or liberty, or franchise.
Sotemen, See SOCAGE. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Sotemen, See SOCAGE.
Sotemen, See SOCAGE. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Sotemen, See SOCAGE.
Sotemen, See SOCAGE. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Sotemen, See SOCAGE.
Sotemen, See SOCAGE. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Sotemen, See SOCAGE.
Sotemen, See SOCAGE. Generally signify liberty or privileges exempted from customary burdens and
impositions. Sometimes Saka, or Saka, was the ter-
rity or precinct in which the chief Lord did exercise
his Saka, Sale, or Saka, his liberty of keeping court, or
holding trials within his Saka or jurisdiction. Some-
times it signified a payment or rent to the Lord for using
his land with such liberty and privilege, as made the
tenant a Sconen, or freeholder, upon no other conditions
than a quit-rent. Cowell, edid. 1727.
Sotemen, See SOCAGE.
Punishment of papists infiltrating, 1 Geo. 1. cap. 47. See 3 Geo. 2. c. 52. f. 15.

Offences against mutiny acts excepted out of general pardon, 20 Geo. 2. c. 12. f. 15.

Foreign protesbants may serve as officers or engineers in America, to the number of 50 officers, and 20 engravers, 2 Geo. 1. cap. 2. f. 5.

For recruiting the army in America, 29 Geo. 2. c. 35.

Foreign troops brought over for the defence of Great Britain in 1757, to be quartered as British, 30 Geo. 3. c. 2.

Men impressed according to the act not to be taken out of the service but for some criminal matter, 30 Geo. 2. c. 18. f. 20.

Mariners not liable to arrests for court or crimes, or debts of the value of 10/. 4 Geo. 3. c. 8. f. 37.

SOLICITOR. See Dol bert. See 3 Geo. 2. Solicitor.

Solicitor (Solicitor.) Is a man employed to take care of, and follow suits depending in law or equity.

COWELL, ed. 1727. See Attorney.

Solidatum. In the matter gender signifies that absolute right or property which a man hath in any thing. COWELL, ed. 1727. See Right.

SULFUR. — In common law. See Sulphur.

SULFUS terreæ. In common law. Sulphus terreæ. Sulphus terreæ dim. que faciat duo filius 12 dim. Demesne. In which book, this word is only used in Kent, and no other county. Various films terreæ sunt 15 Carucates. 1 Infol. fol. 15. According to this computation Sulphus terreæ is about 150 acres, and 7 filins are about 1252 acres, which is less than 17 carucates, for at the lowest carucate terreæ is 100 acres. But my Lord Coke was of opinion, that it did consist of no certain number of acres. This word Sulphus was probably from the Sax. Sul a plough, but what quantity of land this Sulph, fellow, or fellowing did contain, is not so easily determined. It seems to have been the same with a plough-land; so that in Domesday book, Se definde pro uno carucato., is, it is taxed for one carucate or plough-land. COWELL, ed. 1727. See Soil or Solar. (Solarium) A chamber or upper room. Id. ib. SULPRODA. See a term of art, signifying that a man hath wherewith to pay, or, as we say, is a person fitly and industrious. COWELL, ed. 1727.

SULSIT ad diem. Is a plea in action of debt on a bond, bill, &c. that the money was paid at the day limited. MAD. CAFF. 22. To a bond of 50 years standing the defendant pleaded Solit ad diem, relying on the presumption; the plaintiff proved payment of interest two years after the day; this falsifies the plea: The defendant should have pleaded upon the act for amendment of the law, that he paid the money after the day. 1 Strange 652. See Payment.

Solution duo militiae parliament. And SOLUTION Solumienses Burgess. Parliament. Are words whereby of officers and burghers may recover their allowances, if it be denied. Stat. 35 H. 8. c. 11.

SOMERSET house. Affixed to Queen Charlotte for life. 2 Geo. 3. c. 1.

SOMERSETSHIRE. Its history, how preferred, 1 TAC. 1. c. 23. See Fifis. COWELL, ed. 1727.

SON. Abhor. A justification in an action of assault and battery; because the plaintiff made the fist assault, and what the defendant did was in his own defence. 2 Lit. Abr. 523. See Assault and Battery.

SOTAGE. Was according to SOW, pag. 284. A tax of forty thallings laid upon every Knight's see.

STAMPS. Made to be two-pence of four-imparted, pays at flat, 2 H. & W. MSS. 2 cap. 4. f. 47. And every pound 2d. 10 Ann. cap. 19. f. 1. And a penny, 12 Ann. fl. 2. c. 9. f. 1. And home made one penny, 10 Ann. cap. 19. f. 1. And one halfpenny, 12 Ann. fl. 2. c. 19. f. 1.

Wine also sub not to be exported, 2 & 3 Ed. 6. c. 26. 2

SOU

The duty laid on foep, 10 Ann. 19. made perpetual and part of general fund, 3 Geo. 1. c. 7. 12 Ann. fl. 2. c. 9.

Drawback on tax ued in the woollen manufacturies, 10 Ann. 19. f. 29. 12 Ann. fl. 2. c. 9. f. 16. For every 105 pounds, every 256 pounds, every 856 pounds, besides the rate of the cafe, 10 Ann. cap. 19. f. 8.


Cake foep need not be barreled, 10 Ann. cap. 26. f. 17.

Duties laid by 12 Ann. fl. 2. c. 9. made perpetual, 6 Geo. 1. c. 4. in order to be subscribed into South Sea fund, and the surplus mortgaged to the bank, by 2 Geo. 2. c. 3.

Penalty on concealing foep, 1 Geo. 1. c. 36. f. 12. On beginning to work without giving notice, 11 Geo. 1. c. 30. f. 33.

Penalty on officer falsely admitting notice, 11 Geo. 1. c. 30. f. 38. See Customs, Funds.

SUPPAS. (Princeps,) Naturalized, 4 Ann. 1. c. 1 & 4.

See Bing.

SUTTER. See Conurbation, Witchcraft.

SUTTLE. In sums of money lent upon utter, the principal was called for, as distinguished from the interest. PRY, COLL. tom. p. 161.

Salian scripct, A for or a howar. King John granted to Robert de Hyde, lord in Beren of the honour of Montague, and to be held. For service, or service or service, or service, or service, for service, every man of the people, 2 Geo. 2. c. 17.

Sovereignty, A piece of gold current at twenty-two thallings six-piece in 1 H. 8. when by indenture of the mint, a pound weight of gold of the old standard was to be coined into twenty-four fourrells. In 34 Hen. 8, they coined fourrells at twenty thallings a-piece, and half fourrells at ten thallings. In 4 Edw. 6 Sovereignt of gold at twenty-four fourrells a-piece. In 5 Edw. 6. Sovereignt at thirty thallings. So in 2 Eliz.

SOUTHAMPTON. Its charter confirmed, 3 & 4 TAC. 1. c. 15. For improving the waterworks there, 20 Geo. 2. c. 15. 19. See Harbours.

SOUTH-SEA Annuities. See South-Sea Company.

SOUTH-SEA Bonds, Sealing them made felony, 2 Geo. 2. c. 25. Joel. 3.

SOUTH-SEA Company. Establishment of the South-Sea company and their fund, 9 Ann. 21. 3 Geo. 1. c. 9.

Their flock exempt from taxes, 9 Ann. 21. f. 38. Company to have the places they shall possess, and the prizes taken, 9 Ann. 21. f. 50. 51.

Commanders of ships to obey company's instructions, 9 Ann. 21. f. 52.

No embargo on their ships unless named, 9 Ann. cap. 21. f. 54.

Not to interfere with the East-India company's trade, 9 Ann. 21. f. 58.

Their ships to pass and repass through the fireatts of Madagascar, 9 Ann. 21. f. 58.

Treasurer of the navy, &c. may mortgage South-Sea flock for the publick use, 10 Ann. 19. f. 185.

Their fleet for the fift, 9 Ann. 21. f. 59.

The fame persons not to be directors of this company and of the Bank or India company, 9 Ann. 21. f. 61.

Engagement of the South-Sea funds, 1 Geo. 1. c. 21. 5 Geo. 1. c. 19. 6 Geo. 1. c. 4. Not to purchase crown lands, nor lend money to the crown, 6 Geo. 1. f. 4. Joel. 66.

Annul-
Annunities of 600,000 l. reduced to 500,000 l. 3 Geo. 1. c. 9. f. 15.

Lottery annuities subscribed into the South-Sea stock, 5. Geo. 1. c. 9.

Agreement with the South-Sea company for redeeming the public debts, 6 Geo. 1. c. 4.

Exchequer bills made out for the South-Sea company, 6 Geo. 1. c. 10.

For punishing the frauds of the South-Sea directors, &c., 7 Geo. 1. c. 2. & 28. 8 Geo. 1. c. 23. 9 Geo. 1. c. 23. 10 Geo. 1. c. 14. 13 Geo. 1. c. 22.

2 Geo. 2. c. 8.

For granting their flock into the bank and India company, 7 Geo. 1. c. 5.

Discharge of their payments to the publick, 7 Geo. 1. c. 16. 7 Geo. 1. c. 18. 7 Geo. 1. c. 19. 6 Geo. 1. c. 20. 6 Geo. 1. c. 24. 6 Geo. 1. c. 25.

For redemption of South-Sea annuities out of sinking fund, 4 Geo. 2. c. 5. and see 6 Geo. 2. c. 25. 9 Geo. 2. c. 34. 10 Geo. 2. c. 19. f. 35.

New South-Sea annuities created, 6 Geo. 2. c. 28.

Refrained from issuing bonds without a general court, 6 Geo. 2. c. 28. 7 Geo. 2. c. 29.

Fund for their annuity supplied, 2 Geo. 2. c. 6. f. 60.

The company continued till the annuities shall be redeemed, 24 Geo. 2. c. 2. f. 31.

The company's annuity reduced, 24 Geo. 2. c. 11.

Their servants embrazing their employments made felony, 24 Geo. 2. c. 17.

The first and second subscribed South-Sea annuities to be consolidated, 25 Geo. 2. c. 27. f. 26.

The number of directors reduced to 21, 26 Geo. 2. c. 16.

The King may be governor of the South-Sea company, 1 Geo. 3. c. 6.

Southwark. The inhabitants of the flows there, not to be returned on juries, 11 Hen. 6. c. 1. No market to be held in the high street of Southwark, nor hackney coaches, &c., to ply there, 28 Geo. 2. c. 9. Instead thereof a market to be held in a place called the Triangle. 29 Geo. 2. c. 28. 26 Geo. 2. c. 31.

Southgrove. An old name of the month February, so called by the inhabitants of South Wales.

Sawne. Is a word corrupted from the French sawnier, i. e. ; for the flat, a Hen. 5. cap. 7. in the original French hath Des effrats morts fauves, which by turning the two u into ü, was first made faire, and from faire effrats and casualties as are not to be remembered, run not in demand, that is, are not leviable: It is a word of art used in the Exchequer, where effrats que faune not, are such as the thief by his industry cannot get, and effrats que faune, are such as he may have. 1 Edw. 11. l. 20. f. 147.

Spatarius, (For Spatarius.) A Trow-bearer. Cowell, edit. 1727.

Spatia platinum. Pleas of the fword, or a court martial, for the speedy execution of justice on military delinquents. Ed. 16.

Spatulae. Are numbered amongst the holy garments in the mass. 3 tom. pag. 331. vis. Cum alba, amica, flata, faune, satellati, & miracularii, &c.

Speaker of the Parliament. Is an officer in that high court, who is as it were, the common mouth of the rest: And as that honourable affiniss of two is called, so are two speakers, the one termed the Lord Speaker of the house of Peers, and is most commonly the Lord Chancellor, or Lord Keeper of the Great seal of England. The other (being a member of the house of Commons) is called the Speaker of the house of Commons; both whose duties consist in managing debates, putting questions, and thereby collecting the sense of the houses, passing bills, and laying the orders of each house observed, &c. See Parliament.

Spartialty. (Specialitas.) A bond, bill, or fuch like instrument; a writing or deed under the hand and seal of the party. See 19 Inst. Abr. 487.


Spelum. The cell of a monk, mentioned in Malcolm, lib. v.

Spires. For garbling spires 1 Jac. c. 19. Repealed, 6 Ann. c. 16.

Duty on spires, England, 6 & 7 W. 3. c. 7. made perpetual by 7 Ann. c. 7. and part of bank fund: And the surplus part of the aggregate fund, 1 Geo. 1. c. 12. May be imported in English ships whereof the master and two thirds of the mariners are English, 6 & 7 W. 3. c. 7. f. 3.

Additional duty, 3 & 4 Ann. c. 4. made perpetual by 7 Ann. c. 7. and part of bank fund: And the surplus part of the aggregate fund, 1 Geo. 1. c. 12.

New duties on spires, rafins and snuff, 8 Ann. c. 7. f. 6.

The duties laid by 8 Ann. c. 7. made perpetual by 6 Geo. 1. c. 4. in order to be subscribed in South-Sea Stock. Long term. not charged with the farther new duty of 11. 6 d. by 8 Ann. c. 7. of Ann. c. 6. f. 59.

Dirt in pepper, &c., to be destroyed, 10 Ann. c. 26. f. 45. Licences to import splices shall specify the quantity and place of landing, 6 Geo. c. 1. c. 21. f. 45.

Spices packed in small parcels forfeited, 6 Geo. 1. cap. 21. f. 47.

Duties on spires afoxtained, 8 Geo. 1. c. 15. fet. 17. 18. Licences to import splices shall be delivered up at entering the ship, 6 Geo. 1. c. 18. f. 21. See Customs, Hamb., 12 Ann. c. 18. 3 Will.i.

Spigurnellus. Gallifridius Spigurnellus was by King Henry the Third appointed to be feeder of his wits, and perhaps the first in that office. Therefore in after-times the perfons that enjoyed that office were called spigurnellus, Pat. 5. Hen. 3. c. 7. & Churf. 4 Edw. 1. depo m. 6. Johannes Bern Miles, fuitus domini Franfisi Bauen, & Johanna uxor ejifdem fahnnias concedunt a Regi frjflcmiam fuam fipias capella Regis, & officium Spigurnellorum ad fipias ftefiam atque de Rege tenant in capite, Memora- tand. in Seacrar. Mich. 14 Edw. 1. by Sir John Monypius.

Spinatium. Is that fort of vefsel which we now call a pinnace: It is mentioned by Knighton, anno 1338, Re- diuum Normuni cune galei i2 & cum alta spinacius cam mano bene armata.

Spinoulac. Were those three golden pins which were used about the pall; and from thence spinulacius signified to be adorned with the archiepiscopal pall. Du Perret.

Spinter. It is the addition usually given to all unmarried women, from the vifcount's daughter downward. Yet Sir Edward Coke fays, Generoza is a good addition for a gentlewoman, and that they be named spinster in any original suit, appeal or indictment, they may abate and quam the same. 2 Inst. fol. 668.

Spiritualities of a Bishop. (Spiritualia Episcopii.) Are those profits which he receives as a Bishop, not as a Baron of the Parliament. Staudff. Pl. Car. fol. 132. Such are the duties of his viftitation, his benefit growing in ecclesiastic ordnance, his poffession-money, that is, fullifum charitatis, which upon reasonable excuse he may require of his clergy. Johannes Gregor. de Benefic. cap. 6. num. 9. and the benefit of his juridiction. Joachim Stephanus de Juriff. lib. 4. cap. 14. num. 14. See Duties of the Spiritualities.

Spinulae. Mentioned in the act for abolishing, 15 Car. 2. cap. 9. is a corruption from hopital, and signifies the same thing, or it may be taken from the Teutonic foistal, which denotes an hopital or alms house. Cowell, edit. 1727.
Spoliation, (Spoliation) Is a writ that lies for one incum¬

cumbent against another, in any case where the right of the

patronage cometh not in debate; as if a patron be

made a bishop, and hath dispensation to keep his rector, or

the patron present another to the church, who is infuri¬

ated and indicted. The bishop shall have
gainst this incumbent a writ of Spoliation in Court chri¬


Sponsur obulata, A free gift and present to the King

was anecdotically called. Cosull. edit. 1727.

Spuntula, Signifies gifts, gratuities, salaries. Ut nec

episopus nec alas pro justicia faciendi Sportulis contradi¬
tit (i. e. forbidden) acceptat. From hence Sir Coryan

(Epist. 70, 71. 92.) calls those clergymen Sportulantes

fraters who received such gifts for their maintenance,

which afterwards were called Prebenda. Council, edit.

1727.

Spuntalas, The betrothing of a man or woman before

marriage. See Clippedares.

Sponde-breath, Adultery, or incontinence, opposed to

some fiction, A. D. 1542. The Lady Kather¬

ines was accused to the King of incontinence living, not

only before her marriage, but also of Sponde-breath after


Spullers of yarn, Are tiers of yarn, to see if it be


cap. 7. Spullers are those that work at the spile, i. e. Rota

glimmerius testatorum, qua fila retando congradu¬
tur. says Dr. Skinner.

Sporcular, (Sporcular aereum) An ancient god


Squally, (mentioned in fl. 43 Eliz. cap. 10.) Is a

note of faultiness in the making of cloth. See Neurp.

Squills, Prohibited and declared publick nuisances, 9

& 10 H. 3. c. 7.

Scabbing of persons is made felony without benefit of

clergy, and punished as murder, by fl. 1 1 Jac. 1. c. 8.

See Manlaughter.

Stabilis, It was a custom in Normandy, that where

a man in power claimed lands in the possession of an in¬
nexer, he petitioned the Prince that it might be put in

his hands till the right was decided; and then he had a

writ which was called breve de stabilis. To this a char¬

ter of Henry the first seems to allude, in Prym, lib. Angli.

cap. pag. 1204. viz. Et omne decimus venationis pra¬
dictorum forfarum excepta deinceps illius venationum qui

capit infra post stabilis quae Stabilis in forfar de Wendofere. Cowell, edit. 1727.

Stabiliim venationis, The driving deer to a

fland, which is also called driving the wondales. Cowell, edit.

1727.

Stable-bird, (Stabiles stabiles, or rather flaus in stabulis)

In four of the four evidences or presumptions whereby a

man is considered, to intend the sealing the King's deer in

the forest. Monwood, part 2. cap. 9. num. 9. The other three are

deg. deum, back-beer, and bloody-hand. This

stable-bird, is where a man is found in stabile stabitis, at

his landing in the forest with a crofs-bow, or long-bow

bent, ready to shoot at any deer, or else landing close by a

tree with greyounds in a lead, ready to tip.

Cowell, edit. 1727.

Stadium, Is in Domesday book accounted for a furthong

of land, which is eight part of a mile. Id. ib.

Staffe-beding, Is a right to fellow cattle within a

forest. 1 1 Jac. 1. cap. 282.

attachment, See Coaches.

Stage-plays, See Ballads.

Stage-maps, See Placate.

Stagiaris, A canon refiduary in a cathedral church.

Stagiaris, the reference to whiche was obliged; Stagiaris, to keep such refidence. As in a

flame made in the chapter of Penyll's 2 Id. Jul. anns 1749.

They commonly put this distinction between refidianris and

stagiariis; every canon infall'd to the privileges and

profits of refidantia, and while he actually kept the right of refidence, he was flagiariis, or

stagiaris. The word Stagiaris was likewise used for

refidence, as Stagiaris posseam Stagiarum sumps in de¬

minus ecclesiae vicinis incepti, &c. 19. fol. 44.a.

Stagnes, (Stagna) Ponds, pools, or standing waters,

mentioned in 5 Eliz. cap. 21.

Stale-beat, A kind of flier's beat. Stat. 27 Eliz. cap.

21.

Stalkers, The going gently step by step to take game.

None shall stalk with bait or beast to any deer, except in

his own foreft or park, under the penalty of 10 fl. 19 Hen.

7. c. 11.

Stalkers, A kind of fishing-nets, mentioned 13 Rich.

2. fl. 1. cap. 20. & 17 Rich. 2. cap. 9.

Stallages, (Stallagium, from the Sax. Stoel, i. e. flus¬

tum, flatus,) The liberty or right of pitcher or eating

flate in fair market, or the money paid for the same.

Cowell, edit. 1727. See Kennet's Obiffany.

Stallations, It is mentioned by our historians who

figured refidentiary, the same officer whom we now call

the rector, of the horfe. Sometimes it hath been used for

him who hath a stall in a market. Cowell, edit. 1727.

Stamp duties, A tax on proceedings in law, expired,

22 & 23 Car. 2. c. 9.

Grant of a flamp-duty, 5 W. & M. c. 21. Con¬

tinued by 5 Ann. c. 19. and made perpetual and part of

the aggregate fund by 1 Geo. 1. c. 12. The second flamp-


Another, 12 Geo. 1. c. 33. 23 Geo. 2. c. 35. Another,

32 Geo. 2. c. 19. Another, 32 Geo. 2. c. 35.

Second, 2 Geo. 3. c. 36. Exemptions from the flamp-duty, and the penalty le¬

fened, 6 & 7 W. 3. c. 12.

Provisions to prevent frauds in the flamp, 1 Ann. fl. 2.

2. c. 22.

Admissions of freemen before 1 Dec. 1705, without

flamps, made good, 5 Ann. c. 12. f. 8.

Shibboleth to incur any penalty of the flamp-acts for default of the other party, 5 Ann. c. 19. f. 39.

Warrants of the chief justices in Eyre exempted from

stamps, 10 Ann. c. 26. f. 74.

1. The clausus particularly relating to each instrument charged with flamp-duties, reduced to an alphabetical method.

2. Clauses concerning the officers for the management of

stamps-duties.

3. General clausus relating to and infringing the payment of

stamps-duties.

4. Clauses for the security of those who advanced money

on the credit of the stamps-duties.

All of publick nature. See Natural Act.

Ann. in an inferior court that holds plea of forty shillings

but ifuses no writ, or proceeds, or mandate, pays

And

—

Adjudication in Scotland

—

Admission in Letters of latters above 20l. value.

And

—

Exceptions in favour of common soldiers and seamen.

1 21. f. 6. 9 & 10 H. 3. c. 25. f. 44.

Admistratory sentence, attachment and relaxation thereof

And

Warrant
Warrant, mention, or personal decree
And
Label, allegation, deposition, answer, sentence, or final decree
And
Admission into a corporation, or company
Into an inn of courts, or Chancery, or matriculation
And
And into inns of courts
To a fellowship of the college of physicians, or to any office of any court, not being an annual office under the value of ten pounds, per annum
And
And
Admission to a copypath act. See Copyhold.
ADVERTISEMENT IN WEEKLY PAPERS
And
Printer not paying the duty in time, forfeits twelve sum
Advertisement in periodical pamphlets, published at a greater interval than a week, pays
Affidavits, and copies thereof, pay
And
And
Affidavit of plaintiff's cause of action pays as other affidavits
Exceptions in favour of affidavits concerning buying in woolen, and those taken before custom house officers, or justices of the peace, or commissioners for raising the King's duties, 5 H. & M. c. 21, f. 3. 9 & 10 W. 3, c. 25, f. 29. 32 Geo. 2, c. 35, f. 2. And those made for the allowance of duties on foals used in the woollen manufactur, 10 Ann. c. 19, f. 29. 30. 12 Ann. B. 2, c. 9, f. 16, 17.
What payable for affidavits of performance of quarantines, 9 Ann. c. 2. 6, 7.
An licence. See Licence.
Affidavit in the spiritual, or admiralty-court, and copy thereof, pays
An Almanack for any year printed on one side of paper, pays
And
Other almanacks for one year, pay
And
Three for more years pay for three years, 9 Ann. c. 23. f. 23. & 53. and the additional duty for every year,
3 Geo. 2, c. 19. f. 1.
What book to be deemed an almanack, 10 Ann. c. 19. f. 175.
One sheet only needs to be flamped, 9 Ann. c. 23. f. 26.
Provides in favour of almanacks in bibles and common prayer books, and saving the rights of proprietors of almanacks, 9 Ann. c. 25. f. 52. & 53.
What security is to be taken for payment of the duty on paper delivered to the printers of almanacks, and what allowance is to be made for the copies of such almanacks as shall be brought to the commissioners, 9 Ann. c. 23. f. 38.
An Answer in court of equity pays
And
Copy thereof
And
Appeal from the court of admiralty, arches, or prerogative court of
Crownlands or Yorks, pays
And
And such appeal, and every appeal from the admiralty of Scotland, pays
For Writs of Appeal, see Writ.
Appearance on special bail pays
And
And
On common bail, or without bail,
And
Penalty for not entering or filing an appearance within the time limited by the statutes 5 W. & M. c. 21. f. 3.
9 & 10 W. 3, c. 25. f. 33.
Apprentices, masters pay 6d. in the pound for 50l. or under, and one shilling for more, 8 Ann. c. 9. f. 32.
On pain of 50l. 9 Ann. c. 21. f. 66. And double the duty, 18 Geo. 2. c. 23. f. 24.
The time of payment of several duties, 9 Ann. c. 21. f. 65. 12 Ann. B. 2. c. 9. f. 31. 6 Geo. 1. c. 11. f. 52. 7 Geo. 1. B. 1. c. 20. f. 30. 8 Geo. 1. c. 2. f. 38. 11 Geo. 1. c. 8. f. 24. 18 Geo. 2. c. 22. f. 23. 27 Geo. 2. c. 16. f. 5. 28 Geo. 2. c. 19. f. 4.
Things given with apprentices, not being money, how to be valued, 8 Ann. c. 9. f. 45.
The indenture to bear date when executed, and to specify the sum given, on pain of double the sum, 8 Ann. c. 9. f. 35.
And of the apprentice's being disabled from following his trade, 8 Ann. c. 9. f. 39.
And of the indenture's being no evidence, 8 Ann. c. 9. f. 43.
Within what time to be brought to the office and flamped, and the duty—when to be paid, 8 Ann. c. 9. f. 36. 37. 38.
Penalties on non-payment of apprenticeships duties to be discharged on payment of double duties, 20 Geo. 2. c. 45. f. 5.
Encouragement to apprentices paying the duty in the master's default, 18 Geo. 2. c. 22. f. 25. 20 Geo. 2. c. 45. f. 5.
8 H
Provisions
Covenants. See Writ.

County palatine and duchy of Lancaster letters patent, or exemplification of the same, pay 

And 

And 

Grants of profits under the seal of the said duchy or county pay 

And 

Proces from counties palatine pays 

And 

Coylent-right surrender to a copyhold. See Copyhold.

Bentes for draw-backs. See Certificates.

Declaration and copy pay 

And 

Decree, or dismissal of a court of equity 

And 

Decree in the admiralty, or cinque ports. See Admiralty.

Dimissus payfatem. See Writ.

Deed enrolled, pays 

Exempted from further duties by 6 & 10 W. 3. c. 25. f. 52.

Indentures, or deeds not otherwise charged, pay 

And unless they are made for binding parish children apprentices 

And all deeds in Great Britain, not otherwise charged by 12 Ann. except bail-bonds and assignments thereof, and apprentices indentures of poor or charity children, and deeds in Scotland charged with the duty of 21. 21.

And 

If ingrafted without being stampled, not to be evidence without payment of the further sum of

And 

Degree in the two universities, or inns of court, pays 

Exception in favour of bachelors of arts, 6 & 7 W. 3. c. 12. f. 3.

Demurrer in law and copy thereof pay 

And 

In Equity 

Copy thereof 

And 

Depositions taken in the court of equity by commission pay 

And 

Depositions in Chancery (except paper drafts by commission before engrossed) 

Copies of deposition, and depositions not taken by commission, pay 

And 

Depositions in the ecclesiastical, admiralty, or cinque port courts, and copies thereof, pay 

And 

Dissent from the archbishop, or master of the faculties, pays 

And 

And 

Donation. See Presentation.

Drawback. See Certificates.

Ecclesiastical courts, instruments and proceedings. See the Duties on the several instruments.

Entry of actions. See Actions.

Entry of writ of error. See Writ.

Exemplifications of letters patent. See Grants.

Exemption under seal of any court, pays 

And 

Fines. See Writ.

Grants by the King under the Great seal of the duchy or county palatine of Lancaster, of any honour, dignity, promotion, franchise, or privilege, and exemplifications thereof, pay 

And 

And 

Grant of any sum exceeding 100l. under the Great or Privy seal, not directed to the Great seal 

And 

Every such grant under the Great seal of Scotland 

And grant of office or employment above 50l. per annum 

And 

And every such grant in Great Britain pays 

Grant
Grant under the Great seal, Exchequer, dutchy county palatins, or Privy seal, of lands in fee, or for years, of other grants of
profits not particularly charged.

And

Habeas Corpus. See Writ.

Indemnities. See Deeds and Apprentices.

Inquisition pays

And

And

Inquisition, or licence by the presbyters in Scotland

Interrogatories in equity

And

Copy

And

And

Inventory exhibited in ecclesiastical, admiralty, or cinque port courts

And

Copy thereof

And

Judgment signed in any court at Westminster

And

Kalendar. See Almanack.

Laying Bill

Lasts

And

And

Lease. See Deed.

Letters patent, letters of attorney and administration. See Brief, County Palatine, Grant, Administration, Attorney.

Letters of mort

And

And

Libel and copy thereof pays

And

Licence by an ecclesiastical court, or ordinary

And

And

By the Presbytery in Scotland, except to tutors and schoolmasters

Licence of marriage exempt from the duties granted by 9 & 10 W. 3. c. 35. &c. -Penalties for marrying without licence, or banns in England, 7 & 8 W. 3. c. 35. f. 15, 2, 3. &c. -Penalties for marrying without licence, or banns in Scotland, 7 & 8 W. 3. c. 35. f. 4. -Penalties for marrying without licence, or banns in Ireland, 7 & 8 W. 3. c. 35. f. 5. -Penalties for marrying without licence, or banns in Jersey, 7 & 8 W. 3. c. 35. f. 6. &c. -Penalties for marrying without licence, or banns in Guernsey, 7 & 8 W. 3. c. 35. f. 7. &c. -Penalties for marrying without licence, or banns in St. Thomas, 7 & 8 W. 3. c. 35. f. 8. &c. -Penalties for marrying without licence, or banns in the Channel Isles, 7 & 8 W. 3. c. 35. f. 9. &c. -Penalties for marrying without licence, or banns in the Leeward Isles, 7 & 8 W. 3. c. 35. f. 10. &c. -Penalties for marrying without licence, or banns in the Bismarck Isles, 7 & 8 W. 3. c. 35. f. 11. &c. -Penalties for marrying without licence, or banns in the American Isles, 7 & 8 W. 3. c. 35. f. 12. &c.

Licence for retailing wine

And where no other licence is taken out

Where a licence for retailing ale, &c. is taken out

Where a licence for retailing spirituous liquors is taken out

For retailing ale, &c.

Penalties on persons taking recognizances of fellers of ale without first causing flamp licences to be made out,

Licences for keeping alehouses on the military roads in Scotland, exempted, 21 Geo. 2. c. 12. f. 19.

Mandate. See Writ.

Marriage licence or certificate. See Licence, Certificate.

Manservant. See Proofs.

Matrimonial

And

Monition, or personal decree in the admiralty, or cinque ports. See Admiralty.

Monition, or citation in the ecclesiastical courts, and copies of them

And

And

News-papers. See Pamphlets.

Nef prize. See Pythia.

Notarial act

And

Novendemus in Scotland

Orders at sea pay the same as those at land, 6 & 7 W. 3. c. 12. f. 6. & 10 W. 3. c. 25. f. 36. &c.

Pamphlets, and new papers of half a sheet or less, pay

Larger than half, not exceeding one sheet, pay

And

Larger than one sheet and not exceeding six fix in octavo, or twelve in quarto, or twenty in folio, pay 2s. for every sheet in one printed copy, 10 Ann. c. 19. f. 101.

Clauses shewing how and under what penalties such papers are to be flampus before they are printed, 10 Ann. c. 16. f. 104, 105.

And printed copies to be brought to the office and entered, 10 Ann. c. 19. f. 111.

And
ST A

And under what penalties, 10 Ann. c. 19. s. 112, 113.
Pamphlets unfoled, how to be cancelled, and the like number of sheets stamped duty free to be exchanged for
them, 10 Ann. c. 19. s. 114.

What news-papers shall not be deemed pamphlets, &c. 11 Geo. 1. c. 8. s. 13, 14, 15.

Pardon of crime, or forfeiture, reprieve, or relaxation from fine, corporal punishment, or other forfeiture
And all but circuit, or Newgate pardons, and every such relaxation, &c. pay the farther sums of
And the relaxation be of a fine, &c. above 100l.
Parliament (acts of,) proclamations, forms of prayer, &c of state, matters printed by either house of parliament.
School books, books of piety, daily bills of goods exported and imported, and bills of mortality, are excepted,
10 Ann. c. 19. s. 102.

Pofforf
And
And
Patents. See Brief, Grant.
Physicians admissite to the college, pays
And
And
Pleadings in law, and copy thereof
And
And
Pleadings in equity
And
And
And all pleadings in law and equity are to be writ as usual,
Policy of assurance in England, pays
And
And
And if within the bills of mortality
Clauses for securing the payment of the duties on policies of assurance, 10 Ann. c. 26. s. 21, 72, 73.
By stat. 5 Geo. 3. c. 46. sl. 4, 5. it is enacted, that from and after 5 July 1765, where the properties of
more than one person, &c. in a ship or cargo, or both, shall be assured for upwards of 100l. in the same policy,
the policy is void, and the premium remains to the insuror; and in like manner, in case of any
additional assurance not duly stamped; provided any number may be assured on one policy, with 5 stamps
of 5s. each.
Pebbe
And
Copy thereof
Presentation, collation, or donation to a benefice above the yearly
value of 10l. in the King's books, pays
Probate of wills, except from common seamen or soldiers, pays
And
Prorof. See Writ.
Proctor's admittance. See Admission.
Prorogation
And
And
Protel
And
And
Quo minit. See Writ.
Reconocnance and Writs. See Statute.
Register of Degrees. See Degrees.
Rejoinder and Replication. See Pleadings.
Reliefs enrolled, pays
Common releases, pay
And
And
Reprive. See Pardon.
Rules and orders in courts of Westminster, and copies thereof
And
And
Scotch instruments are not charged with stamp during previous to the union, 5 Ann. c. 5. Article 10, 14.
Scotch instruments, what to pay, 10 Ann. c. 19. s. 100.
Scotch deeds, not charged with 2l. 3d. pay
Sentence in the Ecclesiastical courts, and copies thereof, pay
And
Sentence in the admiralty or Cinque ports. See Admiralty.
Sweers proceedings pay nothing, 6 & 7 W. 3. c. 12. s. 2, 9, and 10 W. 3. c. 25. s. 45.
Signavit
And

Vol. II. No. 127. 8 1
Surrender of grant, or office, inrolled, pays  

Writ of Habeas corpus, pays  

Writ of Appeal, except to the delegates, pays  

Writ of Covenant for levying a fine, pays  

Writ of Error, pays  

And every other writ original, except such on which a copias billes  

Subpoena, bill of Middropen, lattices, copias, qua minus, destinam posteriorum, and every other writ, process or mandate of courts holding plea of 40s. pays  

And  

And  

And  

And  

Writs of Covenant, writs of Entry, and writs of Habeas corpus excepted, 32 Geo. 2. c. 25. f. 7.
Salaries of the officers how to be paid out of the duties, 5 W. & M. c. 21. s. 22. 9 & 10 W. 3. c. 25. s. 66. 8 Ann. c. 9. s. 33. 12 Geo. 1. c. 33. s. 5.
3. General clauses relating to and infringing the payment of stamp duties.

Stamps how to be provided and altered from time to time, 5 W. & M. c. 21. s. 7. 8 Ann. c. 9. s. 36. Suits of papers excepted from duties, 5 W. & M. c. 21. s. 14. 12 Geo. 1. c. 23. s. 5.
Probate of wills of feamen and soldiers excepted, 5 W. & M. c. 21. s. 14. And the alteration how to be proclaimed, 5 W. & M. c. 21. s. 7. 9 & 10 W. 3. c. 25. s. 67. 9 Ann. c. 23. s. 33. 10 Ann. c. 19. s. 110. And the proclamation judicially taken notice of by the judges, 10 Ann. c. 19. s. 180.

And in altering the stamp of the party that have vellum, &c., marked with the old stamp, are to be supplied with vellum, &c., stamped with a new stamp, without the payment of penalty, 9 & 10 W. 3. c. 25. s. 65. 9 Ann. c. 23. s. 32. 10 Ann. c. 19. s. 109. 12 Geo. 1. c. 33. s. 8.

Instruments written on paper not duly stamped, shall be of no avail in law till stamped, and the penalties paid, 5 W. & M. c. 21. s. 11. 9 & 10 W. 3. c. 25. s. 59. 9 Ann. c. 23. s. 17. 10 Ann. c. 26. s. 11. 12 Geo. 1. c. 32. s. 8.

Or writing a new instrument, &c., on stamp paper, &c., whereas a former was before written, or tearing off a mark from one writing with an intent to use it on another, 1 Ann. b. 2. c. 32. s. 2.

Or on putting some part of the writing charged with stamp duties, &c., as near the stamps as may be, 1 Ann. b. 2. c. 22. s. 5.

And on officers neglecting to enter or file actions, plaints, bills, appearances, admissions, or other proceedings, 1 Ann. b. 2. c. 22. s. 1. 3 Ann. c. 19. s. 29.

Penalty of $5. for selling un stamped cards or dice, or using cards or dice un stamped, 1 Ann. c. 19. s. 165.

Penalty on defacing the stamp on cards, and new pottle dice, 6 Geo. 1. c. 21. s. 55.

Penalty on not making out all licences duly stamped, 6 Geo. 1. c. 21. s. 56. 29 Geo. 2. c. 2. s. 12.

Penalties in the stamp acts to relate to subsequent duties, 6 Geo. 1. c. 21. s. 56.

The day of fuing out a writ shall be indorsed on the warrant, 6 Geo. 1. c. 21. s. 54.

Penalty on making insuffrance without stamps, 11 Geo. 1. c. 30. s. 44.

Hawkers of unstamped newspapers papers to be sent to the house of correction, 10 Geo. 2. c. 26. s. 5.

Penalties how disposed of, 1 Ann. b. 2. c. 22. s. 6. 9 Ann. c. 23. s. 37. 10 Ann. c. 19. s. 119.

How to be mitigated by justices of peace, 10 Ann. c. 19. s. 120. 173.

Proceeding before such justices not to be supereded by another person, 1 Ann. b. 2. c. 22. s. 6. 9 Ann. c. 23. s. 37. 10 Ann. c. 19. s. 119.

Counterfeiting stamps or procuring paper to be marked with counterfeit feats, &c., where illely, 5 W. & M. c. 21. s. 11. 9 & 10 W. 3. c. 25. s. 59. 8 Ann. c. 9. s. 41. 9 Ann. c. 25. s. 34. 10 Ann. c. 19. s. 115. 12 Geo. 1. c. 26. s. 72. 6 Geo. 1. c. 21. s. 60. 29 Geo. 2. c. 12. s. 21. c. 13. s. 5. 30 Geo. 2. c. 19. s. 27. 32 Geo. 2. c. 35. s. 17.

Stamp duties not to extend to licences by commissioners of excises, 29 Geo. 2. c. 12. s. 25.

4. Clauses for the security of those who advanced money on the credit of the stamp duties.

Such creditors how to be paid, 5 W. & M. c. 21. s. 17. 23. 8 & 9 W. 3. c. 20. s. 13. 13. 8 Ann. c. 9. s. 45. 47. 48. 9 Ann. c. 21. s. 9. 10. 11. 13. 14. 15.

Stamp duties how appropriated, 6 Ann. c. 23. s. 54. 32 Geo. 2. c. 19. s. 31.

Definitive rules to be kept of the payments, 5 W. & M. c. 21. s. 18. 10. 9 & 10 W. 3. c. 44. s. 40. 44. 5 Ann. c. 19. s. 7. 13. 14. 8 Ann. c. 19. s. 7. 34. 21 Ann. c. 29. s. 9. 10. 13. & c. 23. s. 51. 10 Ann. c. 19. s. 108. 12 Geo. 1. c. 33. s. 11. And regulated, 5 W. & M. c. 21. s. 19. 9 & 10 W. 3. c. 30. 44. 5.

And pulled annually, 1 Ann. b. 2. c. 21. s. 8. And the arrears fet in paper on the parties chargeable therewith, 1 Ann. b. 2. c. 22. s. 9.

But not on any person not duly charged, on pain of treble damages, 1 Ann. b. 2. c. 22. s. 11.

The sale of paper and writing, &c., to be set on the foot of the account, 1 Ann. b. 2. c. 22. s. 10.

Clauses concerning the continuance of stamp duties, 9 & 10 W. 3. c. 25. s. 1. 1 Ann. b. 1. c. 13. s. 11. 12. 5 Ann. c. 19. s. 3. 4. 6 Ann. c. 5. s. 4. 6. & c. 17. s. 6.

And declaring them to be redeemable by parliament, 9 & 10 W. 3. c. 25. s. 27. & c. 44. s. 75. 6 Ann. c. 17. s. 6. 9 Ann. c. 21. s. 24.

Standard, (From the Fr. teintaud, &c., figurum, vacillum,) In the general signification, is an enfin in war. And it is used for the standing measure of the King, to the fleeting whereof all the measures in this land or ought to be framed, by the clerks of markets, alms-negers, or other officers, according to Magna charta and divers other Statutes: And it is not without good reason called a standard, because it flanfeth constant and immovable, having all measures coming toward it for their conformity; and even folders in the field have their standard or colours, for their direction in their march, &c., to be repaired. Britton, cap. 30. There is a standard of money, directing what quantity of fine silver and gold, and how much allay, are to be contained in coin of old flatering, &c., and standard of plate, and flour manufactories. Stat. 6 Geo. 1. c. 1.

Standell, is a young flour oak-tree, which may in time make timber; twelve such are to be left flanding in every acre of wood at the felling thereof. Stat. 35 H. 8. c. 17, and 13 Eliz. cap. 25.

Standing arm, Not to be kept in time of peace, without consent of parliament, 1 W. & M. biff. 2. cap. 2.

Stautes, For maintaining Stane's bridge, 13 Geo. 2. cap. 25.

Stannaries, (Stannaria, From the Latin lannum, tin,) Signifies the mines and works where this metal is dug and purifed, as in Cornwall, and other places: Of this read Camul. Brit. pag. 110. The liberties of the stannary-men granted by Edward the First, before they were abridged by the statute 50 E. 3. fee in Plou- den's cafe of mines, fol. 327, and Co. 12 Rep. fol. 9. And further, for the liberties of the stannary-courts, fee 10 Car. forfeiture on account there are four in Devon, and four in Cornwall. Couttey, edit. 1727. Laborers in the stannaries may recover their wages before justices of the peace, 27 Geo. 2. c. 6.

Staple, (Staplum,) Comes from the Fr. Estafte, i. e. forum dominum, a market or staple for wares, which are the principal commodity of France; or rather from the Germ. stapelen, which signifieth to gather, or leape any thing together: In an old French book it is written A Ca-
1.0. The annual amount of the customs of the staple at Calais, 27 H. 6. c. 2.
Protections shall not be allowed in the courts of Calais, 1 H. 7. c. 3.
The officers of the staple prohibited from taking recognition of any duties but of staple, 23 H. 8. c. 6. f. 3.

Star (Starreu). A contradiction from the Hebrew Shebar, which signifies a deed or contract. All the deeds, obligations, and releases of the Jews, were anciently called Stars, written for the most part in Hebrew alone, or else in Hebrew and Latin; one of which yet remains in the treasury of the Exchequer, written in Hebrew without points in King John's reign, the substance whereof is expressed in Latin just under it, like an English condition under a Latin obligation. See the Plea rolls of Feoff, 6 Ed. 1. Rot. 45. 5, 6, \&c. where many Stars, as well of grant and release as obligatory, and by way of mortgage, are pleaded and recited at large. Cowell, edit. 1727.

Star and Bent. Penalty on cutting fir and beat on sand-hills, 15 Geo. 2. c. 33. sect. 6.

Star-Chamber. (Camera felatiata, otherwise called Chamber des cajiples.) Was a chamber at Westminster to call the children of all that imported wool from foreign parts, and to inflict penalties on them of sufficient, as well as of an inferior nature, as boatage, forgeries, perjury, and other such misdemeanors as were not sufficiently provided for by the Common law, and for which the inferior judges are not so proper to give redress: And because that place was before set apart to the same service, it was still used accordingly. Touching the orders belonging to this court, see Canis, p. 112, 113. But by the statute 16 Car. 1. c. 10. This court, commonly called the Star-Chamber, and all jurisdiction, power, and authority thereto belonging, are abolished. Cowell, edit. 1727.


Statarius, A canon refidential in a cathedral church. See Statarius.

Statuarium, A grave or tomb adorned with statues, lugubri. 853. Scapulare manum. All the tenants and legal men within the liberties of a manor, met in the court of their Lord, to do their customary suit, and enjoy their usages and rights. Parch. Antig. 450.

Statutum, (Statutum,) is a written law, made with the concurrence of the king and both houses of parliament. 4 Bat. Abr. 923.
1. Of some requisites which are essential to the validity of a statute.

2. Of those things which are incident to a statute; and from what time a statute begins to take effect.

3. How long any act of parliament continues in force; and of the great power of an act of parliament.

1. Of some requisites which are essential to the validity of a statute.

No statute is good, unless it is assented to by the King and both houses of parliament. 4 Inf. 25. Brs. Parl. p. 76. Hob. 111.

If the statute, however, after having been assented to, voluntarily abdicate themselves, the King, Lords temporal and Commons, may make an act of parliament without them. 2 Inf. 585.

This is notoriously the case, where a bill is brought into parliament for attaining an offender of high treason. The Lords spiritual, however, by the canon law, being prelates and holding such a bill; yet, if the act proceeds, it is valid. 2 Inf. 585, 586.

In like manner where the spiritual Lords, being present, refuse to give their assent to, or protest against the passing of any bill, and the act proceeds, it is good without them. 2 Inf. 585, 586.

Two bills being read in parliament, the one intituled, a Confirmation of the Statute of Provisors, and the forfeiture of him that accepteth a benefice against that statute; the other intituled, the Penalty of him that bringeth a Summons, or Sentence of Excommunication, against any person upon the statute of provisors, and of a prelate executing it; both which tended to restrain the authority which was claimed by the pope, of dispensing of ecclesiastical benefits within this realm; the archbishop of Canterbury and York, for the whole clergy of their provinces, made their solemn protestations in open parliament, that they would in no wise assent to any law in restraint of the pope's authority; these protestations were at their request intolled; yet both bills were passed by the King, Lords temporal, and Commons, and are amongst the printed statutes. 2 Inf. 585, 586. 11 R. 2. 2. cap. 2. 11 R. 2. 2. cap. 3.

As the voices in parliament ought to be absolute, either in favour of the bill or in the negative, if the bishops and clergy give their voices with a condition, such conditional voices are as none; and an act is good without their concurrence. 2 Inf. 585.

A bill was brought into parliament in the time of Henry the sixth, that no man should contradict or marry himself to any Queen of England, without the special licence and assent of the King, on pain to lose all his goods and lands. The bishops and clergy alleged thereto, as first forth as the fame sweared not from the law of God and the church; and so as the same import ed no deadly sin. This being held as no affent, it was specially entered, and it was enacted by the King, Lords temporal and commons. Rat. Parl. 6 H. 6. nun. 27. 2 Inf. 587.

And wherever an act is so specially entered in the parliament rolls, to have been enacted by the King, Lords temporal and commons, it is not to be inferred, that the proposed statute was not assented to parliament; But it must be intended that they voluntarily abdicated themselves; or refused to give their assent to, or protest against the passing an act; or gave such voices as were contra legem et confutandum in parliament. 2 Inf. 585, 587.

Many ancient statutes are indeed passed in the form of charters, ordinances, commands or prohibitions from the King, without mentioning either Lords or commons, Vol. II. No. 127.

and many others have only the general words, it is provided, or it is ordained, without saving; by whom: But, as these have constantly been received as statutes, the presumption is, that the law is not to be understood as having been received from a source inferiour to the statute. 1 Inf. 98.

The difference, according to lord Coke, between a statute and an ordinance is, that the latter has not the assent of the King, Lords and commons, but is made by only one or two of those powers. 2 Inf. 25.

Mr. Pynson, in his remarks on this passage, says there is no such difference, that in any different at all, between a statute and an ordinance. To prove this, he produces more than an hundred acts of parliament, in which the words act and ordinance are either used indifferently, or coupled together as synonymous terms. He likewise cites a clause, contained in all writs for electing knights, citizens and burgesses of parliament, which runs thus, "Statutum et confersandum biij, quae de communi concisi regni subjiciant ordinarii, et infers, that the name Ordinance of Parliament took its rife from the word ordinari in this clause. Pynson's Animado. on 4 Inf. 13.

Pynson's Animado. 74.

Where any statute is against common right and reason, or repugnant, or impollible to be performed, the Common law shall control it, and adjudge it to be void. 8 Rep. 118. Bonham's cases. 2 Inf. 527. Finch 74.

A statute contrary to natural equity, as to make a man judge in his own cause, is likewise void; for jura naturae sunt immutabilia. Hob. 87. 8 Rep. 118.

But it is said in another case, where this last case is cited, that an act must be clearly contrary to natural equity; for that the judges will strain hard rather than interpret any act of parliament void ab initio. 11 Rep. 69. Feller's case. 1 Mod. 115.

Before the art of printing was introduced into England, all statutes were, at the end of every session of parliament, transcribed on parchment, and sent to the sheriffs of every county, and with them a writ from the King, commanding him to proclaim them throughout his bailiwick. After he had proclaimed them, which was usually done in his county court, the transcripts were deposited, that any person might read or take copies of them. 2 Inf. 526, 644. 4 Inf. 26.

But an act of parliament was, even in the ancient times when this laudable practice prevailed, equally binding, although it had not been so proclaimed. 4 Inf. 26. 2 Inf. 526.


This is usually framed by the clerk of that house in which the bill first passes; and is seldom read more than in one place.

The custom of fixing titles to statutes did not begin till about the eleventh year of the reign of Henry the seventh. Ld. Raym. 77. Chance v. Adams. Hard. 324.

A preamble generally contains the motives and inducements to the making of a statute; but it is no part thereof. Herefore acts of parliament were made without preamble. 6 Mod. 62. Mills v. Wiltins. 8 Mod. 144.

2. Of those things which are incident to a statute; and from what time a statute begins to take effect.

Wherever any thing is provided for generally by an act of parliament, all remedies and requisites thereto necessary are supplied by the Common law. 1 Inf. 235. 2 Inf. 226.

If any offence is made felony by statute, it is clear, that every such statute does, by necessary consequence, subjeft the offender to the like attainder, forfeiture, &c. and does require the like confiscation, as to those who shall be accounted accessories before or after, and to all other intents and purposes, as is incident to a felony at common law. 4 Hawk. 392. 3 Inf. 474. 49. 50. 8 K.

Milton
Of this decision in the case of the Statute of Uses, as well incidental to a felony by statute, as to one at the Common Law. 1 H. H. P. C. 652.

When any power is given by statute, all incidents, necessary to the making in effect, are also given: for the maxim is quod lex expressa non deduce videatur et id, per quod deuentur ad illud. 12 Rep. 130, 131.

If an act of wafe should now be given against tenant in tail, after possibility of issue, &c. treble damages would have been made, &c. and all for the benefit of the plaintiff. For these were recoverable under a former statute, by which this action was given; and whenever the same action is given, and whenever the same action is given in any new case, all that before appertained to it is also given. Br. Wals. pl. 68.

Every statute begins to have effect, unless a time for its commencement is mentioned, fixed and certain, or by the first of that fection of parliament in which it is made. 1 Roll. Atr. 465. Hunter's case. Br. Relat. pl. 35. Br. Parl. pl. 86. 4 Ingl. 25, 27. H. 309. Sid. 310.

But wherever a particular day, to which it shall extend, is appointed by an aét of parliament, its relation shall be continued to the day, with the same force, &c. &c. as to the day, &c. &c. of the act, so long as it continues, &c. &c. as to the day, &c. &c. of the act, so long as it continues. 318.

Maxim

The maxim is, where the maxim is a thing done, or an act of parliament comes after, and compels him to do it, the statute repeals the covenant: Or if A. covenants to do a thing, which is lawful, and an act of parliament comes, and hinders him from doing it, the covenant is repealed. But if a man covenant not to do a thing, which is lawful, and an act of parliament comes, and makes it lawful to do it, such act of parliament is no repeal of the covenant. Salt. 198. Bren. v. Rich. 11 Hil. W. 9. 3.

It has however been, in a later case, held, that in contriving an act of parliament, made ex pTo. fault, the words ought not to be strained to defeat a covenant, to the benefit whereof a party was well intitled at the time the act was made. Ld. Raym. 1532. 172. 9 Vin. 47. v. Mayor, Exch. 10 Geo. 1.


Statutes are either temporary or perpetual: Temporary statutes continue in force, unless repealed, till the time for which they were made expires: Perpetual ones till they are repealed. Every statute, for the continuance of which no time is limited, is perpetual, although it is not expressly declared to be. 4 Boc. Abr. 637. It has been laid down, that, where a statute is made for seven years, and, after the expiration of that term, it is by another act made perpetual, the latter only is to be considered in force. Lit. Rep. 213. The Cafe of the College of Physicians.

But this case does not seem to be law. The statute against perjury, made in the 5th year of the reign of Queen Elizabeth, was only to continue in force till the end of the next parliament. Another parliament began in the thirteenth year of her reign; another in the twentieth and twentieth; and another in the twenty-eighth: But this act was not made perpetual till the twenty-ninth year of the reign of that Prince. The first statute has, however, been always held to be in force, and the offence of perjury is constantly charged, in an indictment, to have been committed against the form of that statute. Duch. 276. 24 Geo. 1

In an indictment for perjury, in an affidavit to hold to bail, the affidavit was laid to be taken by virtue of the 12 Geo. 1. c. 29, which was a temporary law for five years only, and after continued with some alterations by the 3 Geo. 2. c. 27. It was objected for the defendant, that it ought to have been perpetual, and to have been taken by virtue of the latter act, and especially as it is no bare continuance; but the statute is in some respect altered, This objection was over-ruled; and by Lord Hardwicke, Ch. J. When an act is continued, every body is entitled to say that it is not in force; and as there has been no alteration in this respect, it is not, but a continuance made quod lex. 1068. Rev. Morgan.

If, before the expiration of a temporary act of parliament, another act is made to continue it for ever, the former remains in force as much as if it had been at first perpetual. Lat. 221. Ann. Owne 135. 637. 213. 9 Geo. 4.

Divers parliaments have attempted to bar, refrain, suspend, qualify, or make void, the acts of subsequent parliament: But this could never be effected, for a latter parliament hath ever power to abrogate, suspend, qualify, or make void, the acts of a former, in the whole or in part. Perjury, notwithstanding any words of restraint or prohibition in the acts of the former. 4 Ingl. 43.

Some parts of Magna Charta, altho' it expressly declared by the 42 Ed. 3. c. 3. That all statutes contrary thereto shall be void, have been repealed or altered by subsequent statutes; yet their last have been manifestly held to be in force. 30 Geo. 1.

Where an act which has been repealed, is revived, the repealing act becomes of no force. 1 Ingl. 686.

By the repeal of a reviving statute, the first statute is revived. 12 Rep. 4. The Bishopc's case. Ld. 12 Rep. 7.

But if an act has been repealed by three different acts, although two of these repealing acts are repealed, yet the third continues in force, and repeals the original act. 12 Rep. 7. The Bishopc's cafe.

When a statute is repealed, all acts done under it while it was in force, are good: But, if it is declared null, all those are void. 1 Ingl. 686. per. 56. 4 Ingl. 43.

Notwithstanding that they may be put an end to by being in fact repealed, are likewise liable to a repeal by implication.

Every affirmative act is a repeal, by implication, of a precedent affirmative one, so far as it is contrary thereto, although there are no negative words in it. For, every positives requires abrogation. 11 Rep. 61. foletter's cafe. Shop. 520. Ld Raym. 160. 4 Ingl. 43.

But
But where a statute, before perpetual, is continued, by an affirmative statute, for a limited time, this does not amount to a repeal of it at the end of that time. 

Repeal and for yet, the latter only shall take effect. 5 Mth. 287. The Inhabitants of St. Clement's v. The Inhabitants of St. Andrew's.

If a proviso is repugnant to the purview or enacting part of a statute, it shall stand, and be, so far as it is, a repeal of the purview because it was left agreed to be by the makers of the law. Fitzg. 195. The Attorney General v. The Governor of Chifia Water-warks.

But repeals by implication are not favoured in law, nor are they allowed, except the inconstancy or repugnancy is plain; for they carry with them a reflection upon the wisdom of the legislature; and such repeals have been ever confined, to the repealing as little of the preceding laws as is possible. 11 Rep. 63. Foster's cafe. 1 Rell. Rep. 38. 10 Mth. 118.

Altho' two acts of parliament are seemingly repugnant, yet, if there be no clause of nnn esse in the latter, they shall, if possible, have such a construction, that the latter may not be a repeal of the former. Dv. 347. Watson's cafe. Bro. Parl. pl. 9. 11 Rep. 63. Hard. 344.

The power of an act of parliament is so preceding great, that the nature and nature can control it. An act of parliament can do no more, but it may do some things which look pretty odd; for it may discharge a person from the allegiance he lives under, and reforce him to a state of nature. 12 Mth. 688. The city of London v. Wood.

An effate may be made to cease by a statute, in the same manner as if the party possiffing it was dead; as is done by the 21 6 H. 8. C. B. which declares, that if, any person accepts a second benefice, the first shall be void in the same manner as if the incumbent had died. 6 Rep. 40. Mid cyt's cafe.


A man can only forfeit such effate as he has, as where tenant in tail with remainder over forfeits, the remainder is saved: But, if the land of tenant in tail is given by marriage to a lady, the remainder is not saved. Godd. 315. Sheffield v. Ratcliffe.

If the King is intituled by an act of parliament to the land of J. S. he takes it discharged of all tenures whatsoever. Bro. Parl. pl. 27.

Where land is subject to a rent-charge, if this land is given to any person by a fluate, the rent is thereby discharged. Bro. Parl. pl. 28.

A fluate cannot make it lawful for A. to commit adultery with the wife of B. for the laws of God forbid this: But it may disolve the marriage with B. and make her the wife of A. 12 Mth. 688. The city of London v. Wood.

An act of parliament cannot alter the course of nature so as to make a woman a man: But it can make her a man to all civil purposes; for it can make her a mayor or a judge of peace. 2 Js. 12. Crew v. Ramfey.

For more learning on this subject, see 4 Bac. Abr. and 1 Rell. Abr. The Statutes.

Statute Merchant, Is a bond of record, acknowledged before the mayor of the flate, in the presence of all or one of the constables; to this end, says the flate, there shall be a seal ordained, which shall be affixed to all obligations made on such recognizances acknowledged in the flate; the seal of the flate is the only seal of the mayor and the council of the flate, and no other. The mayor and the council of the flate have the power and disposal of the mayor, than that appointed by the flate merchant; for though the flate appoints him the custody of it, yet it is in such a manner, that he cannot affix it to any obligation without their consent, it being to remain in the mayor's hands, under the security of their own seals. 2 Rel. Abr. 466. Stat. 25 Ed. 3 c. 6. 

To understand a little of the original and constitution of the flate, and the advantage the nation had by this establishment, we must observe, that the place of residence, whither the merchants removed with their flate commodities, was not near enough to make it no more than mart or market; and this was formerly appointed out of the realm, as at Calais, Antwerp, and other ports on the continent, which were nearer to
us, and whither the merchants might with safety coast it.

4 Ed. 238.

But besides these flable ports appointed abroad, there were others appointed at home, whither all the flable commodities were carried in order to their exportation, such as London, Weymouth, Hull, &c. this was found to be of great use and convenient. There was nothing more particularly dear to the interest and credit of the nation in general; for at these flable ports were the King's customs easily collected, and were by the officers of the flable, at two several payments, returned into the Exchequer: besides, at these flables, all merchandize goods were carefully viewed and marked by the officers of the flable; and this twice yearly avoided the exportation of decayed goods, or ill wrought manufactures, and consequently fixed a flamp of credit on the merchandize exported, which, upon the view, always answered the expectation of the buyer.

Malins's Lex Merc. 337—338. See the 27 Ed. cap. 8.

The flable merchandize, according to Lord Coke, are only wool, woolfells, leather, lead and tin; others butter, cheese and cloths; but whatever they were, the mayor and confable had not only converse of all contrats and debts relating to them, but they had likewise jurisdiction over the people and all manner of things touching the said flable. Now this power was given them, left the merchants should be diverted and drawn from their buiness and trade, by applying to the Common law, and running through the tedious forms of it, for a determina-tion of their differences, and for the greater encourage-ment of merchants, that they might have all ima-ginable security in their contrats and dealings, and the most expeditious method of recovering their debts, without going out of the bounds of the flable.

4 Ed. 238.

Malins's Lex Merc. 337. 27 Ed. 3. c. 8.

By this it appears, that this security was only designed for the merchants of the flable, and for debts only on the sale of the goods bought by them; yet it was time enough to apply it to their own ends, and the mayor and confable would take recognizances from strangers, surming it was made for the payment of money for mer-chandizes brought to the flable; to prevent this mifchive, the parliament in 23 H. 8. reduced the flable flate to its former channel, and laid a penalty of 40L on the mayor and confables who would extend the benefit of the flate to any but those of the flable; but though the flate of 23 H. 8. cap. 6. deprived them of this benefit; yet it framed a new fort of security, to be used ad libitum by all men, known by the name of a recognizance on 23 H. 8. or a recognizance of officers in the matter of a flate.

Coke. C. 1. 272. Because this act limits and appoints the fame procefs, execution and advantage in every particular, as is set down in the flatable flate.

Co. Lit. 290.

A recognizance therefore in nature of a flatable flate, as the words of the act declare, is the fame with the former, only acknowledged under other names; for as the flature runs, the chief justices of the King's bench and Common pleas, or in their absence, out of term, the mayor of the flate at Weymouth, and the recorder of London jointly together, shall have power to take recogniza-nces for payment of debt in the form set down in the flate; in this, as in the former of acts, particular attache themselves to attend the contract, which the said juftices shall have the keeping of, and the said mayor and recorder another of the same print and fashion; and every obligation made and acknowledged before either of the juftices, or the mayor and recorder, must be sealed with the seal of the confurer, with the King's face on one side, and the date of the recognizance, and the name of the person and the recorder before whom it is taken, who are likewise obliged to subscribe their names; besides this, the clerk of the recognizance, (who is appointed for this purpose by the King) or his deputy, shall make and write all obligations thus acknowledged, and deliver them in the same fashion as the several recognizances, with such of the said juftices, or with the mayor and recorder that takes the recognizance, and the other with the clerk, who is farther obliged, at the request of the confurer, his

executors or administrators, to certify such obligations, into Chancery under his seal.


Statutes, or Statuto-Slillons, Are vulgariy taken for the petit sejje, which are yearly kept for the dispo-sing of certain offices, by 5 Eliz. cap. 5. And their flatable sejje, otherwise called petit sejje, are a meet-ing in every hundred of all the freises in England, where by custom they have been used, whereunto the confables and others, both haulholders and veters, repair, for the debating of differences between matters and veters, the rating of veters, and service, by 5 Eliz. cap. 5. And their sejje are made for veters that stand fit to serve, either refuse to serve, or get matters.

Stat. 5 Eliz. c. 5. Cowell, edit. 1777.

Statute Herreratio, is a write for the imprisoning of him that has forfeited a bond called flatable mercant, until the debt be satisfied. Reg. Orig. fol. 146. And of these there is one against in-persons, and another against ecclesiastics. Ibid. & 148.

Statuta Stapulace, is a write that lies to take his body to prison, and feive upon his lands and goods, that hath forfeited a bond called flatable-flate. Reg. Orig. fol. 151.

Statuta de Labaritoriis, is a writ judicial, for the appropriating of such labaritors as refuse to work according to the flate. Reg. Judic. fol. 27.

Statutum, Any flare, or framing flock of cattle, provision, &c. Matt. Wilm. anno 1259. Viginti infiuper & quinque libros pro statero ejusdem fac. When formerly the bishops occupied their own demeine lands, they were obliged to leave at their death such a determined quantity of cattle for a flock to its successors; which flock upon the ground was called staturum, and de flare, de inflaure. Cowell, edit. 1777.

Stering, is the fraudulent taking away of another man's goods, with an intent to find them, again, or with the will of him whose goods they are. The Civil law is where this is to be satisfied by the recom- pense of four-fold; and peace theft, by the recom pense of double; but the law of England adjudges both those offences to death, if the value of the thing stolen be above twelve-pence. Cowell, edit. 1727. See Larceny.

Steel. See Iron.

Stevens (Josephus). Reward of 5000L. for the discover-y of her hidicine for dilolving the flone, 12 Geo. 3. c. 23.

Stepney. The rector of every church and chapel, converted into a parochial church in the parish of Stepney, to be nominated by Brazen-nose College, 12 Ann. 1. c. 1. 1718.

Sterling. (Sterlingum,) Was and is the epithet for silver money current within this realm; and took name from this, that there was a pure coin stamped first in England by the Eafberyings, or Merchants of Eaf-Berry, by the command of King John, and accordingly Roger Heredon parte poter, four. annal. fol. 377 writes it Eafterling. See the flature of Purveyors, cap. 13. By the flate 31 Ed. 1. the penny which is called the Sterling, round, and without clipping, weighs thirty-two grains of wheat, well dried, and twenty pence make an ounce, twelve ounces a pound, and eight pound a gallon, and the penny is called a s. and a half a d. a bushel, which is the eighth part of a quarter, 17 E. 2. cap. 19. The word is not yet out of use; for though we ordinarily say lawful money of England, yet in the Mint, and the like, they say Sterling money. When it was found convenient in the fabrication of monies, to have a certain quality or proportion of base metal to be mixed with the pure gold and silver, the word Sterling or Eafter-ling was then introduced, and has ever since been used to denote the certain proportion or degree of finenics, which ought to be retained in the respective coins. See Lavard's Essay upon Coins, p. 14. See Kenna's Glossary in Stephenson's Law Dictionary.

Steward. (Servuscallus,) Is compounded of the Saxon Stada, i. e. room, place, or field, and Ward, i. e. a ward or keeper; as much as to say, a man appointed in my place of steward, and always signifies a principal officer.
Stolen Goods. To help people to stolen goods for reward, without apprehending the felon, is felony, 4 Geo. 1. c. 11. Prosecutors of such offenders how rewarded, 6 Geo. 1. c. 23. Persons having or receiving lead, iron, copper, brats, bell metal or foil, knowing it to be stolen, may be transported, 20 Geo. 1. c. 30.

Stolen Goods. (Theodore L. Records, fol. 15.) A stolen goods may be transported, 11 H. 7. c. 4.) Ousted to weigh fourteen pounds; yet in some places it is more; and in others it is but twelve and a half, Le charre du Plomo confat ex 30 formellis, & qualimet formella contenit 6 petra excepta dubia libris, & qualimet Petra confat ex 12 libris. Compositio de Panderellis. A stone of wax is but eight pounds, nor is the stone of beef at London any more. See Wrights and Surpfl, and also

Stow, as formerly worn by priests, like unto those which we now call hoods: And sometimes it is taken for the archiepiscopal pall. Exod. c. 188. Alfo a vellum which maturest wore. Cowell, edid. 1777.

Straw. Was a garment formerly worn by priests, like unto those which we now call hoods: And sometimes it is taken for the archiepiscopal pall. Exod. c. 188.
to the church of Rechleser—Concedo & confirm pro per
con. tom. 3, p. 4. So the same prince granted to all re-
cants the freedom of Westminster, that
—by water and by land, by wood and by strand,
quies finis de tholoein, paffisis, &c. Par. antiquit. p. 114.
Hence the fleet in the west suburbs of London, which
lay next the shore or bank of the Thames, is called the Strand.
Cowell, edit. 1727.

Strand, (from the Saxon Strand, a shore or bank
of the sea, or any great river,) Is, when any ship
is either by tempest, or ill fleerage, run on ground, and

Stranger, (derived from the French Etranger, alien-
ney) Signifies generally, a man born out of
the place or known; but in the law it hath a spe-
cial signification, for him that is not privy or party to an
act. As a stranger to a judgment, Old Nat. Brul.
fol. 128. is he to whom a judgment doth not belong; and
in this sense it is directly contrary to party or pri-
cy. Cowell, edit. 1727. See Philip.

Strait. See Way.

Stray. See Citay.

Streamworks, A kind of works in the stannaries,
mentioned in 27 H. 8. c. 23.

Street, How to be cleaned and repaired in market-
towns, Gow. 1. st. 2. c. 52. f. 29. Strand of London to be
demolished, 32 Hen. 8. c. 23. f. 9. sept. 8.

Streptus/Substlistica. The circumstances of noise and
crowd, and other turbulent formalities at a proces or trial
in a public court of justice. And therefore our wise
ancestors did in many cases provide, that right and justice
should be done in a more private and quiet manner.
Cowell, edit. 1727. Par. antiqu. p. 344.

Streetward, Was an officer like our surveyor of the
highways, or rather a scavenger. It is mentioned in the
Monstflec, 2 tom. pag. 187.

Striking, See Church, Palaces.

Strip, (Substitius,) Destruction, mutilation, from the
French Substituo, to substitute & supplant facere, i.
to make strip and wafts, or strip and wals. See
Scripmentum.

Strong, Is a Saxon word, signifying a scarce or bank
of a sea, or any great river. Cowell, edit. 1727.

Strumpet. (Metraxis,) A whore, harlot, or courte-
fan: this word was heretofore used for an addition.
Cowell, edit. 1727.

Strongen, May be imported, 10 & 11 Will. 3.
c. 24. The King, where intitled to strungen, 17 Ed. 2.
fl. 1. c. 11.

Style. (Appella.) To call, name, or intitle one; as the
style of the King of England, is George the Third,
by the grace of God, King of Great Britain, France and
Ireland, Defender of the faith, &c. There is also an old
and new style, used in the dates of things abroad. Junc.
See Calendar.

Subdeacon, Is an ancient officer in the church: He
is mentioned in the apocryphal canons, vis. 43, 43. He
was not made by imposition of hands, but by the delivery
of an empty platter and cup by the bishop, and of a
pitcher, basin, and towel, by the archdeacon. His of-
cise was to wait on the deson with the linen on which the
body, &c. was consecrated, and to receive and carry
away the plate with the offerings, and the cup with the
wine and water in it, &c. He is often mentioned in
the monkish historians; and therefore it is thought proper
to write so much of his name and office. Cowell, edit.
1727.

Subdeco. (Subdit.) Are the members of the com-
monwealth under the King their head. Wood’s Inst. 28.
Subigalis, Is any beast carrying the yoke. Mot.
Par. 146, 146.

Sublegerous, One who is guilty of incest; from the
Saxon Sib, cognates, and later, conubins, or rather from
the Saxon sbiger, i. e. incebus.

Submarital, (Submaritale.) Is an officer in the
Marshall, who is deputy to the chief marshal of the
King’s house, commonly called the knight marshal, and
hath the custody of the prisoners there. Cresp. Jurisdi.
fol. 164. He is otherwise called Under-Marshel.

Substitute, Is an officer who is to be set up in
Subverture. To cut the fenns of the legs or thighs,
to hamstring. It was an old custom in England, Mere-
tries & impudicua mulieres subveresc. See Oberram. de
p. 149.

Subvocation, (Subvocatis,) A secret or underhand
preparing, infruding, or bringing in a false witness, or
corrupting or allowing to do such a false act. Hence Sub-
vation of perjury mentioned in the act of general pardon,
12 Car. 2. cap. 8. is the allowing to perjury. Subvention
of witnesses, 32 Hen. 8. c. 9. and 3 Par. Infl. fol. 176.
See how the word is used in the words in the writ, which charge the party summoned
to appear at the day and place assigned, subvana centum lib-
aram, Cowell, edit. 1727. Subvana not to be grant-
ed without security found for the oath, 15 Hen. 3.
Penalty on perors not appearing to give evidence, when
served with a subvana, 5 Eliz. cap. 9. Subvana shall
not issue out of a court of Equity, till after the bill is
filed, except for an injunction, 4 Ann. c. 10. f. 22.

Subsidy, (Subsidium,) Signifies an aid, tax or tribute,
given by the crown to the King, for the urgent oc-
casions of the kingdom, to be levied of every subject, ac-
cording to the rate of his land or goods, after four fillings
in the pound for land, and two fillings eight pence for
goods. No history mentions that the Saxon Kings had any
subsidies after the manner of ours at present; but they
had both levies of money and personal services to-
wards the building and repairing of cities, castles, bridges,
military expidions, &c. which they called Burgage, Brightage, Herseage, Horsedge, &c. But when the Danes
harrassed the land, King Ethelred submitted to pay them
for redemption of peace several great sums of money yearly.
The first called Dangell, the second called Legging, which
levying of every hyde of land was taxed yearly for twelve
pence, lands of the church only excepted, and thereupon
it was after called bydagem, and that name remained after-
ward upon all taxes and subsidies imposed upon lands;
for sometimes it was laid upon cattle, and then was
termed bydagem. The Normans called the sometimes
taxes, tontalage, otherwise auxilia & subsidies. The
Conqueror had these taxes, and made a law for the
manner of their levying, as appears in Eadmalstitionius
emin, pag. 125. sed. Volumus & firmatur, &c. Many
years after the conquest they were levied otherwise than
now, as every ninth land, every ninth fiddle, and every
ninth thousand. E. 3. sect. 20. Of which you may see
great variety in Roafili’s Agricilum, tit. Taxes, Tentis, Fifteenths, Subsidies, &c. and 4 Infyl. fol. 26 and
33. Whence we may gather there is no certain rate,
but as the parliament shall think fit. Subsidy is in our
flates sometimes confounded with cumbous. 11 H. 4.
c. 17. 1727.

A fifteen granted for Magna charta, and the Charta de

The ninth fiece, &c. granted, 14 Ed. 1. b. 1. c. 20.
No aid to be taken but by allent of parliament, 14
Ed. 3. b. 1. c. 20.

A demand of the revenue enfranched in parliament, 14
Ed. 3. b. 1. c. 1. 5 R. 2. b. 2. c. 3.

The penalties of the fatutes of labourers given to the
people in aid of their subsidies, 23 Ed. 3. c. 8.

Subsidies
which it is said are not traversable, as there are for pro-
hibitions to the spiritual or admiral courts. 1 Pimat. 76.
Breaches of the peace of fume must be fug-
ggued upon record. 2 Ed. 9 & 10 W. 3.

Subsitt, (Sella,) Signifies a following another, but in
sdivers fenes. The first is a suit in law, and is divided
into real and personal, and is one with all action real and
personal. Kitchen, fol. 74. Secondly, Suit of court, or
suit-fruit, courts. At the suit of tenants one to the court
of their lord. 7 H. 7. exp. 2. Thirdly, Suit-covenant is
where your ancestor hath covenanted with mine to give to
his court. Fourthly, Suit-covenant, when men combine the
interest of any one. 2 Ed. 9. Sixthly, Suit signifies the
following one in chaf, as a, fit suit. Westminster. 1 cap. 46. Lastly, It signifies a petition
made to the King, or any great person. Cowell, edit.
1727.

No suits in King's courts under 40s. 6 Ed. 1. c. 8.
Suits not to depart from the King's court without rem-
edy, 13 Ed. 1. st. 1. c. 50.

A writ de nativo not to be granted, unless the Chan-
cery be amerced that it is fixed with the consent of the
confmant, 10 Ed. 3. st. 2. c. 3. art. 4.

The performance of the premises taken at the suit
of another by procex of the King's Bench at Marlbafern,
or inferior courts, without the plaintiff's assent, 8 El.
2. c. 4.

Suit of Court, That is to suit the Lord's court, is
that service which the feudatory tenant was bound to do
his lord's court, and the tenant again his lord. 18 Ed.
1. c. 57. See flat, 4 Ed. 2. c. 28.

Suffragan, (Suffragent,) Is a titular bishop ap-
pointed to aid and assist the bishop of the diocese. Co. 2
Inst. fol. 79. calls him a bishop's Fuggerent. Spelman
says, Divorcat episcopi qui archiepiscopo suffragari & af-
fidentialiter et suffragenti dictator quae suorum suffra-
gan cause ecclesiasticum judicant. It was enacted, (anno
26 H. 8. c. 14.) that it should be lawful for every die-
cesan, at his pleasure, to elect two honest and difcreet
spiritual persons, within his diocefe, and to prefer them
to the King, that he might give one of them such title,
name, and dignity of such in the fees in the suit statute
pecuniary, as he should think convenient, &c. and
that every such person shall be called Bishop Suffra-
gan of the same see, H. Camden in his Britan, tit.
Kent, speaking of the archbishop of Canterbury's Suffra-
gans, says, When the archbishop is busied in weightier
affairs, he has no time to attend to matters that pertain to
order only, and not to the episcopal jurisdiction. Others call
them sufficiency bishops; whose number is limited by the
suit statute. Covell, edit. 1727.

Sugar, Importing it, not within the statute against
regrat. 15 El. c. 25. f. 21.
A duty upon sugar, expired, 1 Jac. 2. c. 4.
Duty upon sugar, 6 Geo. 2. c. 13.
The drawback on exportation of sugar imported from the
English plantations in America, 9 & 10 W. 3. c. 23.
6. 8. Geo. 2. c. 13. f. 9. 26 Geo. 2. c. 32. f. 5.
And on exportation of brown Muscovado sugars refined
6 Geo. 2. c. 13. f. 10.
Sugar may be imported from Spain and Portugal, as
usual, 6 Geo. 2. c. 13. f. 13.
Drawback on British refined sugar out of the last sub-
sidy, 21 Geo. 2. c. 4. f. 7.

Suggestion, (Suggests,) Is in law a furnace, or re-
presenting of a thing; and by Magna Charta no person
shall be put to his law on the suggestion of another, but
by lawful witnesses. 9 H. 3. c. 28. Suggestors are
grounds to move for prohibitions to suits in the Spiritual
courts, &c. where as they meddle with matters that pertain out of their jurisdic-
tion, 2 Lib. Ait. 536. Though mere matters of re-
cord ought not to be stayed upon the bare suggestion of
the party; there ought to be an affidavit made of the mat-
ter suggested to induce the court to consent, a rule for
fraying the proceedings upon the record. 2 Lib. 557.
There are suggestions in repose, for a return balance;
sugg to

Sunnight, (From the Sax. Sunib, i. c. Aratmarum,) Signi-
ifies a Flough-land, also tol for carriage on hoarse-back.
Cromb. Jar. fol. 191. For where the charter of the forest, cap. 14, hath
their words, For a horse that bears loads every half year a halfpence, the book called Popula Odali, with these
words, Pros uso eque partus funngtunm, per dimidium an-
num oblatum. Chart. E. num. 7. It is otherwise
called a Seame; And a Seame in the wether parts is a
hoarse-load. Covell, edit. 1727.
Lift forfeiture or in any and, for Jac. 8d., according to the c. fummons or non-fummons. Judgment before the defendant would be made, if any of these persons, in whose name a joint action is commenced, does not appear, or if after appearance make default, the other or others may have judgment ad quoddam solvendum, in other words, a judgment of severance. Harrod. 318. Manly. 2 Bac. Summ. and Swe. p. 4, 16.

If two bring affizes, and one comes not at the day, a fummons ad quodnam finum may issue; and, if the party fummoned does not appear at the return of the fummons, the other party may pray judgment ad quodnam solvendum, Bac. Summ. and Swe. p. 4, 18.

So if eight have joined in affize, and five of them are nonsuit, or will not judge, judgment of severance may be against thefe five. Bro. Summ. and Swe. p. 16.

So in quo jure, by two, if one makes default, fummons may issue, and then the nonfuit of the one shall not be the nonfuit of the other. Fiz. N. B. 182. 1 Inj. 139.

The confedence of this judgment is, that, notwithstanding the feverance of one or more who did not appear or make default, the other plaintiff or plaintiffs in the action may proceed in the fuit. 4 Bac. Abr. 661.

The judicis of nisi prius have no power to give a judgment of severance; for this can only be done by the judicis of that bench where the record is. Bro. Summ. and Swe. p. 10. 2 Rol. Abr. 485.

If the plaintiff is joined in an action, and one of these has not appeared, he must be summoned before judgment of severance can be given against him: For it is a general rule, that a nonfuit is in no cafe remittory before appearance, because a writ may have been purchased in the plaintiff's name without his privy. 1 Inj. 159. Bro. Summ. and Swe. p. 10. 2 Rol. Abr. 485.

But if two joint plaintiffs have both appeared, and afterwards one makes default, the court may, without if- suing any fummons, immediately give judgment of feverance. Bro. Summ. and Swe. p. 10. 10 Rep. 135. Harrod. 317.

No judgment of severance can be given in a wait of error, unless it is prayed before the defendant has pleaded nolo of eratnam, Cro. Jac. 117. Blunt v. Sneldine.

But fuch judgment may be after joinder in the alignment of error. 2 Lii. Pr. Reg. 683.

For more learning on this subject, see 20 Vin. and 4 Bac. Abr. tit. Summons & Severance.

Summons ad Warrantisandum, Is the procwels where- by the vouchee is called. See Cate in Lottit. 5. 104. 663.

Summaries Laboris, Are laws made to restrain exces in apparel, and professedly costly clothes; of which we have heretofore had many in England, but all repealed. Ann. 1 Jac. 3. Inj. 90.

Sunday, (De Dominico), Is the Lord's day set apart for the service of God, to be kept religiously, and not to be profaned. Perons using bull-baiting or bear-baiting, or fuch like sports on a Sunday, shall forfeit 6s. 4d. and 50s. defrauding, bowling, &c. Stat. 1 Car. I. And if any butchers kill or fell meat on a Sunday, they are liable to a penalty of 6 s. 8d. Carriers, drovers, &c. travelling on the Lord's day, incur a forfeit of 20l. Stat. 3 Car. I. c. 1. No person shall do any worldly labo on a Sunday, (except the works of necessity and chari- ty), under a penalty of 10s. and crying and exuding to fell any wares or goods on a Sunday, the goods to be forfeited to the poor, &c. on conviction before a judge of peace, who
who may order the penalties and forfeitures to be levied by diftaif; but this is not to extend to dressing meat in families, inns, cook-shops, or victorious houses; nor crying of milk on a Sunday in the morning or evening, 29 Car. 1. c. 7. An indictment for exercising the trade of a butcher must be laid to be contra funam tumturis; for the same reason, a suit for any court of justice be entered and recorded to be done on a Sunday, it makes it void. 2 I. Sa. 364. 3 Shop. Atr. 181. The service of a citation on a Sunday is good, and not restrained by the flat. 29 Car. 2. And by two judges, the delivery of a declaration upon a Sunday may be well thought, it not being a process; but Sale, Ch. J. thought it ill, because the act intended to refrain all sorts of legal proceedings. 1 La. Ragm. 706. A writ of inquiry cannot be executed on a Sunday. 1 Strange 387. See 20 Vin. Atr. cit. Sunday.

Super-injunction. (Super-injunction.) One Injunction upon another; as where A. is admitted and Influated to a benefice upon one title, and B. is admitted, Influated, etc., by the prevenient of another. See Hutchinson's cafe in 4 Rep. 2 Part. fol. 453.

Super-jurate. When a criminal endeavored to execute himself by an Oath, or by the oath of one or two witnesses, and the crime was so notorious, that he was convicted by the oaths of many more witnesses; this was called Super-jurare. Leg. Hn. 1. c. 47. Leg. Albion. c. 16.

Supercontractions paleant. Is a writ judicial, that is, which the person who is implicated in the contract, for the over-burdening of a common with his cattle, in case where he was formerly implicated for it in the county, and the caufe is removed into the King's court at Westminster. Reg. jud. 4.

Super-particulare Regis. Is a writ which lay against the King's widow, for marrying without his licence. F. N. B. fol. 172.

Superfedeas, Is a writ in divers cafes, and signifies in general a command to stay or forbear the doing of that which ought not to be done, or in appearance of law to be done, were it not for that whereon the writ lies. See the table of the Reg. Origs. and just. and F. N. B. fol. 256. For preventing the superfedeas of executions, see the statute 16 & 17 Car. 2. cap. 8. Cowell, edit. 1727.

By a superfedeas the doing of a thing, which might otherwise have been lawfully done, is prevented; or a thing that has been done is, notwithstanding it was done in a due course of law, thereby made void. 4 Bac. Atr. 667.

A superfedeas is either express or implied: An express superfedeas is sometimes by writ, sometimes without a writ. Where there is a by writ, some performance to initiate the writ is directed is thereby commanded to forbear the doing of something therein mentioned; or, if the thing has already been done, to revoke, as far as that can be done, the act. 4 Bac. Atr. 667, 668.

If an exigent is awarded against a man, he may have this writ; and by this writ, some performance to initiate the party's finding securies to appear at the return of the exigent, that, if he has not arrested the party, he do not arrest, but suffer him to go in peace; or that, if he has arrested him, he discharge him out of custody. Fithb. N. B. 236.

Or the party, against whom an exigent has been awarded, may, upon finding securies in the court which has power to grant him a superfedeas, have an absolute writ Vol. II. No. 128.

of superfedeas, to the same effect, directed to the sheriff. Fithb. N. B. 236.

An express superfedeas without writ is, where some person, who has, pursuant to an authority in him vested, made an order for doing a thing, dees by a second order forbid that thing to be done. 4 Bac. Atr. 668.

If a judicial writ is made, and order by surprize, he may, upon finding that he has made an improper order, by a second order superfede it. Str. 6. The inhabi-
tants of Pancras and The inhabitants of Rambald.

But if the thing ordered to be done was before the delivery of the second order, it is doubtful, whether this shall, by virtue of the words which are inferred in it, annul the act; and it may perhaps be proper, that no express superfedeas, unless it be by writ, shall have such a retrospective power. 1 Hawk. 145.

That is an implied superfedeas, by which, also' no writ of superfedeas issues, the doing of a thing that other-
wise might lawfully have been done is prevented. 4 Bac. Atr. 668.

A writ of error, a certiorari, and divers other writs have by implication of law, in to mere effects the same effect as a writ of superfedeas, but an implied superfedeas never makes any act void which was done before it existed. 4 Bac. Atr. 668.

No writ of superfedeas lies from any other court to the court of chancery: but this court may supersede its own writs. 4 Bac. Atr. 668.

If one man hath fixed out a supplication from the court of chancery commanding another to find securies of the peace, he, against whom this is granted, may have a superfedeas from the same court commanding the sheriff to forbear to arrest him. Fithb. N. B. 238.

But a writ of superfedeas lies from the court of chan-
cery to any other court.

A capias ad futurum diem having issued from the court of King's bench, a superfedeas was issued from the court of chancery commanding the justices of that court to supersede. This superfedeas was thought to be done to contrary to law: But Finch, because it was out of a higher court, superseded, and no further proceedings were had. Br. Superf. pl. 5.

Where securies of the peace is granted by the court of King's bench, if a superfedeas comes from the court of chancery to the justices of that court, their power is at an end, and the party is, as to them, discharged. Br. Peasc. pl. 17.

Any case of the Westminster may, in term, award a superfedeas to any writ or process, which has issued from such court; or to the proceedings of any other court, which has proceeded in a matter properly notuable in the court from whence the superfedeas issues. 4 Bac. Atr. 668.

For more learning on this subject, see Vin. and 4 Bac. Atr. tit. Superfedeas.

Super statuto de Articulis Cleri, Cap. 6. Is a writ lying against the sheriff or other officer, that disturbs in the King's highways, or in the glebe land, anciently given to redorses. F. N. B. fol. 176.

Super statuto de Anglia, qui sunt tregellis, &c. Is a writ lying against him that uses uisingual either in groes or by retail, in a city or borough town, during the time he is mayor, etc. F. N. B. fol. 172.

Super statuto facta per Benedictum de Marzali de Rop. Is a writ lying against the servand, or mer-
chant, for holding plea in his court of freehold, or for trespas or contrails not made within the King's hou-

Super statuto 1 Ed. 3. cap. 12, 13. Is a writ that lay against the King's tenant holding in chief, who aliened the King's land without his licence. F. N. B. fol. 175.

Super statuto veritatis librarum & laboratorum, Is a writ that lies against him who keeps my ferialis, departed out of my service, against law. F. N. B. fol. 167.

Superstitiosi uere, To churches were void, 23 H. 8. c. 10.

8 M Beneficed
SUR

Benefited clerk not to take salary to sing for any soul, 21 H. 8. c. 13. f. 37.

Colleges, chantries and hospitals, given to the king, 37 H. 8. c. 1 Ed. 6. c. 14.

Commotions not to issue of lands given to superstitious uses, 1 Ed. 6. c. 14. f. 10.

Lands given to superstitious uses vested in the crown for the use of the publick, 1 Geo. 1. f. 2. c. 50.

Superius, is a Latin word, signifying a surveyor or overeer: It was anciently and still is a custom among farmers, especially of the better sort, to make a supervisor of a will, but it is of little purpose; however the intention might be good, that he should superintend the executor, and fee the will performed. Cenwell, edit. 1727.

Suppliant, is a writ signing out of the chancery, for the taking of a protest of peace against any man: It is directed to the justices of peace of the county, and the sheriff, and is granted upon the statute, anns 1 E. 3. c. 16, which ordinates, That certain persons in chancery shall be attainted to take care of the peace. See F. N. B. fol. 80.

This writ was of old called Breve de ministris, as Lambard says in his Eiusarchea, out of the Regift. Orig. fol. 88. See Surety of the peace, and 20 Vin. Abr. 99.

Surety, The King bound to provide remedy in parliament for militia in the church, 23 Ed. 3. f. 6.

The King patron paramount, ibid. f. 4.

Note shall have benefit withiin the realm without the King's licence, 3 R. 2. c. 3. 7 R. 2. c. 12.

The realm of England free, and subject only to god, 16 R. 2. c. 5.


The submission of the clergy to the king, 25 H. 8. c. 19. f. 1.

The bishop of Rome to be abjured, 28 H. 8. c. 10.

The penalties of denying the King's supremacy, 1 Ed. 6. c. 10.

Cenwell, edit. 1727.

The supremacy denied, 1 & 2 P. & M. c. 8. f. 41.

The supremacy restored, 1 El. c. 1. f. 17.

The oath of supremacy appointed to be taken, 1 El. c. 1. f. 19. 5 Ed. c. 1.

Penalty of disability, or on refusal of the oath, 1 El. c. 1. f. 21. 1 W. & M. c. 1. f. 8. c. 9. 13 W. 3. c. 6. 5. 1 Geo. 1. c. 13. f. 8. 14. 17.

Surety of the peace, (Superioratione Foris) is when a commoner puts on more beatts in the forreth than he has a right to. Monmouth, part 2. cap. 14. num. 7. And is taken from the writ De seco di Super- ceremonia Portus, which was for fear when the commons furchargeb. 3 Inst. fol. 293. Sure to be hit, is a writ that lies for the heir of that woman, whose husband has alienated her land in fee, and the brings not the writ of Cou in vita for the recovery of her own land; in this case her heir may have this writ against the tenant after her decease. F. N. B. fol. 193.

Surety, See Ball, and 20 Vin. Abr. 101.

Surety of the Peace, (Securitas Pacis, so called, because the party that was in fear, is thereby secured,) is an acknowledging of a bond to the prince, taken by a commoner or judge of record, for the keeping of the peace. This peace may a justice of the peace command, either as a minifier, when he is commanded thereto by a higher authority; or as a judge, when he doth it of his own power, derived from his commiffion. Of both these, see Lamb. Eere, lib. 2. cap. 2. p. 77. Surety of the peace, may, according to his discretion, bind all those to keep the peace, who, in his presence, shall make any affray, or shall threaten to kill or beat any person, or shall set about together with hot words, and all those who shall go about with unusual weapons or attendance, to the terror of the people; and all such persons, must be known by him to be common barattors; and all who shall be brought before him by a contable, for a breach of the peace in the presence of such contables; and all such persons who, having been before bound to keep the peace shall be convicted of having forfeited their recognizance. Lamb. 77. 78. Brus. Peace, pl. 7. c. 17.

All persons under the King's protection, being of free memory, whether they are natural born subjects or aliens; good subjects or attainted of treason or some other crime, have a right to demand surety of the peace. Lamb. 78. 79. 80. 1 Hawk. 126.

The question whether Jews, pagans, or persons, attainted of praemunire have a right to? Lamb. 80. 1 Hawk. 126.

A wife may demand surety of the peace against her husband, if he threatens to beat her outrageously, or to kill her. Frib. N. B. 80. Lamb. 8. 2 Le. 128. 4 Le. 33.

A woman exhibited articles of the peace, filling herself the wife of the defendant, letting out facts of cruelty, and the tendency of a fault in the ecclesiastical court for the restitution of conjugal rights. When the defendant came to put in bail, he infifted, that the recognizance should not be taken of to carry with it any imposition of the marriage: And the court ordered it to run thus; to keep the peace towards our sovereign Lord the King, and all his liege people, and particularly towards Hannah Penn, who hath exhibited articles of the peace against him the said James Bamberdise, by the name of King's Surety, and the said James, &c. Str. 1231. Rex v. Bambridge.

Articles of the peace may be exhibited by a husband against his wife. Str. 1207. Sim's case, 1 Hawk. 127.

Surety of the peace is usually granted at the request of some one person, for the fear of one man can scarce ever be the fear of another. He cannot be otherwise attainted, and his wife brought to impeach his letters of attorney, and to put himself and his wife, and his lands, and other things, out of his possession. But infants and feme covertcs ought to find surety by their friends, and not to be bound themselves. 1 Hawk. 127.

When ever a person has just cause to fear that another will burn his house: or do him some corporal hurt, as by killing or beating him; or that he will procure others to do him such mischief, he may demand the surety of the peace against such person. Lamb. 82. 1 Hawk. 127.

Surety of the peace may be had against every person whatsoever, being of free memory, whether he be peer or commoner; magistrate or private person; of full age or of age under, as a surety. 1 Hawk. 128.

But of children of covertes ought to find surety by their friends, and not to be bound themselves. 1 Hawk. 127.

It is said that surety of the peace shall not be granted for fear of imprisonment, because damages may be recovered in an action of false imprisonment. Brus. Peace. pl. 32.

But the better opinion is that it may; for every unlawful imprisonment is an affaul and injury. The reason given, that an action will lie, is no more conclusive in this case than in the case of a battery; and yet there is no doubt but suery of the peace may be granted for threatening to beat. Lamb. 83. 1 Hawk. 127.

Surety of the peace may be demanded by a wife, if her husband gives her unreasonable correction. Ms. 974. Sir Thomas Seymour's case. Grot, 215. Pitz. N. B. 80.

Some persons having a dispute in a church, and attending the common prayer out of the defile, an attachment of the peace was, on exhibiting articles in the court of King's Bench, iffued out against them. 1 Ecc. 290. Rex v. Douglas.

But suery of the peace ought not to be granted to a man for fear of danger to his tenant or cattle. Lamb. 83.

It hath however been said, that a man may have the surety of the peace against one who threatens to hurt his wife or child. Dalt. 266.

The surety of the peace ought not to be granted for any peace, unless it is a fear of some future danger; But the offender must in such case be punished by scandal or indictment. Dalt. 266.

The demand of the surety of the peace ought to be soon after the cause of fear; for the sufferings much time to pass, before it is demanded, flown that the party has been
Of granting surety of the peace by the court of Chancery.

2. Of granting surety of the peace by the court of King's Bench.

3. Of granting surety of the peace by a justice of the peace.

4. Of forfeiting a recognition for keeping the peace, and how such recognition may be discharged.

At the Common law it was sufficient, in order to obtain process for surety of the peace from the court of Chancery, if the party who demanded it made oath, that he was in fear of some corporal hurt, and that he did not crave the same out of malice, but for the safety of his body. Finch, N. B. 79, 80.

When the party or parties shall be. After reciting, that divers turbulent and contentious persons, come out of malefic and others in hope of gain by way of composition, do oftentimes, upon their corporal oaths, or otherwise upon false suggestions and surmises, procure process of the peace for good behaviour, out of his majesty's courts of Chancery and King's Bench, and assist divers of his majesty's quiet subjects, whose dwellings and abodes are, for the most part, in countries far distant and remote from the said courts, to their intolerable trouble and vexation, whereas they might, upon good cause shown, receive justice at the hand of the justices of the peace in the counties where they dwell, it is enacted, 'That all process of the peace or good behaviour, to be granted or awarded out of the said courts, or either of them, against any person or persons whatsoever, at the suit of or by the procurement of any person or persons whatsoever, shall be void and of none effect, unless such process shall be granted, or awarded, upon motion first made before the judge or judges of the same courts respectively, sitting in open court; and upon declaration in writing, upon their corporal oaths, to be then exhibited unto them, by the parties which shall desire such process of the causes for which such process shall be, or out of the said courts, respectively, and unless that such motion and declaration be mentioned to be made upon the back of the writ, the said writings there to be entered and remain of record: And if it shall afterwards appear to the said courts, or either of them, in effect, that the causes expressed in such writings or any of them be untrue, that then the judge or judges of the said courts, or either of them respectively, shall and may award such costs and damages unto the parties grieved, for their or any of their wrongful vexations in their behalf, as they shall think fit; and that the party or parties so offending shall or may be committed to prison.'

When articles of the peace are exhibited in the court of Chancery, and oath is made that the surety of the peace is not erased by the party through malice, but for the safety of his life, a writ of suppliant issues, directed to the justices of the peace generally, or to some one justice of the peace, or to the sheriff, commanding them, or him to take security in the sum thereon indorsed, and, if the party refuses to find such security, to commit him to the next gaol, until he does find such security. Finch, N. B. 80.

Where the writ is directed to the sheriff, he may issue a precept to a bailiff to arrest the party, but only himself can take the security or make a return to the writ; for the power given by the writ, it being a judicial one, cannot be abrogated. Bro. Off. pl. 39. Finch, N. B. 81.

If the writ is directed to the justices of the peace generally, only he to whom it is delivered can grant a warrant to compel the party to find sureties. The warrant must also be returnable before him alone; for he alone can take the recognizance and make return to the writ. Bro. Pies, pl. 9. Lamb 127.

The recognition must, in this case, be in such form as is indorsed upon the writ of suppliant. 1 Hawk. 129. Lamb 101.

This is sometimes very large. A writ of suppliant was once indorsed in the sum of 4000l. 2 Will. 202. Chancery's cafe.

If no return is made to the writ of suppliant, the party who filed it out may have a certiorari, directed to the perfon who ought to make a return, commanding him to certify the writ of suppliant, and what has been done thereupon. Fisz, N. B. 81. 1 Hawk. 129. Lamb 100.

When a writ of suppliant has issued from the court of Chancery against any perfon, he may by himself, or some friend, come into the court of Chancery, and find sureties there that he will not do any harm to him who hath filed out the writ; and thereupon he shall have a writ of supersedeas, reciting the writ of suppliant, and the security given, directed to the judges or justices of the peace, or to the sheriff, commanding that they suspend execution of the writ until he has furnished the party with sureties, or if they have arrested him for that cause and no other, that they deliver him. Fisz, N. B. 81, 238.

2. Of granting surety of the peace by the court of King's Bench.

At the Common law the oath of the party was a sufficient ground for the court of King's Bench to grant the surety of the peace; but this case is not within the power of the court. But the party may have his case made in the 21 year of the reign of King James the First, be done, unless articles of the peace are exhibited in this court upon motion in open court. Fisz, N. B. 83, 80.

Mullineux, who had been taken into custody by a suppliant out of the court of Chancery, being brought by a habeas corpus before Jones, a justice of the King's Bench, he was bound by a recognizance to appear in the court of King's Bench the first day of the next term. He appeared at the time; and the court was moved, that the articles exhibited in the Chancery might be read, and that he might enter into a recognizance: But it was refused; and per curiam: The record is not before us, but, if the witnesses who swore to the articles in Chancery, had been here and had sworn articles to the same effect in court, we could have made the surety for the peace. 6 Sim. 61. Mullineux's case.

Where articles of the peace are exhibited in the court of King's Bench, and oath is made, that the party does not crave the security of the peace out of hatred or malice, but merely for the preservation of his life and person from the menacing, or by the apprehension of the peace issues to the sheriff commanding him to take a bond for the appearance of the party at the return of the writ to put in bail to the articles in this court; and, if such bond be not given, to commit the party to the next gaol. Camb. 427. Ruffell's case. Finch, N. B. 79.

Where the party against whom articles of the peace are exhibited, comes into court to put in bail, the articles must be read to him. 6 Mod. 132. The Queen v. Lane.

Articles of the peace have been exhibited against Lord Fans, and processes of the peace having issued upon them, it was instructed, when he came to put in bail, that the facts charged were not a sufficient ground for demanding surety of the peace; or, if sufficient, that the facts were false, and affidavits were offered to disprove them; the reading of these affidavits was opposed, and it was said, that the court had always been at liberty to give such credit to the oath of the party as to order. But it was admitted, that the court may review the articles, and hear any objections arising upon the face of them. Per curiam: This is all we can do, the other was never attempted before; and we must adhere to the course of the court, by taking the articles to be true. Upon reviewing these articles, the court was of opinion that the facts, if flated, were a sufficient ground for granting the surety of the peace.
the peace, and security was given. Str. 1202. Lord
Vane's case.
Robert Parneel having exhibited articles of the peace
against Sir Thomas Allen, Bart. and three others, an
attachment of the peace issued against them. Before ball
was put in, Parneel, in a petition to the court, that the
faid articles were exhibited to the court, and endeavou-
red to explain them. Hereupon the counsel for the
defendants moved for a rule to review the articles, and some
affidavits were read to contradict the facts therein charg-
ed. Upon reading this petition, and the affidavits, in
which the facts were flatly contradicted by five or six per-
cents, a rule was made to shew cause, why the articles
should not be reviewed, and that Parneel should attend
upon the day for shewing cause. He did attend, and the
court was, upon the whole, so satisfied of his having be-
guilty of perjury that he was immediately committed for
willful and corrupt perjury ; and a rule was made, that
all further proceedings upon the articles should fail.
The rule was pronounced in these terms, and not to take
the articles off the file, in order to give the defendants an
opportunity, which could not otherwise have been done,
Sir Thomas Allen, Bart. and others. Hil. 32 Geo. 2.
And it is upon the peace being exhibited, by John
Brown, against Hannah Benett, and three others, a rule
was, upon reading the affidavits of the defendants, made
to shew cause, why these affidavits should not be reviewed.
In these affidavits it was sworn, that the defendants did
not know any such person as Brown the petitioner, and,
being himself being falsly sworn to, it was suggested,
that this was a contrivance of the defendant Bennett's hu-
band to oppress her. No cause being shewn, the articles
were ordered to be taken off the file. MS. Rep. Rex v.
Benett and others. Engli. 32 Geo. 2.
A motion being made for a mandamus to three judges
of the peace in the county of Brecon, to take security
upon articles of the peace exhibited in the court of King's
Bench, an affidavit was produced, that the defendant,
who lived in that county, was seventy years of age and
unable to travel; and Seymour's case, M. 6 Ann was cited.
A mandamus was in this case granted. Str. 353.
Rex v. Lewis.
In a late case a motion of this kind was refused; and
by Denfijon J. such a mandamus has of late years been
granted but once, in the King and Lewiso; and there
the court had great doubt, although the circumstances of
that case were very peculiar, as to the granting it. MS. Rex
v. Lewis. Hil. 29 Geo. 2. 1787.
It is a very great grievance, that it should be in the
power of one man to compel another, who lives perhaps
in the most remote part of England, to appear and put in
ball to articles of peace exhibited in the court of King's
Bench, when he might have had the security of the peace
from his own local body, and it was the opinion of the
court of King's Bench many years ago, that this mis-
chief, although not provided against by the enacting clau-
se of that statute, is within the equity of the 21 Jac. 1.
c. 8. 4 Bat. Abp. 691.
Upon a motion, on the behalf of Ruffell, to exhibit
articles of the peace against seven or eight persons, who
lived at Nottingham; Holt Ch. J. faid, Then we shall give
seven or eight persons the trouble to come up to put in
ball; why did you not go to the judges of peace in the
county? The complainant answered, I could not have had
justice there, they are relations. Hereupon the motion was
It has not of late years been the practice, of the court
of King's bench, to refuse the receiving of articles of the
peace, where the charge contained in them is sufficient
for craving the rarity of the peace: But it seems, as if
that rule was now come to a revolution of putting a stop
to this vexation of the subject; for in a very late case, in
which a motion was made by Beragh, to exhibit articles
of the peace against Wait, the court, it appearing that
Wait lived at the Drivert, and that Beragh had not en-
deavoured to obtain rarity of the peace in the county,
unanimously refused the motion; and my Lord Mansfield,

3. Of granting security of the peace, by a justice of the peace.

A justice of the peace may grant the rarity of the
peace, under the authority of the commiission of the
peace, by which he is empowered to caufe to come before
him all those, who to any one or more of our people,
concerning their bodies or the firing of their houses have
served, as if for a breach of the peace, for the security of
their good behaviour, towards us and our people; and if
they shall refuse to find such security, then in our
prisons, until they shall find such security, to caufe to be
fafely kept. Lam. 36.
Whenever oath is made before a justice of peace by
any perfon, that he is actually under fear that another
will burn his house, or do or procure to be done to him
some corporal hurt, and that he does not crave the
rarity of the peace through malice, but for the safety
of his life, the justice is bound to grant it. Lam. 83.
F. N. B. 79. 1 Hawk. 127.
Where security of the peace is directed against a peer,
the safest way is to apply to the court of chancery or
King's bench. 1 Hawk. 127, Lam. 81.
If the person against whom it is demanded, be present,
the justice of the peace may commit him immediately,
unless he offers forfeitures; and a forfeit he may be com-
manded to find forfeitures, and be committed for not doing
But if he be absent, a warrant for committing him can-
not be granted till the warrant has kissed commanding him
to find forfeitures, and this warrant, which must be under
seal, ought to shew the caufe for which it is granted, and
at the same time. Lam. 83, 1 Hawk. 128.
The justice of the peace, who grants the last men-
tioned warrant, may in this case make it special for
bringing the party before himself only, for, as he has
most knowledge of the matter, he is best qualified to do
justice in it. 5 Co. 59. Pylter's case. 1 Hawk. 128.
But if the justice be of general terms to carry the
party before any justice of the peace, the officer, who
executes it, has his election to carry him before what
justice he pleases, and may carry him to gaol, by virtue
of the same warrant, if he refuses to find forfeitures for
such justice; for the warrant has these words in it, if
he shall refuse to find security, &c. Bro. Ff. Eif. Infrmp. pl. 11.
1 Hawk. 128. 5 Co. 59.
If one, however, who apprehends that the rarity of the
peace will be demanded against him, finds forfeitures
before any justice of the peace of the same county, either
before or after a warrant is issued against him, he may
have a supersedeas from such justice; and this shall
prevent or discharge him from an arrest, under the warrant
of any other justice, at the suit of the same party, for
whose security he has found such forfeitures. Lam. 95.
1 Hawk. 128.
A supersedeas may also be had, to a warrant granted by
a justice of the peace, upon finding forfeitures in the court
of chancery or King's bench. F. N. B. 23.
But by the 21 Jac. 1. c. 8. par. 3. After reciting,
that divers turbulent and contentious persons, deservedly,
fearing to be bound to the peace or good behaviour,
by justices of the peace of the counties where they
dwell, did often resort to the court of King's bench, to
bind to the peace or good behaviour in the court of chancery
or King's bench, upon sufficient forfeitures, or upon colourable
procution of some perfon or perrons, who will be ready
at all times to release them at their own pleasure; where-
onupn their majesty's wishes of supersedeas are oftentimes di-
rected to the justices of the peace, which advice of his majesty's
officers, requiring them and every of them to forbear to
arrest
In support of a rule to try proceedings in a _false facta_, upon a recognizance for keeping the peace, it was said, that the assault, which had been made, was not upon him at whose request the surety of the peace was granted, but upon another person. It was held that this makes no difference; and the rule was discharged. _M.S. Rep. Rex v. Stanley, and his bail, Trin. 27 Ges. 2._

But a recognizance for keeping the peace, is not forfeited, where an officer, having a warrant against one who still will not suffer himself to be arrested, beats or wounds him in the attempt to take him. _Lamb. 128. 1 Hawk. 130._

So it is not forfeited, if a parent in a reasonable manner chaffles his child; a master his servant, being actually in his service at the time; a schoolmaster his scholar; a grocer his servant, a helthind his wife. _Sid. 176, 177. Lamb. 127, 129. Hill. 149, 150. 1 Hawk. 130._

F. N. B. 80.

And, without enumerating all the actual assaults, which a man may make upon the person of another, and not forfeit his recognizance for keeping the peace, it may be laid down as a principle, that such a recognizance is not forfeited by any assault which could have been justified in an action, or upon an indictment, for the assault. 4 _Brow. Atr._ 694.

It has been held that a recognizance for the keeping the peace may be forfeited by any treason against the person of another, or by any unlawful assembly in _terror populi_. _Lamb. 115. 1 Hawk. 130._

Words which tend directly to a breach of the peace, as challenging a man to fight, or threatening to beat one who is present, amount to a forfeiture of such recognizance. _Lamb. 115. 1 Hawk. 130._

_Cro. Eliz._ 80.

A recognizance is likewise forfeited by threatening to beat a person who is absent, if the party, who has so threatened, does afterward in wait to beat him. _Lamb. 115._

But it is not forfeited by words of heat or cholera, as the calling a man knave, liar, or rascal: For, although such words may provoke a faulty man to break the peace, they do not directly challenge him to do it; nor does it appear, that the speaker intended to carry his refection any farther. _Cro. Cas._ 198. _Reed v. Heyward, and his bail._ 1 Hawk. 130.

_Nay, it has been held, that a recognizance for being of good behaviour shall not be forfeited for such words; and a _fortisior_ one for keeping the peace shall not._ _Cro. Eliz._ 86. King's _cafe._ _Me. 249._ 1 Hawk. 130.

Such recognizance shall not be forfeited by a trespass on the lands or goods of another, unless it is with force. _Cro. Jot._ 508. 1 Hawk. 130.

A man is not forfeit a recognizance for keeping the peace, who does a hurt to another in playing at cudgels, or such like sport, by consent; for these sorts, which tend to promote activity and courage, are lawful. _Dalt._ 234. 1 Hawk. 131.

But he who wounds another in fighting with naked swords, forfeits his recognizance, because no consent, nor even the command of the king, can make so dangerous a diversion lawful. _Bro. Cor._ 329. 1 Hawk. 131.

If a soldier hurts another soldier, by discharging his gun in a manner which will be dangerous, it is no forfeiture of a recognizance for keeping the peace; for although he would be liable in an action for the damage occasioned by his negligence, this, it not being a wilful breach of the peace, is not within the purport of the recognizance. 1 _Hawk._ 131. _Hib. 132._ 2 _Rial._ 549.

A court of quarter-seessions cannot in any case proceed against the parties, for a forfeiture of a recognizance for keeping the peace; but the recognizance must be sent into some of the King's courts in _Wiltshire Hall._ 1 Hawk. 130.

All proceedings upon a forfeited recognizance must be by _false facies_, and not by indictment; because where a _false facies_ is brought, the parties have an opportunity of pleading any matter in their discharge. 1 _Rial._ 900. _Perrot's cafe._ _Cro. Jot._ 598. 1 Hawk. 130.
Privileges granted to surgeons, 32 H. 8. c. 42.

The surgeons company in London separated from the barbers, 18 Geo. 2. c. 15.

Surgeons of the army to be examined by examiners appointed by the surgeons company, 18 Geo. 2. cap. 15. vetl. q.

Sutcliiff. Upon his oath. Leg. Will. I. c. 16.

Surmifce. Is something offered to a court to move it, to grant a probator, auditia querea, or other writ grantable thereon, and which shall be allowed to be a good returnable or not. See 2 & 3. Eliz. 529, 527. See Sur- g gestion, and 20 Vin. Atr. r. 111.

Sutuulage. (Fr. Surplus, Lat. Surplusagium, Carolinum,) Is a superfluity or addition more than needful, which sometimes is the cause that a writ abates; but in pleading many times it is absolutely void, and the writ voided the clause or record, and the claim well plaid. Bro. Plap. 637.

And on a writ of inquiry of damages in wafhe, in which the sheriff was commanded to go to the place, and there to inquire of the wafhe done and damages, who returned the inquisition, without mentioning that he went to the place wafhe; this was held to be forufplage in the writ that would not hurt, because by the plea in the action the wafhe was acknowledged, so that he need not go to the place wafhe to view it. Poph. 24. A dispositio was returnable Tre Tri. Nifi prius venerator Mathaus Huls, Mil. Capital. Baro, &c. on such a day, quatenus mox curia; whereas the mouth of faw was not the move to the move of judgment as a discontinuance; but adjudged that the word ejusdem shall be rejected as forufplage and void, and then the word juri shall be intended fame next, as a covenant to pay money at Michaelmas, shall be intended Mis- cibution next ensuing. Hard. 1390. In a de- claration for debt, upon demure, it was objected a- gainst the declaration, for that the plaintiff averred the defendant had not paid prad. xqungina libras, &c. When the word forfeatio was not before mentioned: And it was resolved that it should be forufplage, then it is that the defendant had not paid prad. librris, which must be the grounds for which the plaintiff had declared. 1 Laws. 445. Cn. Eliz. 647. 3 Nelf. Atr. 262. A plaintiff being right named through all the proceedings, but in the last place, where it was said that a copia ulugatum was prosecuted against praditi. Johannes Fowler, and his true name was George: It was ruled, That the word Johannes shall hold as the last name at that place; and the defendant was ordered to be that a copia ulugatum was prosecuted against praditi. Fowler. 2 Laut. 919. 1 Lec. 420. If a jury find the subsitude of the issue before them to be tried, other superfluous matter is but forufplage. 6 Rep. 46. See 20 Vin. Atr. 114 419.

Surrender. Is a second rebruter, or a rebtung more than once. See Rehuter.

Surrender, Is a second defence of the plaintiff's declaration in a caufe, and answers the rejoinder of the defendant. Woff. Synb. part. 2. As a rejoinder is the defendant's answer to the replication of the plaintiff; so a furrender is the plaintiff's answer to the defendant's rejoinder. Wood's Inf. 586.

Surrenderer, (Surfum-redlatio,) Is an inframment in writing, testifying with apt words, that the particular ten- unt of lands or tenements for life, or years, doth suffi- ciently confer and agree. That he which has the next or immediate remainder or reversion thereof, shall also have the present estate of the fame in poftession, and that he yield; and gives up the name unto him; for every fur- renderer ought forthwith to give poftession of the things forrendered. Woff. Synb. part. 1. lib. 2. fet. 502.

Surrender, (Chergerus,) May be deduced from the French Chergerus, signifying that he dealeth in the me- chanical part of physick, and the outer wards perform- ed with the hand; and therefore is compounded of two Greek words, viz. μετέχειν, manas, epy, σχολον. : And for this reason are they not allowed to administer inward medicine. Cowell, edit. 1727.

None to practice physick or surgery in London, unless admitted by the bishop, or by the dean of St. Paul's. 3 H. 8. c. 42.


The surgeons incorporated with the barbers, 32 H. 8. c. 42. f. 3.

Surgeons shall have their names over their doors, 32 H. 8. c. 42. f. 3.
is also a customary surrender of the copyhold land, for which see Coke, loc. Litt. 74. And a surrender may be of letters patent to the King, to the end he may grant the estate to whom he pleases. Cowell, edit. 1727. See 20 Vin. Abr. 119—145.

**Sutragate.** (Sutragatus,) One that is subsumed or appointed to a bishop, or another, not, munificence of a bishop, or of a bishop's chancellor. Cowell, edit. 1727.

**Suttrifie.** (Superfetia,) mentioned in Stat. 32 H. 8. cap. 48.) Seems to be an especial name used in the caille of Duer, for such penalties and forfeitures as are laid upon those who pay not their duties or rent for Copyhold at their days of service. Bradshaw, By the Prop. it is a general

**Sutteyp, (Superfus,)** Is a French word compound ed of jur, i. super, and vort, verrae, verrae, Verrae. It signifies with one, that has the over-feeding or care of some great person. As a superius-general of the King's manors, Crump. Jus. fol. 39. And in this sense it is taken in Stat. 33 H. 8. cap. 39, where there is a court of sufteries erected: And the sufteries of the wards and Tiveries. But he is taken away with the court of wards and Tiveries, by the statute made anno 12 Car. 2. cap. 24. Cowell, edit. 1727.

**Sutey of the King's Exchange, (mentioned in Stat. 9 H. 5. fl. 2. cap. 4.)** Was an officer whose name seems in these days to be changed into some other, for there is none such now, or else the office is now difused. Cowell, edit. 1727.

**Suspiration, (Superfis,)** Is a随时 compound ed of jur, i. super, and vort, verrae, verrae, Verrae. It signifies the longer liver of two junior tenants. Id. ib. See Jointtenants, and 20 Vin. Abr. 140—150. ib. **Suspension, (Superfis,)** Is a temporal fop of a man's right; as when a legiency, rent, &c. by reason of the unity of poftime thereof, and of the land out of which they lay, are not off for a time, &c. dorminum, but may be revived or awaked, and so differs from ex- tinguishment, which dies for ever. Br. tit. Extinguishment and Suspension, fol. 314, and Co. on Litt, ib. 3 cap. 10. fol. 559. Suspension is also used sometimes by us, as it is in the Canon law pro miniari excommunicationis, fl. 24 H. 8. cap. 12. Suspension ab officio. And when he niter for a time is declared unfit to execute his office, Suspension a beneficio is when a minifter for a time is de- prived of the profits of his benefice. Cowell, edit. 1727.

**Suspicion, A person may be taken up on suspicion, where a felony is done, &c. but those who are im- proximately related to the person guilty or robbers, are bail- able by statute. 2 Hawk. P. C. 101. And the party being a private person, that takes up one on suspicion of felony, must do it of his own suspicion, or not upon that of another; and he must have reasonable caules of it, &c. 2 Hal's Hist. P. C. 78. See 20 Vin. Abr. 152—153.

**Suspitcul, (Lat. Suspicula, i. ducere suspicium,)** Seems to be a spring of water passing under the ground toward a conduit or cistern. Stat. 33 H. 8. cap. 10. Cowell, edit. 1727.

**Sutters, Its fumare, where to be held, 19 Hen. 7. c. 24.**

**Sutboure, The South door of a church. It is mentioned in Gerv. Durb. de generatione Cantuar. Eccl. and it was the usual place where canonical purga- tion was performed; that is, where the fact could not be proved by sufficient evidence, the party accused came to the South door of the church, and there in the presence of the people, made oath that he was innocent. This was called judicialis Dei, and so was the vulgar purga- tion, which was by fire or water. It is for this reason that porches are built at the South door of the church. Cowell, edit. 1727.**

**Sutimes, (Lat. Suspirare, i. ducere suspicium,)** Is a noble bird of game; and a per- son may prefer to have game of swans within his ma- nor, as well as a warren or park. 17 Rep. 17, 18.

Nall shall keep a game of swans unlesse he have lands of the yearly value of five marks, 22 Ed. 4. c. 6. Per- sons taking their eggs out of the nest, &c. how pun- nished. 2 Hen. 7. cap. 17, 1. 11. 1. c. 77. 3. Cap. 2. See Cont.
Forfeit.

17. The 30 Geo. 3. c. 21. and the 6 & 7 W. 3. c. 11. shall be repealed.

18. A penalty of concealing sweats, &c. 8 W. 3. c. 30. § 16.


20. What to be deemed sweats, and who the makers thereof for sale, 10 & 11 W. 3. c. 21. § 5.

21. Sweats, to be removed without a permit, 6 Geo. 3. c. 21. § 22.

22. A less duty laid on sweets, and extended to made wines, 10 Geo. 2. c. 17.

23. Wines of British grapes exempted, 10 Geo. 2. c. 17. § 1.

24. Made wines not to be retailed without licence, 10 Geo. 2. c. 17. § 10.

25. Retailers of sweets or made wines to take out licences, 31 Geo. 2. c. 31. § 7.

26. Wine or Hoggs, Shall not go untrained in woods, 35 Geo. 2. 8. c. 17. § 17.

27. For keeping wine in London, &c. 2 W. & M. c. 1. § 8. 2d. 38. &c. 9 W. 3. c. 37. § 4. See Cattle.

28. Drinking, or Selling of Land, Selling, Selling, &c. Selling terra, in Saxon Selling, from sail of bath, aram; &c. to this day in the western parts, a plough is called a Sell, and a plough-hall, a Sell padder. It is the same with Carnarvon terra, that is, as much as one plough can till in a year: A hide of land, though others say it is an uncertain quantity. Lovell, ed. 1727.

29. Swain's-hills, Silver swound-hills may be exported, 9 & 10 W. 3. c. 28.

30. Swain's-hills, (Fratres jurati,) Persons by whom real and personal coventants to share each the other's fortune. In any notable expedition to invade and conquer an enemy's country, it was the custom of the more eminent soldiers of fortune, to engage themselves by reciprocal oaths to share the reward of their service. So in the expedition of Duke William into England, Ethel and Ethel were swain brothers, and co-partners in the estate which the conqueror allotted to them. So were Robert de Olilly and Roger de Eorly. Paroch. Amity, 57. No doubt this practice gave occasion to our proverb of swain brothers, and brethren in iniquity, because of the dividing plunder and spoil. Lovell, ed. 1727.

31. Copper-cace. Wood under twenty years growth; Copper-wood. See the statue 45 E. 3. cap. 3. It is otherwise called in Law-Lrench Sulkeins, 2 Ifyl. fol. 642. See Eithers.

- E. it remembered, That on the — to wit. £1 in the — of his majesty's reign, A. B. was convicted before me, one of his majesty's justices of the peace for the county, riding, division, or liberty aforesaid; or before me mayor, justice bailiff, or other chief magistrate of the city or town of —— within the county of —— (as the case shall be) offavering one or more profane oath or oaths, or of cursing one or more profane curse or curses, as the case shall be.

Given under my hand and seal, the day and year aforesaid.

Which form and conviction shall not be removed by certiorari into the king's bench, but shall be final; and the said justices, mayor, or other chief magistrate, before whom such conviction is made, shall cause the same to be writ upon parchemin, and returned to the next general or quarter sessions of the peace for the county wherein such conviction was made, to be filed by the clerk of the peace, and be kept among the records of the said county.

Sect. 9. All justices of peace, and every mayor or other chief magistrate of any town corporate, shall put this act in execution within their several jurisdictions, although such chief magistrate be rated, and pay to the said effect of the poor of any parish or place where any offence is committed.

Sect. 10. All penalties inflicted by this act, for profane cursing and swearing, shall be dipt of for the benefit of the poor of the parish wherein such offence was committed; and all charges of information and conviction shall be paid by the party offending, if able, over and above the penalties, which charges shall be ascertained by the justice of peace, mayor or chief magistrate, before whom such conviction is made; and in case such party be not able, or not immediately pay the said charges, or give security for the same, it shall be lawful for the justice, or, to commit such offender to the house of correction, to be kept to hard labour for six days, over and above such time for which such offender may be committed in default of payment of the penalties; and in such case no charges of information and conviction shall be paid by any person.
TAB

Symbolum, (Gr.) is the apostles creed; in Latin Collatius, because the catholic faith was by them in unum collata: It is often called by this name in our historians.owell. edit. 1777.

Spurius. To cut his words short, to pronounce them fo as not to be underfood; the word is ufed in several of our ecclefiaical councils and synods. Iis quod ex fallitum minus verba non præsidentur vel scriptura. Concilium Sarr. cap. 26. Synag. Nigra. cap. 10.

Spontius, A patron or advocate: It is mentioned in Matt. Paris. anno 1245. Synodum omnium ecclesiasticorum urbs fabularum, &c.

Spend, (Synodus.) A meeting or assembly of ecclefiaical persons concerning religion, of which there are four kinds: 1. General, where bishops, &c. meet of all nations. 2. National, where those of one nation only come together. 3. Provincial, where they of one only province meet. 4. Diocesan, where but of one diocfe meet. Convocation is all one with a synod, only the one is a Greek and the other a Latin word. Our Saxon Kings usually called a Synod, or mixed council, confenting both of ecclefiaical and state Nobility, three times a year, which was not properly called a Parliament till Henry the third's time. Connell, edit. 1727.

Synodal, (Synodale.) Is a tribute in money, paid to the bishop, or archdeacon, by the inferior clergy at Easter visitation; and it is called Synodale quasi in simplicem facultatem deutor. See Hierarchia de Preparatio ur Synodalis. p. 66. & 98. These are called otherwise Synods in the statute of 32 Hen. 8. c. 16. Yet in the statute of 25 H. 8. c. 19. Synodale Provincial seem to signify the canons or constitutions of a provincial synod. And sometimes Synodale is ufed for the synod itself. See Dug. Harewood's, fol. 126. and Spelman de Concil. 1 Tom. p. 529.

Synodals, tellers, The urban and rural deans were at first called so, from informing and attesting the disorders of clergy and people in the episcopal fund. But when they funk in their authority, the synodal writsles were a stock of unqualified grand jury, to inform of or present offenders, a priest and two or three laymen for every parish. At laft two principal persons for each diocefe were annually chosen, till by degrees this office of inquest and information was devolved upon the churchwardens. See Kever's Dist. Antiq. p. 649. Synodale juramentum, was the solemn oath taken by the said Typerists, as is now by churchwardens to make their presents. Connell, edit. 1727.

T.

EVER peston convid of any other felony (save murder) and admitted to the benefit of his clergy, shall be marked with a T, upon the brawn of his thumb. Stat. 4 H. 7. c. 13.

Tabard. Tabard, The bachelor scholar on the foundation of Queen's college Oxford, are called Tabards, or Tabarders, from a gown wore by them, called a tabar, tabbor, or tabbard; for Verigenus tells us, that tabard anciently signified a short gown that reached not farther than the middle of the leg, and it remains for the name of some in Germany and other countries, which, with the Tabard and Saxon tabor, signify all a kind of garment, &c. Connell, edit. 1727.

Tabardinn, A long garment like a gown; sometimes it signified a herald's coat, but generally a gown wore by ecclesiastics. Mut. Par. 164.

Tabellion, Tabellion, a petty public officer, or scrivener allowed by authority to ingres and register private contracts and obligations. Convol. edit. 1727.

Tableau, (Reddittus ad memoriam.) Rents paid to bishops or religious prelats, referred or appropriated to their table or house-keeping. Such rents paid in specie, Vol. II. No. 79.

Tableturn, or provision of meat and drink, were sometime called bord-land rents. Connell, edit. 1727.

Tabling of fines, Is making a table for every county where his majesty's writ runs, containing the contents of every fine paid in any one term; as the name of the county, towns and places, all the lands or tenements leis; the name of the dammandant and defcorant, and of every manor named in the fine. This is to be done properly by the chipographer of fines of the Common pleas, who every day of the next term, after the ingress of such fines, must take the said tables in some open place of the said court, during its fitting. And the said chipographer is to deliver to the sheriff of every county, his under-sheriff or deputy, fair written in parchement, a perfect content of the table so made for that thire, in the term next before the afsises or that quarter, and to be set up every day of the next afsises, in some open place of the court, where the justices of afsises shall then sit, and to continue there during their fitting: And if either the chipographer or the afsisse fail herein, he shall suffer privilege. And the chipographer's fee is thus; if any land each totaling is four pence, 23 Edw. 3. c. 5. and 5th. Synod. part 2. tit. Fines, fol. 130.

Tabula. See Cudomariaus.

Tail, (Tallum, from the French word Taille, i. e. tertia, from taillor, to cut or limit.) Signifies two several kinds being to the ground, and a man's cloth of each. Vol. 2. p. 251. Willson's cafe. First, it is ufed for the fine, which is opposite to fee-simple, by reason it is so minc'd or parted as it was, that it is not in the owner's free power to dispose of it, but is by the first giver cut or divided from all others, and tied to the issue of the donee. C. lib. 4. in Prow. And this limitation of tail in this or any other kind is called a tail special, Tail general, is that whereby lands or tenements are limited to a man, and to the heirs of his body begetter; and so it is called, fo many hundreds over the tenant holding by this title shall have, one after another in lawful marriages, till the title by them all have a possibility to inherit one after another. Tail per stirpes is when lands or tenements are limited to a man and his wife, and the heirs of their two bodies begetter; and hath this term of special, because if a man bury his wife before issue, and take another, the issue by his second wife cannot inherit the land, &c. Also if any land be given to a man and his wife, and to their son Thomas for ever, this is Tail special. Connell, edit. 1727. See Cudate, and 20 Fin. Abr. tit. Tally.

Tail after possibility of issue extinct, Iere was land given to a man and his wife, and to the heirs of their two bodies respectively; and a man not being without issue between them begetter; he shall hold the land for term of his own life, as tenant in Tail after possibility of issue extinct, and notwithstanding he do waste, he shall never be impeached of it. And if he alien, he is the reverent, or to have a writ of entry in conveyance, but he may enter, and his title is lawful; by R. Thorpe Chiri Justice. 28 E. 3. 96. and 45 E. 3. 25.

Talit, (Attititua, Fr. Teintis, i. intestus.) And signifies subluminously, either a conviction, or adjecively a person convid of felony or treason, &c. See Attaint.

Talies, (Lat.) Is ufed in our law for a family of men impannelled upon a jury or inquest, and not appearing, or at their appearance challenged by either party as not indifferent; i in which case the judge, upon motion, grants a supply to be made by the sheriff of one or more such there present; and hereupon the very act of supplying is called a Talies, or inquest. And it is that he had had one Talies, either upon default or challenge, may not have another to contain so many as the former: For the first Talies must be under the principal panel, except in a case of appeal, and fo every Talies less than other, until the same be made manifest in court, and such as are without exception. Yet this general rule is not without exceptions, as appears by Stannard, Pl. Cor, lib. 3. c. 5. These commonly called Talies may in some forts, and indeed are called Miloires, viz. When the whole jury is challenged, as appears by Br. tit. 8. 9 O. Tales,
T A N

Tales, &c. TALE. Tales, fol. 105. See Cc. lib. 10. fol. 99. Bruegge’s cafe. See JUR.Y.

Tales, Is also the name of a book in the King’s bench office, of such jurisdiction as were of the Tales. Co. lib. 4. fol. 93.

Tallage, (Tallagium,) May be derived of the French Taille, or TALL. and it properly signifies a piece cut out of the whole, but metaphorically is used for a share of a man’s substance paid by way of tribute, toll, or tax. Stat. de taliaggio nun concedendo temp. E. 1. and Ston’s Annuals, pag. 445. Thence our tallagiers in Chaucer for tax or toll gatherers. See SUTTHOP. Tallage says Cole, is a general word for all taxes. 3 Inst. fol. 323. But tenancies in ancient demesne are quit of these taxes and tallages granted by parliament, except the King do tax ancient demesne, as he may when he thinks good, for some great cause. Cowell, edit. 1727.

Tallagere, or Tallyer, are usually paid, to give up accounts in the Exchequer, where the method of accounting is by tallies. Cowell, edit. 1727.

Talley, (Talha, Fr. Taille, Ital. Taggiare, i.e. finders,) A thick cut in two parts; on each of which was marked what was due between debtor and creditor; and this was the ancient way of keeping accounts. There are two sorts of tallies mentioned in our flattaxes, to have been long used in the Exchequer; the one is termed tallies of debt. Stat. 1 Rich. 2. cap. 5. which are a kind of acquittance for debt paid to the King. As for example, The university of Cambridge pays yearly ten per cent by such items as are by their charters granted to them in fee-farm, viz. 3l. 51. at the Annunciation, and 5l. at Michaelmas. He that pays these sums, receives for his discharge a talley at each day, with both which, or notes of them, be repairs to the clerk of the pipe office, and there instead of them, receiveth an acquittance in parchment for his full discharge. The other are talley of reward spoken of 22 H. 8. 11. and 33 & 34 H. 8. 16. and 2 & 3 E. 6. cap. 4. which seem to be tallies or tallies of allowance, or remittance made to sheriffs for such matters, as to their charge they have performed in their office, or for such men or thing as by course have capp upon their accounts, but cannot levy, 2. Vis. Atr. 135.

Tally, Every canon and prebendary in our old cathedrals church, had a flatted allowance of meat, drink, and other distributions, to be delivered to him per modum tail, that is, as much meat or drink as was called a tallia. Cowell, edit. 1727.

Tallow, Prohibited to be exported, 18 El. e. 9. 13 & 14 Car. 2. cap. 47. 57. Tallow, to what duties liable on importation, 2 Will. & M. c. 3. fol. 36. May be imported from Ireland duty free, 32 Geo. 2. c. 6. and as much or less is excused to and from the port of London, 3 Geo. 2. c. 10. and continued by 4 Geo. 2. c. 6.

Talidhte, or Tallow, (Talatutur,) is Fire-wood, cleat and cut into billots of a certain length. Stat. 34 & 35 H. 8. cap. 3. and 7 Edw. 6. cap. 7. This was anciently written tahybponde. Cowell, edit. 1727.

Tant quam, is in nature of a qui tam, being where a man accusation as well for the King as for himself, on an information for breach of some penal law, whereby any penalty is given to the party that sues. Terms de Ley 556. In every case where a statute prohibits a thing, and do not annex a penalty to the committing thereof, the party offending may be indicted for a contemp against the statute; or action lies against him for breach of it, which must be brought tam pro domino Rige, quam pro se ipso, as there is a fine to be paid to the King. 2 Inst. II. 118. Co. Exc. 655. G. 4. 134. In action popular, brought quam quan, the King can demand but his own parte, or course; but after acquitte, the King may discharge the whole. 3 Inst. 238. See Adon, Information, Qui tam.

Tanger, An ancient city of Barbary, lying within the kingdom of Fez, mentioned in the statute of 15 Car. 2. cap. 7. is a yearly part of the common be- longing to the crown of England. Tanger not to be deemed a plantation, 22 & 23 Car. 2. c. 26. 1

T A X

Taxi, is a law or custom in some parts of Ire- land, of which Sir John Davis in his reports, fol. 28. thus, Quot aequam perquin jussi de aequis cafuata, manures, terres ou tenementus del nature & de tenure tanality, que donues imposse les caules, &c. don’dulc defendr & de temps divinitus done perquin iustamentur de ayans, &c. But some have so understood it, as to fancy it did not mean a cultivation, at least not so far as the French understand the word, but either for a revenue, from that time forward, not to levy it but by content of the realm. Stat. 25 Ed. 1. cap. 5. Cowell, edit. 1727.

Tammare, To dred or tan leather. Plac. Part. 18 Ed. 1.

Tannery, Shall not use the mystery of a shoemaker, 13 R. 2. fl. 2. 12. 21 R. 2. c. 10. 2 H. 6. c. 7. 2 & Ed. 6. c. 6. 2. Ed. 6. c. 7. H. 7. c. 11. Shall sufficiently dry their hides, 10 H. 7. c. 10. Shall not export leather, 27 H. 8. c. 14. 5. 5 El. c. 8. Direction for their true working their goods, 2 & 3 Ed. 6. c. 11. 1 Jac. 1. c. 22. 3. 5. 11. Who may exercise the trade of a tanner, 1 El. c. 9. 1 Jac. 1. c. 22. 3. 5. No butcher to be a tanner, 5 Ed. c. 8. 1 Jac. 1. c. 22. 3. 4. None but tanners may buy rough hides, 1 Jac. 1. c. 22. 3. 7. Any deep skins need not be searched or sealed, 4 Jac. 1. c. 6. Shall not have their hides, 13 & 14 Car. 2. c. 7. 5. 8. Regulations concerning tanners, 9 Ann. c. 11. Exempt, From exemption of the duties called the two third subsidies, 7 Ann. c. 7. 9. 14. Tar. See Pitch, Stones.

Tar and Exer. The first is the weight of box, straw, clothes, &c. wherein goods are packed; the other is a consideration allowed in the weight for wafle, in emptying and re-covering the goods. Book of Rates.

Tarreget, A field; from the Latin Taraxes, because it was formerly made of leather wrought out of the back of an ox. Cowell, edit. 1727.

Tartgia, (Tarida,) Was a ship of burthen, since called a taritas, Kingston, anno 1385. calls it tartia, viz. Captis duos tarias bone vino. Walsingham, anno 1386. a ship of five tons, it tartia, viz. Captis for tartias refertus multus bons.

Tartaron, (mentioned in flat. 4 Hen. 8. cap. 6.) A kind of fine cloth or silk.

Tassum, A mow or heap, from the French toasser, to pile up; hence toasser, to mow or heap up; and ad toasser, to heap into a mow. Cowell, edit. 1727.

Tath, In Norfolk and Suffolk, the lord of each manor had the privilege of having their tenants flocks of sheep brought at night upon their own demesne ground, there to be folded for the benefit of their danga, which liberty of improving their land is called satb. Cowell, edit. 1727. See Sompain, Tenants.

Taverne, See Alehouses, Inns.

Tauri libri Libertas. In some ancient charters taurus liber signifies a common bull, so called, because he is common to all the tenants within such a manor or libery, viz. Cam libertatis sallia, tauri libri & liberi cap. 3. Cowell, edit. 1727.

Taur, (Tara,) from the Gr. τάρα, æra. Was such a tribute as being certainly rated upon every town, was wont to be yearly paid, but now not without content in parliament, as subsidies are. It differs from a subsidy in this, that it is always certain, as it is set down in the Ex- chequer book, and listed in general of every town, and not particularly of every man. It is also called a fif- tenth, flat. 14 Edw. 3. flat. 1. cap. 20. and 9 H. 4. cap. 7. It seems that in ancient time, this tax was im- posed by the King at his pleasure, but Edward the First, by his fir Sachne, brought it forever, from that time forward, not to levy it but by content of the realm. Stat. 25 Ed. 1. cap. 5. Cowell, edit. 1727.

Taxes
T I E

Taxes granted to the King shall not be drawn into cuffs, Conf. Chart. 35 Ed. 1. c. 5. Aid shall not be taken but by common assent, Conf. Chart. 55 Ed. 1. c. 5. 13 Cor. 2. b. 1. c. 4. No taking or sale shall be taken without common assent. St. de talag, non censis. 34 Ed. 1. b. 3. c. 1. Aids granted to the King shall be levied after the old manner, 1 Ed. 3. b. 2. c. 6. Impositions shall not be set upon staple merchandise without assent of parliament, 45 Ed. 3. c. 4. 11 R. 2. c. 6. Goods shall be charged to a fifteen, where they were at the time of granting, 9 H. 4. c. 7. A collector of fifteens shall have debt against his companions for what he shall pay in their default, 9 H. 5. b. 10. A collector in a city shall not be appointed in a county, unless he has lands of the value of 5l. a year, 18 H. 6. c. 5. Subsidies granted, 31 H. 6. c. 8. 11 H. 7. c. 10. The subjects shall not be charged with any charge in nature of a benevolence, 1 Ed. 3. c. 2. Collectors of public money may plead the general fates, 13 & 14 Cor. 2. c. 17. A tax laid on flocks in trade, 1 Ann. fl. 2. c. 15. Duty on places and pensions, 31 Gen. 2. c. 22. Military offices exempted, 31 Gen. 2. c. 25. f. 24. Duties laid on tea and chocolate and criminals elusîon, and in their armour led them through the Holy land, to view the sacred monuments of christianity, without fear of infidels: for at first their profussion was to defend travellers from highwaymen and robbers. This order continuing and extending for near two hundred years, was far spread and extended both to Christians and particularly here in England. But at length some of them at Jerusalem, falling away (as some authors report) to the Saracens from christianity, or rather because they grew too potent and rich, the whole order was suppressed by Clement Quirinus, anno 1307. by the council of Vienna 1312. and their substance given given possession of Jerusalem, and all their revenues, to the Templars of Jerusalem, and partly to other religious. Caffari de gloria mundi, temp. Bar. 9. Confid. 4. and See Ann. 1 Edw. 1. cap. 24. Those flourished here in England from Henry the second's days, till they were suppressed. They had in every nation a particular governor, whom Braden, lib. 1. cap. 10. calls Mangisium Militis Templi. The master of the Temple here was summoned to parliament, 45 H. 3. m. 11. in Schedule. And the chief minifter of the Temple church in London, is still called Master of the Temple. Of these knights read Mr. Drygale's Antiquities of Warwickshire, fol. 190. for the records they were also called Fratres Militis Templi Salomonici. And Stow, par. fol. 554. b. About nine years after their institution, they were ordered by a council held at Triers, to wear a white garms, and afterwards in the pontificate of pope Eugenius, they wore a red crofs on their garments. The Templars, which we now call Knights of Cash, was the place where they dwelt, and in the Middle Temple the King's treasure was kept. Cowell, edit. 1727. Temporals shall be forfeit for eroding their crofles, St. Vit. fem. 2. 13 Ed. 1. c. 33. The jurisdiction of the conservators of their privileges restrained, St. Vit. fem. 2. 1. Sid. 1. The lands of the Temporalitas of Bishops, (Temporalia Episcoporum) Are such revenues, lands, and tenements, and lay-fees, as have been laid to bishops fees, by Kings and other great persons, to the world, as they are barons, and lords of the parliament. See Temporalitas of Bishops. From the 31 Ed. 1. to the time of the reformation, a custom did obtain, that when bishops received from the King their temporalities, they did by a solemn form in writing renounce all rights to the fald temporalities by virtue of any papal constitutions, and accept of them only owing to the King's bounty. This practice was in the occasion of a bull of pope Gregory 8. which censred the fee of Wurcefler upon William de GenevibrORG, and committed to him Administration spiritualis & temporalis
In Ji.

Particulars, Matt.-time, which is from Mich-aelmas to St. Lucy. New. 1407. After it was called retropannagium. Cavell, edit. 1727.

Seems to signify as much as to offer, threw forbearance; as to tend the efface of the party of the demandant. Old Nat. Breu. fol. 123. To tend an averment. Britton, cap. 76. To tend to traverse. Staunf. 15. Cavell, edit. 1727.

Tender, (From the French tendre, i.e. tener, dedica,-

tur,) used adjectively signifies the fame with us in English. But in a legal sense it denotes as much as carefully to offer, or circumspectly to endeavour the performance of any thing belonging to us. As to tender rent is to offer it at the time and place where and when it ought to be paid, (by the life-time of the tenant,) under his law-furnac. Kitchin, fol. 197. It is to offer himself ready to make the tender, or prove that he was not fummoned. Cavell, edit. 1727.

Tender, is an offer to pay a debt, or perform a duty. In every plea of tender, where money is the thing de- manded by the action, and the debt or duty is not di- charged by the tender and refusal, money may be brought in without leave of the court: But as other things, as well as money, may, where a tender is pleaded, be brought into court, this is with more propriety called bringing in- to court generally, than a bringing money into court. In all other cases, the leave of the court must be had, before money can be brought into court. The rule, under which this leave is granted, is, as in the case of an ejectment by a mortgagee, founded upon a particular act of parliament. In other cases, it is founded upon that discretionary power, which is, for the furtherance of justice vested in the court. By the discretionary rule it is, whenever it appears to the court, that it is expedient, that upon bringing money into court, all proceedings in an action shall be stayed. At other times it is ordered, that the money brought into court shall be struck out of the plaintiff's declaration, and that the plaintiff shall not, at the trial of the issue, be permitted to give any evidence as to this money. This rule, by which the court prevents the plaintiff from being obliged to be struck out of a declaration, is, from its being more frequently granted than that by which it is ordered that the proceedings shall be stayed, called the common rule. 5 Bac. Abr. 1.

1. By whom a tender may be made; and what is a good tender.

2. At what place, and at what time a tender must be made.

Wherever the right of tendering is personal, it cannot be exercised by any other than the party in whom it is. 7 Rep. 13. 1 Inf. 208.

A tenant, who is liable to a writ of ejection, must, if he would prevent the landlord from recovering is land, in perfon tender his rent, which is in arrears. Bro. Tend. pl. 29. Terra de Ley 102.

If a feoffment is made, with condition that, if the feoffor pays a sum of money to the feoffee, it shall be lawful for him and his heirs to enter, and the feoffee dies before the money is paid, no tender can be made either by his heir or executor: For the right of tendering is in that case personal, the meaning being the same, as if the words had been, if the feoffor during his life pays the money. 2 Inf. 208.

If a feoffment is made, with condition that, if the feoffor pays a sum of money to the feoffee on a day cer- tain, it shall be lawful for the feoffor and his heirs to enter, and the feoffee dies before the day, a tender may be made at the day, either by the heir of the feoffor, as privy in blood, or by his executor, as privy in repre- sentation; because the right of tender is not in this case personal. 1 Inf. 208, 208, 209. 4 Rep. 120.

A tenant devised land to Anne his wife for life, re- mained to Daniel his second son in fee; provided never-
A tender in any money coined, upon which there is the King's flamp, is good; for all such money is current in proportion to its value without any proclamation. Cant. 387. Dixon v. Willingsbr. 1 T. T. 207. Sack. 446.

If a contract is to pay 100l. in any foreign coin, a tender to the amount of that sum in any current coin of this kingdom is good. Lat. 84. Ward v. Ridgway.

If money is made current by proclamation at a higher rate than its intrinsic value, a tender in forch money according to the value it is current at, is good. 5 Boc. Abr. 5.

Queen Elizabeth had some mixed money coined at the Mint, and sent it into Ireland, with a proclamation to be current there at a certain value; and by the same proclamation it was put to the current of all other coins in that kingdom. It was held that a tender made in this money was good. Dox. 18. The Case of mixed Money.

But if the money, which has been tendered, becomes afterwards current at less value, it was current at, and when the tender was made, was tendered by the party who refused to accept it must bear this loss. 5 Boc. Abr. 5.

In debt for rent, the defendant pleaded a tender of the rent in pieces of English money called shillings, every one of which was, at the time of the tender, current at the value of twelve pence, and that he yet is ready to pay the rent at the rate per annum, when the act was put to the current of all other coins at that value, and brings the same into court. The plaintiff demurred, and for cause alleged, that before the bringing of the action, the said pieces of money were by proclamation made current only at the value of six-pence; But he afterwards thought proper to accept the money, according to the value when the tender was made. Dyr 81. Barrington v. Potter. Dav. 27.

If any foreign coin is made current in this kingdom by proclamation, a tender in such money is good, for it thereby becomes lawful money of this kingdom. 5 Rep. 114. Wode’s cafe. 1 T. T. 207.

If the money tendered is once accepted, the acceptor has no remedy, although some of it be counterfeited, or deficient in value, or although there is not so much as it was tendered for; because it was his duty to have examined and told it, before he accepted it. 1 T. T. 208.

The party to whom money was tendered, had accepted it, and put it into his purse: But, upon examining before he left the place, he found some counterfeit pieces amongst it, and for this reason refused to carry the money away with him. It was held, that, as he had not objected to the money before he did accept it, he could not afterwards return it. 5 Rep. 115.

A tender of a bank note, as money, is not strictly speaking a legal tender: But if the tenderer offers to turn it into money, that makes it a good tender. Eq. Caefer. Abr. 319. Austin v. The Executor of Destwell.

It seems reasonable, that a tender of any sort of goods should, unless they are to be delivered according to some sample, be made in a middling kind of goods of the sort. 5 Boc. Abr. 6.

2. At what place, and at what time a tender must be made.

If the contract is, that money in grog, or rent of the land shall be delivered, as at a place certain, a tender can only be made at such place. Bro. Tond. pl. 17. Bro. Cond. pl. 17. 1 T. T. 210. Freem. 149.

If no place is appointed for the payment of money in grog, a tender must be made at whatever place the person to whom it is due, happens to be: But, if he is out of England, the party who ought to pay the money is not bound to go out of the realm to seek him. Bro. Tond. 1 T. T. 210.

So, in the case of money due upon a mortgage, it was formerly held, that this, which is to be considered in grog, and collateral to the title of the land, must, if no place is appointed for the payment thereof, be ten-
TEN

dered to the person, if he is within England. 1 Inif. 210.

But it has been held in the court of Chancery, that a tender to the person is not in such case necessary.

A mortgagee, after a mortgage was in possession under the mortgagor, went to the mortgagee's house with money sufficient to redeem the eflate, and tendered it there: But it did not appear that the tender was to the mortgagee, or that he was in the house at the time; yet this was held to be a good tender. 1 Eyn. Ca. 29. Memm. 7.

Personal notice was given to a mortgagee, the day before the 25th day of March 1722, that the mortgage would, on the 25th of September following, between the hours of ten and twelve in the forenoon, tender the principal money, which was 1000l. and all interest due thereon, in Lincoln's Inn Hall, and a tender was accordingly made; it was objected, that no place being appoin ted in the mortgage deed for the payment of the money, the tender ought to be made to the mortgagee in person: But the tender was held to be good, and by King Chancellor, the money being lent in town, and no objection made by the mortgagee to the place where notice was given, it would be very hard to compel the mortgagee to travel with this great sum of money to Oxford where the mortgagee lives. 2 Will. 378. Gyles v. Hole.

If no place is appointed for the payment of rent issuing out of a land, a tender upon the land is good, for it is not in this case necessar y to make a tender to the person. 1 Inif. 209. Bro. Tent. pl. 17.

But although a tender to the person is not, in the case of rent issuing out of land, necessary, a tender made to the person would be good. 3 Eyn. 48. Crep v. Hambleton.

If any special corporate service is referred in a grant of land, this, although issuing out of land, must be tendered to the person of the grantor; and the tenant must seek him to whom it ought to be done, if he is within England. 1 Inif. 210, 211. Bro. Tent. pl. 17.

If no place is appointed for the delivery of heavy goods, a man is not to bound to carry such goods with him, and tender them to the person to whom they ought to be delivered; for, if he goes to such person to know at what place he will receive them, and afterwards tenders them at that place, it is a good tender. 1 Inif. 210.

Every tender, whether it be given by the Common law, or by statute, must be made before an action is commenced. In cases where the defendant pleaded, that he tendered amends before the action commenced, to wit the 2d day of October. The plaintiff replied, that, before this tender he had filed out a lattit, telle the last day of the preceding Trinity term, and had thereupon procured the defendant to be arraigned; but at this time was held to be false. For a tender, after the failing out of an original writ, comes too late. 4 Eyn. Car. 264. Watty v. Bakir.

But where a tender has in fact been made before a writ is found out, the court, out of which such writ issues, will upon application take care, that the tender shall not be void, by any relation of such writ to a day anterior to the tender. 5 Bor. Arr. 7.

A defendant pleaded a tender on the 4th day of May ante diem exhibitione billae. The plaintiff replied non obstant ante diem; and, in order to out the defendant of the benefit of his tender, made up the paper book with a general memorandum. At by this means the writ would be related to the first day of the term, which was before the 4th of May, the court of King's Bench, on affidavit being laid before them that the writ was not found out till the fifth day of May, made a rule that the plaint iff should make his memorandum special, to the time of filing, to be of no effect. 5 Eyn. 288. Smith v. Key.

A tender was pleaded to have been made, on the 1st day of January. The plaintiff replied an original telle the second day of January. Upon application of the defendant, the court of Chancery ordered the telle of the original to be altered, from the 2d day of January, the common telle day of an original returnable on the Other
Tenement, (Tenementum) Signifies properly a house or home-stall; but more largely it comprehends not only a house, but all corporeal inheritances differing out of, or exercisable with the same. 

Cot. Lit. 6. 9. 154. A tenement may be said to be any house, land, rent, or others, for life in fee for life. 2 Hawk. P. C. 295. For the tenement being but being a word of a large and ambiguous meaning, and not so certain as meffuage, therefore it is not fit to be used to express any thing which requires a particular description. 2 Lid. Ab. 566. The word tenement is join'd with the adjective frank, to denote an estate in lands, offices, &c. for life in fee for the King. 6. 7.

Tenementary Land, The Saxon Thome or possessor Buckland, or hereditary free eftates, divided them into two sorts, inland and outland. The inland was the domains which the lord kept in his own hands. The outland was granted out to tenants under arbitrary rents and services, and was usually in these words, Tenendum per servitium. But by the flat of Quia emptores terrarum, (16 Ed. 1.) the tenendum was usually from the soccou and his heirs, and not of the chief lord of the fee, whereby lords lost their ejectments, forfeitures, &c. But since the flat disposed the tenendum, where the fee-simple palfes, must be of the chief lord of the fee, by the customs and services, whereby the soccou held; yet this flatte does not extend to a gift in tail; for the donee shall hold of the donor. 

Cot. Lit. 6. a. 2 Inf. 66. 67. 509. 501. 502. 505. The tenendum most commonly and properly succeeds the soccou, and was usually in these words, Tenendum per servitium. But by the flat of Quia emptores terrarum, when the fee-simple doth palfes, the tenure is always of the chief lord, and is thus fet forth, Tenendum de capitisbols dominis, &c. But this clause at this day is for the most part left out of deeds, and altogether omitted; and where former grants now must be incorporated with the hatendum, for we say, To have and to hold, in which clause the estate is limited, &c. Tenentibus in affilia non onerandis, &c. Is a writ that lies for him to whom a dilferer hath alienated the land, whereby he diññs another; that be he nor not, whether the damages are awarded, if the dilferer have wherewith to satisfy them himself. Reg. of Writs. fol. 214. 6.


Tenmantale, (Sex. tenmantale, i.e. decem virorum numerus) Decanaria, tithing, Leg. Ed. Conf. Alto an ancient tax or tribute paid to the King. Hen. 7. 37.

Tenor, (Lat.) Of write, records, &c. is the substance or purport of them, or a transcript or copy. Tenor of a libel hath been held to be a transcript, which it cannot be if differs from the libel; and justum tenorem imposes it, but not ad officium, &c. for that may impair an identity in sense, but not in words. 2 Salk. 437. In action of debt brought upon a judgment in an inferior court, if the defendant pleads null et tiel record, a tenor recordi only shall be recorded; and by Holie Chief Justice it must be the same on coroner's. 3 Salk. 296. A tenementary land, which is divided out from Lands, or cessoria to remove the ind-Ément, is good by the city charter; but in other cases it is usual to certify the record itself. 2 Hawk. P. C. 295.

Tenures immutabilia innitentes, is a writ whereby the record of an indenture, and the proceeds thereupon is called out of another court into the Chancery. Reg. of Writs. fol. 60. a.

Tenures pecuniaria. The tenure of these presents, If the matter contained therein, or rather the true intent and meaning thereof, as to do such a thing according to the tenure of a writing, is to do the same according to the true intent and meaning thereof. Consol. edit. 1737.

Tenures pecuniaria. This is the word whereby the record or document is chargeable to which all ecclesiastical livings pay to the King; for though the bishop of Rome does originally pretend right to this revenue, by the example of the high priest among the Jews, who had tenths from the Levites, numb. cap. 9. Hieron. in Exepl. yet we read in our chronicles that these were often granted to the King by the Pope upon divers occasions. Sometimes for one year, sometimes for more, till by the statute 26 H. 8. cap. 3. they were annexed perpetually to the crown. See Jfrt Fritius and Tenures. It signifies also a tax levied of the temporary. 4 Stat. 34. 3d. Fifth fruits and tenths were first on occasion given, and generally by custom claimed, in an acknowledgment to the fee of Rome. The tenths of all ecclesiastical benefices in England were first allowed by Pope Innocent 4. to King Elon. 3. anno 1253. for three years; which occasioned the Norwich taxation, anno 1254. This proved a great opprobrium to the clergy, and was soon made more grievous. For when the king had again granted the tenths to the King for three years, for a compensation of what they tell short of the expected value, the King in the 53rd year of his reign, anno 1269. made the clerg)' pay within those three the tenths of four years, and made the chief landlord, the king, by the statute 1 anno 1285. 4 Stat. 3d. whereas Pope Nicholas IV. granted this favour to the crown for six years, towards an expedition to the Holy land; that they might be then collected to the full value, a new taxation by the King's precept was begun anno 1288. and finished anno 1291. 20 Ed. i. by the bishop of Lincoln and Winchester. For a particular account whereof, see Ken's Prebec. Parb. Antq. p. 1325.

Tenor, A stretcher, tryer or prover, which dyers and clothiers use. Stat. 1 R. 3. cap. 8. but prohibited by 30 Eliz. cap. 20.

Tenures, Robbing of, in faire and markets, is felony, and pardoned in burgage, & 6 Ed. 6. cap. 14.

Tenure (Tentura, from the Lat. Tentura,) Is the manner whereby lands or tenements are held; or the service that the tenant owes to his lord: And there can be no tenure without some service, because the service makes the tenure. 1 Inf. 1. 93. A tenure may be of houses, of land, or of other things; but not of persons. All lands in the hands of a subject are held of some lord or landlord, by tenure or service: And all the lands and tenements in England are said to be held either mediately or immediately of the King, and therefore he is famous domus supra annus. 2 Stat. 531.

Under this tenure is included all rights in an inheritance; but the significacion of this word, which is a very extensive one, is usually restrained by coupling other words with it; this is, sometimes, done by words which denote the duration of the tenant's estate: As if a man holds to himself and his heirs, it is called tenure in fee simple. At other times the tenure is coupled with words pointing out the instrument by which an inheritance is held; thus, if the holding is by copy of court-roll, it is called tenure by copy of court-roll. At other times, this word is coupled with words that shew the principal service by which an inheritance is held: As where a man holds by knight's service, it is called tenure by knight's service. 5 BeC. Abr. 34.

Tenure in fee-farm, burgage, socage, or petit jeñalty, shall not give warclippage. M. C. 9 H. 3. c. 27. Of a signory feoffage to the King, the tenants shall hold as before, 20 Stat. 4 H. 3. c. 31.

A tenure during life shall referre enough to do the service. M. G. 9 H. 3. c. 32. A fee or part of a fee aliened shall be held of the chief lord, and the services shall be apportioned. Stat. Quia emptores terrarum, 18 Ed. I. fl. 1. c. 1. 2. Seignories revived of lands of perfons attainted granted by the King. 7 Ed. 4. c. 5.

\[\text{Lands}\]
Lands coming to the crown by surrénder, &c. not to be held in capite, 1 Ed. 6. c. 4.

Fines and fealties for alienation taken away, 1 Car. 1. c. 3.

Tenure in Bramfield and Isle, in Denbyshire, confirmed, 3 Car. 1. c. 6.

Fines and fealties to be free and common socage, 12 Car. 2. c. 24.

Saving of rents, certain heriots, &c. 12 Car. 2. c. 24. f. 5.

Not to take away frankalmoign, coypholds, &c. 12 Car. 2. c. 24. f. 6.

Not to infringe any title of honour by which any person may have a right to fit in the lords house, 12 Car. 2. c. 24. f. 11.

Tenure of ward-holding, &c. in Scotland, taken away, 2 Geo. 2. c. 50.

For more learning on this subject, see 20 Vin. and 5 Bac. Abr. tit. Tenure.

Term. (Termini, ) Signifies commonly the limitation of time or estate; as a lease for term of life or years, &c. Dra^t. lib. 2.

Tenour (Tenour ex terminis.) Is he that holds lands or tenements for term of years or life, Litt. 100. A term for years cannot plead in assize like tenant of the freehold; but the special matter, viz. his lease for years, the reversion in the plaintiff, and that he is in possession, &c. Dyer 246. Jenk. Cent. 142.

Terms, Are those spaces of time, wherein the courts of justice sit for all that complain of wrongs or injuries, and seek their rights by course of law or action, in order to their redrefs; and during which, the courts in Westminster-hall sit and give judgments, &c. But the high court of parliament, the chancery, and inferior courts, do not obferve the terms; only the courts of King's bench, Common pleas, and Exchequer, the highest courts at Common law. Of these terms there are four in every year, viz. Hilary term, which begins the 23d of January, and ends the 1st of February; Easter term, that begins the Wednesday fortnightly after Easter day, and ends the Monday next after Ascension day; Trinity term, which begins the Friday after Trinity Sunday, and ends the Wednesday fortnight after; and Michaelmas term, the 6th, and ends the 28th of November. Each term had certain returns; as Hilary term has four; Easter hath five; Trinity four; and Michaelmas six: But by statute Trinity term was abridged four returns; and Michaelmas two. returns; for those terms were formerly longer than they are now, till contrahed by the statutes 32 H. 8. c. 21. and 16 Car. 1. c. 16. There are four terms in day, called Effion day; the day of exceptions; the day of return of writs; and day of appearance, called the quarter die post. The term is said to begin on the Effion day, which begins on the day following the Wednesday at law at Westminster, to take and enter effions; but the third day afterward is the first day of the term, at which time the judges in all the courts fit to do the business of the term. 2 Lit. Abr. 569. All the term in construction of law is accounted for as one day to many purposes, for a plea that is put in the last day of a term, is a plea of the first day of the term; and a judgment on the last day of term is as effectual as on the first day. Trin. 23 Car. B. R. And for this reason, the judges may alter and amend their judgments in the same term, &c. It hath been held, that the courts sit not but in term, as to giving of judgments: And the judges of B. R. and C. B. before Trinity term 1651. did not sit longer in court than till one o'clock upon the last day of term; because they would not encourage attorneys to neglect their clients business till the last day of term, as too commonly they do, to the till of the court, and too much hurry in dispatch. Mich. 27 Car. 2. c. 8. The term is still so constitutioned, and the returns of writs and proceedes confirmed. 1 W. & M. ss. 5. t. c. 4. Where there is a term intervening between the term and a return of a writ of copias, &c. or when the term to which a suit is continued is adjourned, and the suit is not adjourned, it is a discontinuance. 2 Hawk. 258. The illative terms are Hilary and Trinity terms only; so called, because in them the illives are joined, and records made up of cases, to be tried at the Lent and Summer assizes, which immediately follow. 2 Lit. Abr. 568.

By statute, 24 Geo. 2. c. 63. sect. 1. There shall be in Michaelmas term four common days of return only, viz. the morrow of All Souls; the morrow of St. Martin; in eight days after St. Martin; and in fifteen days after St. Martin.

Sec. 2. The same days of return shall be observed in all the high courts of record of the King; and there shall not be more than five returns, from the first term of St. Michael, in three weeks, nor from the day of St. Michael in one month, nor either of them; and the said term of St. Michael yearly shall begin upon the morrow of All Souls, (except it be on a Sunday, and then on the morrow next after) for the keeping courts, prorogued terms, &c. in like manner as had been used, and the day of the return, called from the day of St. Michael in three weeks; and the full term of St. Michael, shall yearly begin upon the fourth day of the said morrow of All Souls, except it be on a Sunday, and then on the morrow next after.

Sect. 3. If any writ of dower unde nihil habet, or writ of entry for common recoveries, or writ of right of advowson, or in any other real action, be returnable in the Common pleas, in the morrow of All Souls, day shall be given in fifteen days of St. Martin; if on the morrow of St. Martin, then in eight days of St. Hilary, if in eight days after St. Hilary, then in fifteen days of St. Hilary; if in fifteen days of St. Martin, then on the morrow of the purification; if in eight days of St. Hilary, then in eight days of the purification; if in fifteen days of St. Hilary, then in fifteen days of Easter; if on the morrow of the purification, then in three weeks from the day of Easter; if in eight days of the purification, then in one month from the day of Easter; if in fifteen days of Easter, then in five weeks from the day of Easter; if in three weeks from the day of Easter, then on the morrow of the Akenfian of our Lord; if on one month from the day of Easter then on the morrow of the Holy Trinity; if in five weeks from the day of Easter, then in eight days of the Holy Trinity; if on the morrow of the Holy Trinity, then in three weeks from the day of the Holy Trinity; if in eight days of the Holy Trinity, then on the morrow of All Souls; if in fifteen days of the Holy Trinity, then on the morrow of St. Martin; if in three weeks of the Holy Trinity, then in eight days of St. Martin.

Sect. 4. In all writs of dower unde nihil habet, after issue joined, it shall not be needful to have above fifteen days betwixt the telle and return of the venue, or any other process for trial of the issue.

Sect. 5. If any writ of dower unde nihil habet be made out of any of his Majesty's courts at Westminster, and having day from the fourth day of the morrow of the Akenfian, to the morrow of the Holy Trinity, shall be good notwithstanding there be not fifteen days between the telle and the return of the said writs. 2 Hawk. 239.

Sect. 6. Upon common recoveries in writs of entry, and writs of right of advowson, all writs of summons to warrant upon the appearance of the tenant to such writ of entry and writ of right of advowson, shall be abridged to four returns exclusive.

Sect. 7. In such cases as special days have been used to be given, it shall be lawful to the justices of the King's courts of record to appoint special days of return. 2 Hawk. 239.

Sect. 8. The days of assize in darrein preferment, and in a plea of quo re impedit limited by the statute of Marlborough, 52 H. 3. c. 12. and also the days to be given in antient limited in 5 Ed. 3. c. 6. and 23 H. 8. c. 3. may be extended by shortland to other cases.

Terms of the Law. Are artificial or technical words and terms of art, particularly used in and adapted to the profession of the law. 2 Hawk. 239.

Terms for payment of Rent. (Termini census.) Rent-terms or times, the four quarterly saults upon which rent was usually paid. Cowell. ed. 1777.
...and...and...and...Jilt...of...fuch...caruogio,...by...men,...and...and...eas...in...the...Land...of...the...King...in...the...of...25.1.2...nor...of...lands,...goods...or...chattels,...formerly...seized,...after...he...has...cleared...himself...of...that...femy,...upon...fufpiion...whereof...he...was...formerly...converted,...and...delivered...to...his...ordinary...to...be...purged. Reg. Orig. fol. 68.

...and...Terra...texit...ultra...brevitatem...levaturn. Is...a...writ...for...the...delivery...of...lands...or...goods...to...a...debtor...that...is...discharged...above...the...quantity...of...the...debt. Reg. Jud. fol. 38.

...and...Terra...texit...ultra...brevitatem...levaturn. Is...a...writ...for...a...man...con-...victed...by...attaint,...to...bring...the...record...and...proceeds...before...the...King,...and...to...take...a...fine...for...his...imprisonment,...to...deliver...him...his...lands...and...emoluments...again,...and...to...rely...him...of...the...fine...and...waft. Reg. Orig. fol. 232. It...is...also...a...writ...for...the...delivery...of...lands...to...the...heir...after...homage...and...relief...performed. Ibid. fol. 293. Or...in...security...taken...that...he...shall...perform...them. Ibid. fol. 212.

...and...Terrat...a...measure...containing...fourteen...and...four...miles,...mentioned...in...the...fartes...1 Rich. 3. cap. 13. 2 Hen. 6. cap. 11. So...called...because...it...is...the...third...part...of...a...tun. A...tierce...of...wine. Coswell. edit. 1727.

...and...As...to...bring...one...to...the...telle...is...to...bring...him...to...a...trial...by...an...inquest...before...the...King. Ch. 2. commonly...called...the...Tepl-adil,...all...officers,...civil...and...military...are...to...take...the...oaths...and...teft;...and...if...they...neglect...it,...and...execute...any...office...within...the...words...of...that...finance,...being...legally...convicted...thereof...upon...information,...preliminary...or...indenture,...in...any...of...the...court...at...Wiff-......and...examination...of...the...offices,...they...shall...forfeit...to...500l...to...be...recovered...by...him...who...will...fue...for...the...same...after...act...of...duty. Cap. 25...2...e. 2.

...and...Sefta...de...Novil,...An...ancient...and...authentic...record...in...the...cuboty...of...the...King's...remembrancer...in...the...Exche-...quer,...said...to...be...compiled...by...John...de...Novil...a...justice...in...the...judicial...office...in...the...beginning...of...the...25th...of...the...2nd...year...of...Ed. 9. was...known...as...a...writ...for...the...delivery...of...lands...in...grant...or...fealty...suits,...with...fees...and...feate...to...the...King,...or...especially...within...the...county...of...Hereford. See...Nicholson's...English...Library, P. 3. p. 103.

...and...Tentamentum...is...then...defined...by...Plutarch...Tentamentum...of...testats...montes,...a...teamentum...is...a...writ...of...the...mind:...But...Aulus...Gellius,...lib. 6. cap. 12. denies...it...to...be...a...compound...word,...and...faith,...It...is...verba...simplices,...as...Calebamentum,...Paludamentum,...&c....And...therefore...it...may...be...thus...better...defined,...Tentamentum...of...ultima...volucis...sicut...facientia,...de...qua...quis...quis...partim...fum...firt...trial,...and...in...writing...of...the...words,...or...in...the...affid...of...a...teamentor...teamentum...writing,...and...a...teamentum...in...words,...which...is...called...a...Nuncpiusatu...teamentum,...which...is,...when...a...man...being...fick,...and...for...fear,...left...death,...want...of...memory,...or...speech,...should...come...to...suddenly...upon...him...that...he...should...be...prevented...if...he...fliald...the...writing...of...his...teamentum,...defers...his...neighbours...and...friends...to...bear...witnes...of...his...latt...will,...and...then...declares...the...fame...before...them...by...words,...which...after...his...deceafe...is...proved...by...witnesses,...and...put...in...writing...by...the...ordinary,...and...then...flands...in...as...good...force...as...if...it...had...at...the...first...in...the...life...of...the...televantor...in...writing,...except...only...for...lands,...which...are...defeivable...by...but...a...teamentum...put...in...writing...in...the...life...of...the...televantor. See...Co. a...Liti. 2...c. 10. f. 167. Placed. fol. 541. Parmandus...and...Jurdin's...calf...Co. 6...Rep. Marquis...of...Winchesfer's...calf...Teamentum...was...anciently...used...according...to...Splagem...pro...fcripto...charts...in...&...in...the...Allan's...freeters...in...the...&...in...the...Allan's...freeters...in...the...Superfinius...perfunctio...full...tit...ulterior...and...in...the...Te-...mentum...ferret...ulterior...nomina...continetur.—Si...quis...contra...hoc...meo...auriatus...teamentum...aliquod...machinae...imperium...promunifit...Chatta...Croylandes...ab...Ethel-...baldno...Rece...Anno...Domini...716...Coswell...edit. 1727.

...and...Televantor...Lat)...He...that...makes...a...teamentum. See...Swinburne...of...Wills...and...Teamentum....And...especially...see...8...Q...differentarion...
THA

disfutation of the probate of wills or testaments by the learned Sir Henry Spelman among his late remains, pag. 127. Cowell, edit. 1727.

Tefflatum, A writ in personal actions, as if the defendant could not be arrested upon a copy in the county where the action is laid, but is returned non est inventus by the sheriff. This writ will be returned in every county where such person is thought to have wherewith to satisfy: And this is termed a teflatum, because the sheriff first tollified that the defendant was not to be found in his bailiwick. See Kitchin's Return of Writs, fol. 287.

Telfo, Is a word commonly used in the last part of every writ, wherein the date is contained, which begins with these words, Telfo me ipse, &c. if it be an original writ; or if judicial, Telfo Roberto Raymond militis, or Roberto Eure militis, according to the court whence it issues. Yet we read in Gallois, lib. 1. cap. 6. &c. and lib. 2. cap. 4. The last clause in an original writ be Telfo Radulpho de Clavillano apud Clauden, &c. and writs in the Register of Writs, Telfo custode Anglie, as namely in the title Prohibition, f. 42. and Conclavity, f. 54. See 20 Vin. Abr. 262—266.

Tennal, A burden or fine levied on the tenants of the manors of the time and place when and where a lord or bailer landed, and the place of his dwelling and birth, unto which he is to pass, or such like. 3 Iof. f. 85.

Telfon, or Telfou, (2 & 3 Ed. 6. cap. 17.) A fort of money, which, among the French, did bear the value of a florin; in Henry the Eighth's time being of brass, lightly gilt with silver, it was reduced to 12d. and in the beginning of Edward the Sixth 10d. and afterwards to 6d. For the fabrication and value of teffon, see Lauderi's Essay upon Coins, p. 22.

Tertius, Is mentioned in several authors, to signify the Third Term. It was written in golden letters, and carefully preserved in the churches. Cowell, edit. 1727.

Tertius Hoffmanus, An ancient manuscript containing many of the Saxons laws, and the rights, customs, tenures, &c. of the church of Rochester, drawn up by Ermulf bishop of that see from 1114 to 1124. Cowell, edit. 1727.

Thames, Persons navigating boats on the river Thames, committing thefts, how punished, 2 Geor. 3. cap. 28.

Thamage of the King, (Thamamium Regis,) Signified a certain part of the King's land or property, whereof the ruler or governor was called Thame. Cowell, edit. 1727.

Thame, (From the Sax. Theman, ministrare,) Was the title of those who attended the English Saxon Kings in their courts, and who held their lands immediately of those Kings, and therefore in Domesday, they were proficuously called theami & servientes Regis, though not long after the conquest the word was disused, and instead thereof, those men were called Barones Regis, who as to their dignity, were inferior to Earls, and took place next after Bishops, Abbots, Barons and Knights. These were also theiri ministers, and those likewise called barons: They were lords of manors and had a particular jurisdiction within their limits, and over their own tenants in their courts, which to this day are called barons courts: But the word signifies sometimes a nobleman, sometimes a freeman, sometimes a magistrate, but more properly an officer or minister of the King. Edward King gave mine Bishops, and mine Earls, and all mine Thenege, and the Ipshe mine Prefel in Paulus minifter babdov land. Charter Edw. Conf. Pat. 18 H. 6. m. 9. per Iospe. Lamb. in his Expedition of Saxon words, verb. Thane, And Skene de vorbor, signif. faith. It is a name of dignity, that equal part with the son of an earl. This appellation was in use among the Normans, as appears by the Mappa, and by a certain writ of William the First: Williamm Rex Salutar Hermannum episopus, & Steuinam, & Brityi, & omnis Thanes mess in Dorfereyn pago amicabiliter. MS. de Abbatisbury. Camden says, They were ennobled only by the office which they administered. Thomas Regis is taken for a baron. 1 Ios. fol. 5. 1. And in Domesday tenants, qui esti caput manoris. See Adilis, de Notitia, fol. 134. The Saxon Thane was fcelen from Thelian, servite; and in Latin minister a ministries. So that a Thane at first (in like manner as an earl) was not properly a title of dignity, but of service. But according to the Regiam Custum, one of greater estimation, found in Douro: So that the title of Kings, and the eminency, either in court, or commonwealth, were called Thani majors and Thani Regis. Thane that served under them as they did under the King were called Thani minores, or the leffer Thane. Cowell, edit. 1727. See Skene, fol. 132.

Thane-Lands, Such lands as were granted by charter of the Saxon Kings to their Thanes with all immunities, except the threefold necessity of expulsion, seer of cattle, and mending of bridges. Cowell, edit. 1727.

Thalsela, Was a certain form of tributary money, imposed by the Rannet on the Britons and their freemen, and paid every year; which payment continued under several reigns of the Saxon, Danjilb and Norman Kings; for the word is mentioned in the laws of H. 1. c. 78.

Thiefs, (Partum,) Is an unlawful family taking away of another man's movable and personal goods, against the law and the commonwealth, which is divided into theft simply so called, and petty theft, whereof the one is of goods above the value of twelve pence, and is felony; the other under that value, and is no felony, but called petit larceny. See Lactenn and Felony. Theft from the person, or in the presence of the owner, is called theft. Whif. Symbol. pass. 2. Indictm. sect. 58. 59. 60.

Thief-Bote, (From the Sax. Theof, i. e. Furtum, and Bote, Campefnato,) Is the receiving of a man's goods again a a thief, after stolen, or other remedy not to prosecute the felon, and to intent the thief may ecape; which is called Furtum. It is considerable with fine and imprisonment, etc. H. P. C. 139.

Theleumon, or Beve effecuti querci de Theleumon, Is a writ lying for the citizens of any city, or burgesses of any town, that have a charter or prerogative to free them from toll, against the offices of any town or market, who would confine them to pay toll of their merchandise contrary to their said grant or prerogation. F. N. B. fol. 226.

Thelemonomanus, The toll-man or officer who received the toll. Cowell, edit. 1727.

Thelemonus rationabilis habebus pro dominus habebas titus coumitia Regis ad firmamentum, Is a writ that lies for having the King's demesne in fee-farm, to recover reasonable toll of the King's tenants there, if his demeine had been accustomed to be tall. Reg. Orig. fol. 87.

Themagium, A duty or acknowledgment paid by inferior tenants in respect of theme or team. Cowell, edit. 1727.

Themc, Tociici agricola, i. e. Auctum crescentia circa agris pro clavaris curum, vulgarly called hedgerows or dike-rows. Lindew. Cowell, edit. 1727.

Theodan, In the degree or definition of parts among the Saxon, the earl or prime lord was called theodan, with the title of the King's thane; and the husbandman or inferior tenant was called theoden, or under thane. See Than.

Theodoves, The bondsman among their Saxons were called thedoves and eftoves, who were not counted members of the commonwealth, but parcels of their masters goods and subsistence. See Steven of Douro, cap. 5.

Theofaurus, Was sometimes taken in old charters for theofaurarius, the treasurers; and Domesday register, where Waters was often called Liber theofaur, Cowell, edit. 1727.

Thehninga, A titling. Tothningamannus, a titling-man.

Theifaker. See Felony.

Thegreg, (Thamux,) A nobleman, a knight, or freeman. Cokuur. far. fol. 157.

Thehropus, Is used for a confable, in fol. 28 H. 9. c. 10. and Lambard's Duty of Confables, pag. 6. and founds
feems to be corruptly used for the Saxon Freeberg, ingen-
naud sueijjfer. Couell, edit. 1727.

Thirdings. The third part of the corn or grain growing on the ground at the tenant's death, to the lord for the lord not within a certain manor, and lands be-
longing to the manor of Teward in the county of Here-
ford. Id. 1b.

Third Night aum-hinde, (Triaun notum Hifes),
By the laws of St. Edward, (cap. de Hopitibus.) If any
guay lay a third night in an inn, he was accounted a do-

mous住在son of the house, or the opposite, as he should
he foomit. Formam night, unceau, two night guue, third night aum-hinde, that is, the first night a stranger, the second night a fugit, the third night a do-

mestic. Bract. lib. 3. tract. 2. cap. 10. num. 2.

writes bygone for终身.

Thistle. (See Denarius curtius Comitatus.
Thistlake. It was a custom within the manor of
Hilton, in the county palatine of Chester, that if in

iving beasts over the common, the driver permits them
to graze or take but a thistle, he shall pay a half-penny to the lord of the fer. But at Eyerton in Nett-

hamshire, the ancient custom, if a false thistle or a cottage
killed a swine above a year old, he paid to the lord a
penny, which purchase of leave to kill a hog was also
called thistle-take. Reg. Priorat. de Thurgarton. Cou-

ell, edit. 1727.

Thites, Fifth with broken bellies, 22 E. 4. cap. 2.
what said statute are not to be mixt or packed with
tale-fish.

Thopo, Throp, Crop. Either in the beginning or end
of names of places, signifies a street or village, as

thirop: From the Sax. Thorp, villa, view.

Thorn, Thorn. Thorny land, from the Saxon
Thorun, i.e. a bundle, or the Britith drea, i.e. twenty-
four. In most parts of England consitts of twenty-
four sheaves, or four shocks, six sheaves to every thock,
2 H. 6. cap. 2. yet in some counties they reckon but
twelve sheaves to the thorne. King Alfred's ann.
915 gives by his charter to St. John of Beverley's church,
four thrawes of corn from every plough-land in the East
Riding of Yorkshire. Couell, edit. 1727.

Threab, Thread, oatmeal, to what duties liable on
importation, 4 Will. & M. c. 5. Sifters thread exempt
from the two third subsidies, 7 Ann. c. 7.

Thrip, (From the Saxon Thrimp, which signifies
three,) Was an old piece of money of three thrippings,
according to Lombard, or rather, (as Selden thinks) the
third part of a threepence of solmum, f. 60. See

Wergeld. It was certainly but a groat, or the third part of a thlling. Couell, edit. 1727.

Thriiling, (Thribingham,) In the statute of Merton,
fignifies a court which consists of three or four hundred.
Co. 2 H. 6. f. 59.

Thwip, Thwip, or throwing Silk. See Silk.

Thwanni, The sole printing thereof granted to Sa-

muel Buxley, 7 Geo. 3. c. 24.

Thwode, Thwode. A woodwoard, or one who looks af
the woods.

Thumllum, Signifies a thumb: 'Ts mentioned in
Lev. xiv. 25, apud Brompton.

Thumucht, A word, which in some old writers is taken for the custom of giving entertainments to the sheriff, &c. for three nights. Rot. 11 & 12 Ric. 2.
The text is a page from a historical document discussing the cultivation and regulation of trees and shrubs. It includes references to the law regarding the proper treatment of trees and the penalties for offenses related to tree cultivation. The text also touches on the responsibilities of the owner in the event of damage or theft.
Tithes are due either by rule, or by custom: All tithes, which are due by rule, arise from such fruits of the earth as renew annually; or from the profit that accrues from the labour of a man. Hence it follows, that such tithes can never be part of, but must always be collateral to, the work from which they arise. 1 Rep. 13, 14. Priddle v. Napier.

Nay, tithes due by rule are so collateral to every kind of land, that if a lease is made of the glebe belonging to a rectory, with all the profits and advantages thereof; and there is besides a covenant, that the rent to be paid shall be in full satisfaction of every kind of exaction, and demand, belonging to the rectory; yet, as the glebe is not expressly discharged of tithes, the lease shall be liable to the payment thereof. 11 Rep. 13, 14. Priddle v. Napier. 1 Roll. Abr. 655. pl. 1. Gor. Edin. 261, 162. Gor. Carr. 352.

No tithes due by rule of the produce of a mine or of a quarry, because this is not a fruit of the earth renewing annually, but is the substance of the earth, and has perhaps been to a great number of years. F. N. B. 53. Br. J. P. p. 18. 2 Inf. 514. 1 Roll. Abr. 657. Gor. Carr. 352.

But in some places tithes are due by custom of the produce of mines. 2 Le. 49. Baxter v. Hutchinson. 

No tithes are due by rule of time: The challs, of which this is made, being part of the soil. 1 Roll. Abr. 657. pl. 5.

Tithes are not due by rule of bricks, which are made from the earth itself. 2 Mod. 77. Stratfield's case.

Nor is tithes due by rule of turf, or of gravel: Because both these are part of the soil. 1 Mod. 35.

It has been held, that no tithes is due by rule of fall; because this does not renew annually. 1 Roll. Abr. 642. pl. 16.

But every one of these, and all things of the like kind, may by custom become tithable, 1 Roll. Abr. 642. pl. 7. pl. 8.

No tithes are due by rule of houses; for tithes are only due by rule of such things as renew from year to year. 11 Rep. 16. Brown's case.

But houses in London are, by decree, which was confirmed by an act of parliament, made liable to the payment of tithes, 2 Inf. 659. 7 H. 8. c. 2.

And before this decree, houses in London were by custom liable to pay tithes; the quantum to be paid being that which the market value of such houses for which the tithre was no customary payment. 2 Inf. 659. Hard. 116. Gibb. Ed. Rep. 153, 194.

There is likewise in most ancient cities, and boroughs, a custom to pay tithes for houses; without which there would be no maintenance in many parishes for clergy.


It was held by three barons of the Exchequer, Price, Montague, and Pigg, contrary to the opinion of Lord Chief Baron, that two tithes may be due of the same thing, one de jure, the other by custom. Bank. 43. Earl of Scarsborough v. Hunter. 

Tithes are of three kinds, personal, prefidential, and mixt. Such tithes as arise from the profit of the personal labour of a man, in the exercise of any art, trade or employment, are called personal tithes. 2 Inf. 649.

By the statute 2 & 3 Ed. 6. c. 15 par. 7. Common day labourers are exempted from the payment of perifhial tithes.

No perifhial tithes are due from servants in his husbandry; for by their labour the tithes of many other things are increased. 1 Roll. Abr. 646. pl. 1.

The better opinion always was, that a miller, except he be occupied a corn mill, was only liable to the payment of 8 R. of

1. Of what tithes are in general due, and where personal tithes are due. 
2. Of what preidential tithes are due; and of the tithes of application, corn, hay, wood, &c.

Vol. II. N°. 132.
of personal tithe. 2 Infl. 621. 1 Roll. Abr. 641. pl. 19. 
Cra. Tet. 523.

But it seems to have been formerly held, that the occupier of a corn mill was liable to pay, as personal tithe, the tenth part of his toll. 2 Roll. Rep. 84. Seeow. 281. Brenvold. 32.

It is however now settled, by a decree of the house of Lords, that an appeal from a decree of the court of Exchequer, that only personal tithe are due from the occupier of a corn mill. 1 Ecf. Cap. Atr. 366. Newt v. Chamberlain, 2 Will. Rep. 453.

The occupier of a newly erected mill is liable to tithes, although such mill is erected upon land discharged of tithe. 2 Raym. 734. 460. 19.

It is said in one book, that the occupier of an ancient mill shall not pay tithes: But that the occupier of a new mill is, by the 9 Ed. 2. c. 1. e. 5. made liable to pay tithes. Mar. 15. pl. 36.

This seems to be a mistake, for that statute only provides, that new erected mills shall be liable to the payment of tithes: But, as nothing therein is said concerning ancient mills, there can be no doubt, that such ancient mills, as before the making of this statute were liable to pay tithes, continued afterwards to be liable. 12 Med. 245. Hort v. Hads. 3 Baff. 212.

No personal tithe is due by the occupier of the parson, who receives without personal labour, or of the profit which one man receives from the labour of another. 1 Roll. Abr. 656. pl. 1. pl. 2. 2 Infl. 621. 649.

If a man lets a ship to a fisherman, no personal tithe is due of the money received for the use of such ship, because it is a profit from without personal labour. 1 Roll. Abr. 656. n. pl. 2.

If a man purchases a house for 300l. and afterwards sells it for 500l. no personal tithe is due; for the personal labour bears no proportion in this case to the profit. 1 Roll. Abr. 656. n. pl. 5.

If a inn-keeper rents a house, profit, out of his kitchen, cellar, and stables, as to make 200l. of what cost him only 100l. no personal tithe is due of this profit: Because the profit did not arise from personal labour alone, and so far as it did, it perhaps arose more from the personal labour of servants, than from that of the master of the inn. 2 Baff. 141. Dolley v. Davitt.

2. Of what predial tithe are due; and of the tithe of agistment, corn, hay, and wood.

Such tithes, as arise immediately from the fruits of the earth, as from corn, hay, hemp, hops; and all kinds of the seeds and herbs, are called predial tithes. 2 Infl. 649. 1

They are so called, because they arise immediately from the fruits of the farm, or earth. 2 Infl. 647. By the ecclesiastical law many things are liable to the payment of predial tithes, which by the Common law are not so. 2 Infl. 621. 4 Med. 314.

The design under this head, is to show what things are liable by the Common law to pay predial tithes.

In doing this, it will appear, that some things, which are in the general exempted therefrom, become by custom liable to the payment of predial tithes. 1 Roll. Abr. 635. E. pl. 2. 2 Roll. Abr. 642. S. pl. 7. pl. 8.

It will also appear, that divers things, which are in the general liable thereto, are under particular circumstances exempted from the payment of such tithes. 1 Roll. Abr. 645. pl. 11. Cra. Eliz. 475. Pream. 355. 12 Med. 235.

But whenever any fraud is used, to bring a thing under those circumstances, by reason of which it would, if it had come fairly under them, have been exempted from the payment of predial tithes, it is by such fraud rendered liable thereto. Cra. Eliz. 475. Pream. 355.

They are not to be so considered, as to enumerate all the things which are liable to predial tithes, only those shall be mentioned, concerning the tithes of which some question has arisen; but, from such as will be mentioned, it may be easily collected of what other things predial tithes are due.

T I T

Adition. Agitation, in the first sense of the word, means the depasturing of a beast the property of a stranger; But this word is constantly used, in the books, for depasturing the beast of an occupier of land, as well as that of a stranger. 5 Bar. Ab. 53.

An occupier of land is not liable to pay tithe for the pasture of hoes, or other beasts, which are used in husbandry; and which there are depastured. Because the tithe of corn is by their labour increased. 1 Roll. Abr. 646. pl. 2. pl. 3. pl. 6. pl. 7. Cra. Eliz. 446. Ld Raym. 132.

But if hoes or other beasts be used in husbandry out of the parish, in which they are depastured, an agistment tithe will be laid upon them. 7 Med. 114. Harrow's cafe. Ld Raym. 130.

It seems to be the better opinion, that no tithe is due for the pasture of aaddle horse, which an occupier of land keeps for himself or servants to ride upon. 1 Roll. Abr. 643. 4. Cra. Jac. 430. Boff. 174. Bank. 3.

An occupier of land is liable to an agistment tithe, for all horses which he keeps for sale. Cra. Jac. 430. Hambton v. Wild. 1 Roll. Abr. 647. pl. 14.

No tithe is due for the pasture of milk cattle, which are milked in the parish, in which they are depastured; because the tithe is paid of the milk of such cattle. 1 Roll. Abr. 641. 2. Ld Raym. 130. Cra. Eliz. 446.

Milk cattle, which are referred for calving, shall pay no tithe for their pasture whithd they are dry: But if they are afterwards foid, or milked in another parish, an agistment tithe is due for the time they were dry. Hext. 110. Ld Raym. 130.

No tithe is due, from an occupier of land; for the pasture of young cattle, reared to be used in husbandry, or for the. Cra. Eliz. 446. 476. Sheringb v. Fleetwood.

But, if such young beasts are sold, before they come to such perfection as to be fit for husbandry, or before they become an agistment, the tithe must be paid for them. Hext. 86. Woolmer's cafe.

An occupier of land is liable to an agistment tithe, for all such cattle as he keeps for sale. Cra. Eliz. 446. 476. Cra. Eliz. 446. 476. Cron. Car. 237.

It is in general true, that an agistment tithe is due, for depasturing any fort of cattle the property of a stranger. Cra. Eliz. 279. Cra. Jac. 279. Bank. 1. Pream. 320.

No tithe is due for the cattle, either of a stranger or an occupier, which are depastured in grounds, that have in the same year paid tithe of hay. Bank. 10. 79. Pream. 334. Ld Raym. 131.

No agistment tithe is due for such beasts, either of a stranger or an occupier, as are depastured on the head lands of ploughed fields: Provided that these are not wider than is sufficient to turn the plough and horses upon. 1 Roll. Abr. 646. pl. 19.

No tithe is due for such cattle as are depastured upon land, in the same the year paid tithe of corn. Bcs. Disfm. 18. 1 Med. 216.

If land, which has paid tithe of corn in one year, is left unvown the next year, no agistment is due for such land; because, by this lying fallow, the tithe of the next crop of corn, will be exempted. 1 Roll. Abr. 646. 2.

But the land, which has paid tithe of corn, is suffered to lie fallow longer than by the cours of husbandry is usual, an agistment tithe is due for the beasts depastured upon such land. Slep. Abr. 1008.

As the question, whether an agistment tithe is due for sheep, does not seem to be quite settled, it will be a matter of great importance the principal cases, in which this has been agitated.

It is laid down in one old case, that no tithe is due for the pasture of sheep, because they are animalia fructuosa. 1 Roll. Rep. 63. pl. 7. Muscal v. Price. Mabs. 12. Tac. 1.

But
But in another book of the same author, where this very case is reported, there is a dubitator. 1 Rel. Ab. 642. pl. 8.

In a cafe, not long after, it was held, that an agrimen
tite should be paid for sheep, which, after having been
been turned to corn, and by the Lady—day, were removed into another; and by Ded
dridge, justice, otherwise the parson of the parish might be
declared of his tite; for the sheep are now carried into
a second parish, and they may not be brought back and
In another case, by Whittington, justice, that Di
animalibus autilia, as horses, oxen, &c. the parson flasl
have agrimen tite: But that De animalibus utilibus, as
cows, sheep, &c. be shall have in specie.
In another cafe, it is said to have been laid down, that
notwithstanding the nature of sheep eat in the
But, in another report of the same cafe, it is said to
have been held, that no tite is due for the pasture of
wethers; because they will yield a tite of wool. 1
Rel. Ab. 647. pl. 13.
In a modern cafe, in the court of Exchequer, it is
said that, it seemed to be admitted, that tithe is due
for the agrimen of yearling sheep, because it is a new

In another cafe shortly after, in the same court, it
appeared, that sheep after paying tite of wool, had been
sheared by the same person, by which they were bet
tered to the value of five shillings each; and were then
fold. It also appeared, that the defendant had, before
the next shearing time, bought in as many as were
fold; and that of the tite of wool was paid. It was infis
ted, that, if an agrimen was to be paid for the sheep
fold, this would be a double titing: But the court held,
that this was a new increase, and decreed the defendant

In this cafe no notice was taken of the cafe of
Baker and Sweet: But the cafe of Dammer and Wood
field was not mentioned. In which it was held, that
there had been decreed, and the decree had been affirmed on a
rehearing, that the tite for depasturing sheep from the
time of shearing till they were fold, should be account
ed for.

But in a still later cafe, the court of Exchequer were
of a quite different opinion. A bill was brought for the
agriment of depasturing sheep four months in the parish after
they had been thorn; it appeared also, that at the end of
this time they were removed into another parish; and
that they were thorn there at the next shearing time. In
this cafe the cafes of Coleman and Baker, and Dammer
and Woodfield was mentioned. But the court held, that
no agrimen tite should be paid, because sheep are animalia fruitu.
Barns. 132. Poor v. Seymour, Hils. 5 Geo. 2.

Corn. It is laid down in some books, that no tite is due
due to the reakings of corn incontinently fattened. 1
Mor. 278.

But, if more of any sort of corn is fraudulently fet
tered, than, if proper care had been taken, would have
been fattened, tite is due of the reakings of such corn. Cro.
Eliz. 475.

And it has been said by Holt, Chief Justice, that tite is due of the reakings of all corn, except such as is bound
up in fheaves. 12 Med. 125.

No tites are due of the strubbles left in corn fields, after
mowing or reaping the corn. 2 Inl. 621. 1 Rel. Ab. 646. 12.

Hay. Tite of hay is to be paid, although beefs of the
plough or plail, or sheep to be foddered with fuch
pl. 12. 12 Med. 497.

But no tite is due of hay grown upon the headlands
of corn. It was held, that beefs that headlands are
not wider then is sufficient to turn the plough and horspes
upon. 1 Rel. Ab. 646. pl. 15.

It is laid down in one old cafe, that if a man cuts down
grafs, and, while it is in the fheathes, carries it away
and gives it to his plough cattle, not having sufficient
fustenance for them otherwise, no tite is due thereof. 1

And in a modern cafe, the court of Exchequer femed
to be held, that no tite is due of vetches or
clover, cut green, and given to cattle in hufbandiy.
Bunb. 279. Hayes v. Dufay, Hils. 3 Geo. 2.

But in another cafe, some years before this latter cafe, it
was held, that the right to tite of hay accurses upon
mowing the gras, and that the fubsequent application of
this, which is to grafs, or when it is made into hay,
shall not, although beacts of the plough or pail are fed
with it, take away this right. 12 Med. 498.

And the doctrine of this latter cafe coincides with that
of an old cafe; in which it was held, that tares cut green,
and given to cattle, the beacts of the plough, may by special
custom be exempted from the payment of tites; from whence it
follows, that such tares are not exempted de jure. 12

It is laid down in some books, that no tite is due of af
termowth hay; because tite can only be due once in the
Reym. 243.

But it is held in other books, that tite is due of aftermowth hay. 1 Rel. Ab. 64. pl. 11. Cro. Eliz.
Bunb. 541.

And the principle, upon which the doctrine that no tite
is due of aftermowth hay is founded, is denied in
some modern cases.

In some of thefe it is laid down, that tites shall be
paid of divers crops grown upon the same land in the
Bunb. 314. Swainf. v. Digg, Hils. 5 Geo. 2.

In others it is held, wherever there is in the same year
a new increase from the same thing, tite is due. Bunb.

Wood. Tite of wood is not due of common right,
because wood does not renew annually: But it was, in
very antient times, paid in many places by custom.
Bunb. 61.

A confitution was made, in the twentieth year of the
reign of Edward the Third, by John Stratford, arch-
bishop of Canterbury, that tites shall be paid, within this
province, of hifta caudis. 2 Inl. 642. Palm. 37, 38.

In the fame year, the commons petitioned the King,
that no man be impleaded in court Chriftian for tites of
wood or underwood, unless in fuch places where fuch
tites be not due of common right, because wood does not
renew annually: But it was, in very antient times, paid in many places by custom.
Bunb. 61.

A confitution was made, in the twentieth year of the
reign of Edward the Third, by John Stratford, arch-
bishop of Canterbury, that tites shall be paid, within this
province, of hifta caudis. 2 Inl. 642. Palm. 37, 38.

In the same year, the commons petitioned the King,
that no man be impleaded in court Chriftian for tites of
wood or underwood, unless in fuch places where fuch
tites be not due of common right, because wood does not
renew annually: But it was, in very antient times, paid in many places by custom.
Bunb. 61.

A confitution was made, in the twentieth year of the
reign of Edward the Third, by John Stratford, arch-
bishop of Canterbury, that tites shall be paid, within this
province, of hifta caudis. 2 Inl. 642. Palm. 37, 38.

In the same year, the commons petitioned the King,
that no man be impleaded in court Chriftian for tites of
wood or underwood, unless in fuch places where fuch
tites be not due of common right, because wood does not
renew annually: But it was, in very antient times, paid in many places by custom.
Bunb. 61.

A confitution was made, in the twentieth year of the
reign of Edward the Third, by John Stratford, arch-
bishop of Canterbury, that tites shall be paid, within this
province, of hifta caudis. 2 Inl. 642. Palm. 37, 38.

In the same year, the commons petitioned the King,
that no man be impleaded in court Chriftian for tites of
wood or underwood, unless in fuch places where fuch
tites be not due of common right, because wood does not
renew annually: But it was, in very antient times, paid in many places by custom.
In consequence of this, a statute was made in these words: 'At the complaint of the Great men and Com-
moners, laying by their petition, that when they fell their gros wood, of the age of 20 or 40 years, and of a greater age, to merchants, to their own profit, and to the aid of the parish, the priests, and the common charges of Holy church do impede and trouble the said merchants, in court christian, for the tithe of the said wood, under the

denomination of titua casta, by the reason of which they cannot feel their wood for the real value, to the
great damage of themselves and the realm; it is ordained and established, that a prohibition in this case shall be

granted, and upon the same an attachment, as it hath hitherto been.' 45 Ed. 3. c. 3.


From these petitions and answers, from this statute, and from books of the belt authority, it appears plainly, that no tithe of gros wood was due de jure at the Common Law, and that the demand thereof is such by virtue of the constitution made by the archbishop, was an encroachment. 2 Inf. 642. 45 Ed. 3. c. 3. Plowd. 470. Bro. Paroch. pl. 1. Cres. Jes. 100.

After the making of this statute, prohibitions were constantly granted to suits instituted in spiritual courts

for tithes of gros wood. But two questions often arose, What is gros wood? And of what age gros wood must be before it is exempted from the payment of tithe? 2 Inf. 643. 644. 645.

For the putting an end to these, it hath been long settled, that by gros wood is not meant small wood, nor h一经 wood, but such wood as is generally, or by the

custom of a particular part of the country, used as timber; and that all such wood, if of the age of 20 years,


Oaks, ashes, and elms, being universally used as timber, it hath been always held, that such trees, if of the age of

20 years, are gros wood. 2 Inf. 642. 643.

It had been held upon great deliberation, notwithstanding what is laid down to the contrary in Plowd. 470.

that a horn-beam tree, if of the age of 20 years, is gros wood; because this is used in building and repairing.

2 Inf. 643.

It is for the same reason been held, that an aspen tree, of the age of 20 years, is gros wood. Ibid.

Tithes are not in the general due of beach, birch, hazel, willow, fallow, alder, maple or white-thorn trees, or of any fruit trees, of whatsoever age they are: Because there are not timber. Plowd. 470. Cres. Eliz. 1 Cres. Jes. 190. 1 Roll. Abr. 640. pl. 5. pl. 6. Brentw. 94.

But, if the wood of any of these trees is used in a particular part of the country, where timber is scarce, in

building and repairing, no tithe is due of such wood, if of the age of 20 years, in that part of the country. Hib. 20. Brentw. 94.

It is laid down in several old books, that, if a timber tree, after it is of the age of 20 years, decays so as to be

unfit to be used in building, no tithe is due of the wood of this tree; because it was once privileged. 11 Rep.


But the contrary is laid down in some other books. In two of these it is laid down, that, if the wood of a

coppice has been usually felled for firing, such wood shall pay tithe, altho' it stand till it be 40 years of age.

Sid. 500. 4 Lev. 189.

And in another it is laid down, that, if the wood of a timber tree is sold for firing, it is, altho' the tree was of

the age of 20 years, liable to pay tithe. Banc. 99. Greenaway v. The Earl of Kent.

The reporter of this last case mentions four others, in which the same had been held; and says, that it was in

one, that timber, if laid down, that tithes of timber-trees is only exempted from the payment of tithe, on the

account of its being used in building. Buckle v. Lasare.

The doctrine, however, of the old books is confirmed by a very late case in the court of Chanery. A bill being brought for tithe of the lopping of timber-trees, which had been sold for firing, it was infilled that this wood, which would otherwise have been exempted from the payment of tithes, was liable thereof, because it was sold to be used for firing; and the cafes just now cited, were held by Hardwicke Chancellor, in the cafe in 1 Lev. 189, and Sid. 300. the wood in question was coppice wood, which had been usually felled for firing; and such wood, of whatever age it is, is always tithable. The cafe of Greenaway and the earl of Kent, is quite a singular one, and is not law, for in the cafe of Biddle and Durley, Hil. 11 Ges. 1. it was agreed, that no tithe is due of the wood of a timber tree, which has been once privi-

leged from the payment of tithe, altho' such wood is sold to be used for firing, M.S. Rep. Walton v. Tryon, Mabel. 25 Ges. 2.

It is laid down in divers books that, if a timber-tree of the age of 20 years is lopped, no tithe shall be paid of the loppings altho' they are not of 20 years growth, for that the tree, which is privileged, shall privilege the loppings. Bros. Difam. pl. 14. 1 Rep. 4. Cres. Eliz. 4. Gibb. 175. 1 Roll. Abr. 640. pl. 3.

But the doctrine laid down in one old book, is, that such loppings of a timber-tree, as are of the age of 20 years, shall be exempted from the payment of tithes; and it is added as a reason, that branches of that age may be useful in building. Plowd. 470. Payy. v. Miltn. 3.

The former, however, is the better opinion.

But in this case the court appear, that the lopping of the trees, for the tithe of which the bill was brought, were not of 20 years growth: But it also appeared, that the trees were of the age of 20 years, before they had ever been lopped. It was held by Hardwicke, Chancellor, that no tithe was due of these loppings; for that, if a tree is once privileged from paying tithe, the privilege extends to all future loppings, of whatsoever age they are. M.S. Rep. Walton v. Tryon.

It has been said, that, altho' a tree has been once lopped before it was of the age of 20 years, the future loppings of such tree, provided these are of twenty years growth, are not tithable. 3 Roll. Abr. 640. pl. 1.

But in the case already cited, it was laid down by Hardwicke Chancellor, that wherever a tree has been

lopped before it was of the age of 20 years, all future lopping, altho' ever so old, are liable to pay tithe. M.S. Rep. Walton v. Tryon.

It has been said, that, if a tree, which was once privileged from paying tithe, is felled, the germins that

spring from the root of such tree, are also privileged. 11 Rep. 48. Lisler's cafe.

But in the case already cited, it was said by Hard-

wicke Chancellor, that all germins, which spring from the roots of trees that have been felled, are tithable. M.S. Rep. Walton v. Tryon.

The wood of a coppice, which has usually been felled for firing, is liable to pay tithe, altho' the same is of the age of 40 years. 1 Lev. 189. Sid. 300.

And in the case afore cited, it was said by Hard-

wicke Chancellor, if, when the wood of coppice is felled, some trees growing therein, which are of the age of 20 years, and have never been lopped, are lopped, and these loppings are promiscuously bound up in faggots with the coppice wood, tithe must be paid of the whole: because it would be very difficult, to separate the tithable wood from that which is not so; and the owner ought to fur-


3. Of what mixed tithes are due.

Such tithes as aris from beasts or fowls, which are fed with the fruits of the earth, are called mixed tithes. 2 Inf. 649. 1 Roll. Abr. 635.

Many things are by the ecclesiastical law liable to pay such tithes, which by the Common law they are not. 2 Inf. 621. 4 Med. 344.
That is eden'd, roll, roll, roll. That it is eden'd, roll.

Any young lambs at Matlock.

And at Milltimpton, the sockets for the future there is a use of such young pigeons as are from the house of the person who breeds them. 1 Will. 14. 1.

No title is due of the young of all birds and beasts, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

And the same remain in due, but by custom, or by use, such crops, cuts, and marks, as may happen to the same, shall be kept only for such purposes as the persons for whom they are kept or used, shall have before paid their due.

No title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

This is to certify, to enregister all the things which are liable to pay mixed tithe, only their due. 1 Will. 14. 1.

But that no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

The due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But that no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But that no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.

But no title is due of the young of all birds, except such as are free from the general liable to pay tithe. 1 Will. 14. 1.
pay such sum as upon such complaint shall be adjudged as aforesaid.

par. 12. It is enacted,* That the said justices shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they find the complaint false and vexatious.

By par. 5. It is provided, That this act shall not extend to titles within the city of London, or in any other place, where the fame are settled by any act of parliament.

By par. 7. An appeal is given to the felctions, and it is enacted, That if the justices there present, or the majority of them, shall confirm the judgment of the two justices, they shall decree the fame by order of sellion, and if the said two justices shall give such costs as to them shall seem just and reasonable.

By the fame par. it is enacted, That no proceedings, or judgments, had by virtue of this act, shall be removed, or superceded, by any writ of certiorari, or other writ whatsoever, unless the title of such titles shall be in question.

By the 7 & 8 W. 3. c. 34. par. 4. It is enacted, That where any quaker shall refuse to pay, or compound, for his great or small titles, it shall be lawful for the two next justices of the peace of the same county, other than such justice of the peace as is patron of the church, and appeal, to which the said titles belong, or any ways interred in the said titles, upon the complaint of the person who ought to have and receive the same, by warrant under their hands and seals to convene before them such quaker, and to examine upon oath, which oath the said quaker are impowered to administer, or in some manner as by this act is provided, the truth and justice of the said complaint, and to ascertain what is due from such quaker to the party complaining, and by order under their hands and seals to direct the payment thereof, so as the sum ordered, as aforesaid, do not exceed ten pounds; and upon refusal of such quaker to pay according to the said order, or upon refusal of any one of the said justices, by warrant under his hand and seal, to levy the money, thereby ordered to be paid, by diversfies and sale of the goods of such offender.

By the same par. it is enacted, That any person finding himself aggrieved, by any judgment given by such two justices of the peace, may appeal to the next general quarter-fellions, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter; and if the justices then present, or the major part of them, shall find cause to continue the said judgment, they shall then decree the same by order of sellions, and shall proceed to give such costs to the appellant, as to them shall seem just and reasonable.

And by the same par. it is enacted, That no proceedings, or judgment, had by virtue of this act, shall be removed or superceded by any writ of certiorari, or other writ out of his majesty's courts of Westminster, or any other court whatsoever, unless the title to such titles shall be in question.

By the 1 Geo. 1. fl. 2. cap. 6. par. 2. The like remedy is given for the recovery of all titles and all other ecclesiastical dues from quakers, as by the 7 & 8 W. 3. c. 34. is given for titles to the value of ten pounds.

And or thereby further provided, That any two or more justices of the peace of the same county or place, other than such justice as is patron of the church, or chapel, to which the said titles or dues belong, or any ways interred in the said titles, upon complaint of any parson, vicar, curate, farmer or proprietor of such titles, or other of such goods, that he hath received or recoverd, any such titles or dues, are hereby required to summons, in writing under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made; and after his or their appearance, or upon default of appearance, the said warning or summons shall be proceeded upon, to hear and determine the said complaint, and to make such order therein as in the said act is limited or directed; and also to order such costs and charges, not exceeding ten shillings, as upon the merits of the cause shall appear just; which order shall and may be so executed, and be so recovered or affirmed, by the general quarter-fellions of the county or place, with such costs and remedy for the same, and shall not be removed into any other court, unless the title to such titles shall be in question, in like manner as in and by the same act is limited and provided.

For matters relating to this subject, see 5 Bat. Abp. tit. Titles, 8 Vin. Abt. tit. Disfrs, and a new tractise on the laws concerning Titles.

Citing, (Tittlingum, From the Saxon Teuthang, which signifies Describer,) Signifies, (according to Lambard, in his Book of Confultic) the number or company of such tithes, connected in one society, all being bound to the King for the peaceable behaviour of each other. Of these companies, there was one chief or principal person, from whom his office was called teuthang-man, at this day in some places tittlingum, but is indeed a confable, for the old way of tithing is long since left off. It is also used for a court, Magna charta, cap. 25. Morton, cap. 10, and 23 B. 3. cap. 4. Cowell. edid. 1727. See Chief pledge, Frank-pledge, December and Titlingum.

Citing'men, In the Saxon times, for the better conservation of peace, and the more easy administration of justice, every county was divided into ten districts or tithings, each tithing made up of ten fribergis, each friborg of ten families; which tittlingmen, or civil deans were to examine, and determine all leffer causes between villages and neighbours, but to refer all greater matters to the superior courts, which had a jurisdiction over the whole hundred. Cowell. edid. 1727. See Ew. Parisb. Aux. p. 633.

Title, (Titulus,) Properly is when a man hath lawful cause of entry into lands whereof another is seised, for which he can have no action, as title of mortmain, or title to enter for breach of condition; But legally this word is used only for an absolute title or right in the personal word, for every right is a title, but every title is not such a right for which an action lies, and therefore Titulus of jusfa canfa Joflalini quad tisfum off, and signifies the means whereby a man cometh to his land, as his title is by fine or feoffment. And as by a release of a right a title is released, so by release of a title, a title is released also. See Co. 4. Rep. Ew. Allam's case. This is a word mentioned in several councils and synods; and it signifies the church to which a priest was ordained, and where he was constantly to reside. Const. London. an. 1125. Nulius in proutetamen, nullus in diatamen, titulus in quibuslibet. Every title of the church signifies many reasons why a church is called titulus. But that which seems the best, is, because in former days the name of the Saint to whom the church was dedicated, was engraved on the porch, as a figur that the saint had a title to that church. From whence the church itself was afterwards called titulus. Cowell. edid. 1727. See 2 Vin. 276. 258.

Title of Entry, Is when one seised of land in fee, makes a feoffment thereof on condition, and the condition is broken; after which the feoffee hath title to enter into the land, and may do so at his pleasure, and by his entry, the seised title shall be liable to be set aside in him prefently. And it is called Title of Entry, because he cannot have a writ of right against his seoffice upon condition, for his right was out of him by the feoffment, which cannot be reduced into entry; and the entry must be for the breach of the condition. Cowell. edid. 1727.

Dilinpho, T. B. 2. edid. 1706. Deuot. For rebuilding the town of, 5 Geo. 2. c. 14.

Talatat, A towel. In the inquisition of seignories and knight's fee, within the counties of Essex and Hertford, made in the 12th and 13th year of King John,—Petrus Pictus tenat domicilium cum domino in civitatem Hept-Nive in county Essex et coronatione Regis.—i. e. by the service of waiting with a towel at the King's coronation.—Ex Lib. Rab. Sanc. fol. 137.
Tobacco. Not to be planted in England or Ireland, 2. Car. 2. c. 34. 15 Car. 2. c. 7. f. 18. 2 & 3 Car. 2. c. 26. 5 Geo. I. c. 11. f. 19.

A duty of 3d. per pound upon tobacco, 1. Jace. 2. c. 10. 7 & 8 W. 3. c. 21. f. 29.

This duty made perpetual, and part of the South-Sea fund, by 9. Ann. c. 21.

Security to be given on importing tobacco, 7 & 8 W. 3. c. 23. f. 10.

Tobacco to be imported in cafe or chaff only, 10 & 11 W. 3. c. 21. f. 29.

Three months time given for paying the subsidy on plantation tobacco, 9 & 10 W. 3. c. 23. f. 10.

Tobacco to be imported in cafe or chaff only, 10 & 11 W. 3. c. 21. f. 29.

Nine months time given for paying the one third subsidy on tobacco, 2 & 3 Ann. g. c. 9. f. 11.

European tobacco or of foreign plantations not to be sold on board ships of war, 6 Ann. c. 32. f. 12.


No debenture or drawback for ships under 20 tons, 8. Ann. c. 12. f. 20.

Allowances made out of the duties on tobacco, 12 Ann. f. 2. c. 8. 5 Geo. I. c. 7. 9 Geo. I. cap. 21. fess. 3. 12.

The adulterating tobacco and snuff prohibited, 1 Geo. I. c. 46. 5 Geo. I. c. 11. f. 22.

Importation of foreign tobacco prohibited, 1 Geo. I. c. 46. 5 Geo. I. c. 11. f. 22.

Importation of tobacco as well as smuggling is prohibited, 1 Geo. I. c. 46. 5 Geo. I. c. 11. f. 22.

Allowance for wafe in exporting to Ireland, 6 Geo. I. c. 21. f. 48.

Penalty on landing tobacco in Ireland, that is entered for other foreign parts, 6 Geo. I. c. 21. f. 49.

Condemned tobacco to be fold or burnt, 12 Geo. I. c. 38. f. 13.

Importation of tobacco flacks prohibited, 12 Geo. I. c. 28. f. 13.

Repeal of a prohibition of importing tobacco stripped, 2 Geo. II. c. 2. 9.

Allowance and drawback upon tobacco out of the last subsidies, 2 Geo. II. c. 2. f. 5.

Importers of tobacco to bring a manifefl from the officer of the custom in the plantations, 24 Geo. II. c. 41.

Regulations for removing tobacco by land, 24 Geo. II. c. 41. f. 9. 26 Geo. II. c. 13.

Regulations for carrying tobacco coastwise, 24 Geo. II. c. 41. f. 10.

No tobacco to be exported unless in vefsels of 70 tons, 24 Geo. II. c. 2. 41. f. 25.

Interest to be paid on tobacco bonds from the day in the condition to the day of the feeder's certificate, 24 Geo. II. c. 41. f. 30.

An interest may be allowed on a tobacco bond, before it is due, 24 Geo. II. c. 41. f. 30.

Tobacco removed without certificate may be feized, 26 Geo. II. c. 13. f. 2.

Claud Joinfion relieved from his bond for fecuring duty on tobacco, 3 Geo. III. c. 26. f. 8.

For other matters, fee Customs, Plantations, Snuff.

Tobacco pipe clay, not to be exported: 13 & 14 Car. 2. c. 18. f. 8. 5 Geo. I. c. 21. fess. 32.

Toe of wool. Contains twenty-eight pound, or two flacks, contained in the flacks 12 Car. 2. cap. 32. See 3 f. 7. f. 96.

Toft, (Tifiun) A mefflage or rather a place where a mifflage formerly flooded, but is decayed or casually burnt, and not re-built. It is a word much used in fhips. Wolf. Symbol part. 2. lit. Finals. fett. 26.


Toile, (French Toile, f. Tela) Signifies with us a net or cord to encompass or take deke; which is forbid to be unlawfully in parks, on pain of 20l. for every deer taken therewith, Stat. 3 & 4 Will. & M. c. 10. f. 5.

Tolled (Signet) Of difteners. See Newcomenfmiths.

Toff, To bar, defeat, or take away; as to toll the entry, i.e. to deny or take away the right of entry. Stat. 8 Hen. 6. c. 9.

Toll, (Tollum, theodunum) Is a Saxon word and properly a payment in towns, markets, and fairs, for goods bought and fold. It is a reasonable fum of money due to the owner of the fair or market, upon falfe of Things tollable in a town, market, or for tollage, piege, or the like. 2 Sift. 250.

Information againft B. farmer of Newgate market, for extortion, in taking divers fums of money of the market people for rent for the use of the little flalls in the market, and divers great sums for fines, and was found guilty. It was helid by the court of B. R. and by Hild Chief Justice at Guildhall, that if the defendant confeds feveral flalls, and does not leave fufficient room for the market people to tend and fettle their wares; fo that for want of room they are forced to hire the flalls of the defendant, the taking of money for the use of the flalls and of the said rent in that way, is extorfion, if the people have room enough clear to themselves, to come and fell their wares, but for their further convenience they voluntarily hire thefe flalls of the defendant, without any necelfity compelling them, there it is no extortion, tho' the defendant takes a fine and rent for the use of them. The law has not appointed any flalls for the market people, but only that they shall have the liberty of the market, which the defendant does not abridge, having left room enough besides the place where the flalls are fet; and then if they will enjoy the convenience of the flalls, they must comply with the defendant's term. 1. Raym. 148. 149. Hill. 8 & 9 W. 4. c. 12.

Taking outrageous toll prohibited. St. Walm. 1. 3 Ed. 1. c. 31.

Toll of a mill how to be taken. Ord. pro fijlar. c. 4.

Toll not to be taken, or any thing in lieu thereof, but in the usual proportion, 22 Car. 2. c. 8. fess. 8. See 5 Ed. 1. c. 16. fess. 7.

Portoll. A prefcription to have port-toll for all goods coming into a man's port may be good; and this 'tis faid without any confideration. 2 Leov. 90. 2 Lat. 1519. And it hath been adjudged, that the liberty of bringing goods in a port for safety, implies a confideration in itself. 3 Lat. 37. Preffcription of toll for goods landed in a manor, or to have port-toll for all goods coming into ports, is a good preffcription; but not to have toll of goods brought into a river, 2 Leov. 96, 97.

Toll may be appartenant to a manor. 2 Mod. 144.

Shoynough-toll is properfly where a toll is taken of men for tolling them in the high ftreets. 22 Roll. Afr. 522. 22 Af. 58. by Thorpe. Mich. 41. & 42 Ed. B. R. in Smith v. Shepherd's cafe. Thorough-toll improperly is when toll is taken of men for fifting thro' a vill, in a place which is not the high ftreets. 22 Roll. Afr. 522. 22 Af. 58. by Thorp.

Toll traverfe is properly when a man pays certain toll for fifting over the fof of another man in a way not a high ftreets. 22 Af. 58. by Thorp, M. 41. 42 Ed. B. R. in Smith v. Shepherd's cafe. The words tollo-through and toll-outerve are used promiscuously. Arg. And the court feared to agree. Mod. 232. in cafe of James v. Jefhorn.

A man cannot preffcribe to have thorough-toll of men paffing thro' a vill in the high ftreets, because it is againft the common law and common right; for the high ftreets is common to all. 2 Roll. Afr. 522. 22 Af. 58. by Thorp, M. 41. 42 Ed. B. R. between Smith v. Shepherd. dubitatatur without alleging of a special confideration, as the repairing the way.

And the King cannot have fuch toll for paffing in the high ftreets, as in the cafe aforefaid, for the caufe aforefaid. 2 Roll. Afr. 522. 22 Af. 58. by Thorp.

A man may preferve to have toll-traverfe of men paffing thro' a vill in a place which is not the high ftreets; for it is more than the law allows to go there. 2 Roll. Afr. 523. 22 Af. 58.

A man may preferve to have toll-traverfe of men paffing over his fof in a way which is not a high ftreets, and the preference is fecured. 2 Roll. Afr. 522. 22 Af. 58. Bro. Tell. pl. 6. cites S. C. Toll-standes, is when one claimeth to have toll for every bead driven over his ground; fo for a man may
null
trade, tho' it be to a particular place only, if there was no consideration for it, it is void; if there be a consideration, in such case it may be good: But if the restraint be general throughout England, altho' there be a consideration, it will be void. 2 Litt. Abr. 179. L. Rep. 1457. Tho. 32. 390.

A person not qualified to exercise a trade himself, by having served an apprenticeship, entering into partnership with a qualified partner, and only sharing the profits and flanding the risks, of the partnership, without ever exercising or interfering in the trade himself personally, is within the prohibition and penalty of 5 Eliz. c. 4. So as to be liable to the penalties of it. Burn. Rep. 5. 10. See 20 Vin. Abr. 317. 335.

Traga, Was a fort of waggon without wheels. It is mentioned in the Magnon. 1 tom. p. 851. Drain, &c. See Dri.

Tranfcriptio, (Mentioned in flat. 24 & 35 H. 8. cap. 14. Is the copy of any original written again or exemplified, as the Transcript of a fine. Cowell, edit. 1727.


Tranfcriptio recognizantium factae rogationi juriariai intertitumatis, Gr. Is a writ for the certifying of a recon- sistance taken before justices in eyre in the Chancery. Reg. Orig. fol. 192.

Tranfcriptio orallis, Is a writ commonly called a writ or action of trespass, of which Fitchbury reckons two forts; one invento, so called because it is directed to the sheriff, and is not returnable, but to be determined in the court; the form whereof differs from the other, because it hath their words, Quare ui & arnis, &c. F. N. B. fol. 84. The other is termed a writ of trespass upon the cafe, which is to be sued in the King's Bench or Common Pleas, in which are used always these words, ui & arnis, F. N. B. fol. 92. See Trespass, and the divers uses of this writ in the table to the Register of writs, and 2 Leif. f. 419.

Tranfcriptio, (Mentioned in flat. 14 Car. 2. cap. 11.) Is used for a Cufforn houfe warrant or let-pafs; from tranfies, to go forth or let pafs. Cowell, edit. 1727.

Tranfcriptio is the opposite to local. See Local.

Tranflation, (Translatio) In a common fenie of the word signifies a verion out of one language into another; but in a more confined acceptation, it denotes the setting from one place to another, and the removal of a bishop to another diocefe, &c. this is called tranflying. And such a writ Mnore writes not anna confecratio, but anna tranfizationis mysteri, &c. A bishop tranfflated is not confecratas ne new; for a confecration is like an ordina- tion, and is an indefeasible character, and holds for ever. 3 Salt. 72. but a bishop is to be a new elected, &c. 1 Salt. 137.

Tranfposition, Notorious spoil-takers in Northam- berland, &c. may be tranfposed. 18 Car. 2. c. 3. f. 2. 2.

The judges may transport felon that flees cloth from the rack in the night, or embezzle the King's stores. 22 Car. 2. c. 5.

Felons burning flacks of corn, or killing cattle in the night, 22 & 23 Car. 2. c. 7. f. 4.

Felony is the benefit of clergy may be punished with imprisonment, 4 Car. 2. c. 11.

Felons may be tranfposed by a subsequent court for the fame county, 6 Geo. 1. c. 23.

Expence of tranfposition to be paid by the county treasurer. 6 Geo. 1. c. 33. f. 3.

Submissions for tranfposition to be in the name of the clerk of the plece. 6 Geo. 1. c. 23. f. 4.

Refusing transporte, death, 6 Geo. 1. c. 23. f. 5.

Convicts not transporting themselves, or returning, to suffer death. 16 Geo. 2. c. 15. f. 1.

Directions for trial of offenders who return from transpo, or do not transport themselves. 16 Geo. 2. c. 15. f. 2.

Reward for convicting such offenders, 10 Geo. 2. c. 15. f. 3.

Vol. II. N° 110.

TRA

Rebels transported and returning, or going into France or Spain, guilty of felony without clergy, 20 Geo. 2. c. 46.

Transubstantiation, A declaration against the doctrine of transubstantiation used in the church of Rome is requir'd. 20 Geo. 2. c. 39.

Traverfie, (from the French Traverse, f. Transfier) Signifies sometimes to deny, sometimes to overthrow or undo a thing, or to put one to prove some matter; much used in answers to bills in Chancery; or it is that which the defendant pleads, or faith in bar to avoid the plaintiff's bill, either by confessing and avoiding, or by denying and traversing the material parts thereof. West. Synb. part 2. tit. Chancery, fect. 54. 55. The formal words of which traverse are in our French fœns cert, in Latin pig. box, and in the English without that. See Kitchin, fol. 227, and 1741. Pr. Wroxf. Prer. cap. 20. See 20 Vin. Abr. tit. Traverse.

Traverse an inquit, Is to take issue upon the chief matter, and to contradict or deny some point of it. As in a pretention against A. for a highway overflowed with water, for default of securing a ditch, &c. A. may traverse either the matter, that there is no high- way there, or that the ditch is sufficiently secured; or otherwise he may traverse the cause, viz. That he hath not the land, or that he and they; whole eftate; &c. have not used to fow the ditch. Lamb. Eiren. lib. 4. cap. 13. f. 521. 522. Cowell. edit. 1727. See 20 Vin. Abr. tit. Traverse.

An office Issued, to prove that an inquisition made on lands or goods by efeecor is defective, and untruly made. Cowell, edit. 1727.

An office returned by an efeecor in Chancery may be traverse. 2 Ed. 3. c. 2.

Lands feized on an inquisition shall not be let to farm till a month after it is returned, and shall be let to the party that will traverse the inquisition, 8 H. 6. c. 16.

No grant to be made of lands till a month after the inquisition is also returned. 18 H. 6. c. 6.

No protection to be allowed to a patentee in the fire facius, 23 H. 6. c. 16.

Rights faved that are not found by the inquisition, 2 & 3 Ed. 6. c. 8.

Traveile given, where the King is intituled by double matter and execution, 2 & 3 Ed. 6. c. 8. f. 7.

Traveller, A ferry. 'Tis mentioned in the Ma- gnificon. 2 tom. 1002.

Travellers, Of those fhillers who used unlawful arts and engines to destroy the fifh upon the river Thames, some were flipt, t'other others hanged, two were drowned, and the others fleaven of London, p. 19. Hence to trawl or traveile with treliving-line for pikes. 

Trawlbotton. See Jifsices of Trawlbotton; and fee copies of severable commissions granted to them by Ed- ward the first in Spelman's Slugary, trelle Trawlbotton. The common people in those days called them Trawlbotton, quid fonts, trelle baculum. Edward the first in his thirty-second year, lends out a new writ of inquisition, called Trawlbotton, against intrudors on other men's lands, who, to oppress the right owner, would make over their lands to great men; against batters hired to beat men, breakers of the peace, ravifhers, incendiaries, murderers, fighters, false affirows, and other such malefactors: Which inqui- sition was so strictly executed, and such fines taken, that it brought in exceeding much trelve to the King. Chron. fol. 111. See Plac. parliamentaria, fol. 211. & 230. Anno 1303. 2 Ed. 1. In a parliament of 1 Rich. 2. the Commons of England petitioned the King, that no commiion of Eyle or Trawlbotton, might be issued during the wars, or for twenty years to come. R. Par. 1 R. 2. Cowell, edit. 1727.

Trafalgar, (from the French Trafalgar, f. Transfier) See Trafalgar.

Tranfportation, Of taking arms by the King's authority against his perfon, and those that are com- mission'd by him, condemned by the flat. 14 Car. 2. cap. 3.

8 T. E. B. C.
The initial letters half of this continuall note of time in the dariTuye r


giTfer, where the valuation of mansors is recounted, what it was in the time of Edward the Conqueror; and what

since the conquest. As in Oxenforde—manorium de


(Ed. Perdris.) Of the French Treasur, and it is
divided into high treason and petty treason; high treason
is defined to be an offence committed against the security
of the King or kingdom, whether it be by imagination,

word, or deed; as to compass or imagine the death of the

King, Queen, or Princess, to deface, despite, or defend

the King's wife, or that her eldest son's wife: or

levy war against the King in his realm, adhere to his

enemies, counterfeit his Great seal, Privy seal, or money;

Or wettingly to bring false money into this realm coun-
terfeited like the money of England, and utter the

name. To kill the King's Chancellor, Treasurers, Justices of

either bench, Justices in Eyre, of seise, or of Oyer and

Terminer, being in their place doing their office. Stat. 25
E. 2. cap. Forging the King's seal manual or privy

signet, Privy seal, or foreign coin current here. Stat. 22
Mar. cap. 6. Or diminishing or impairing current mon-

ey. Stat. 14 Eliz. cap. 2, 18 Eliz. 1. Or to lay

the King is an heretick or papist, or that he intends to in-


troduce popery, &c. ann. 13 Car. 2. cap. 1. &c. In case

of this treason, a man shall be drawn, hanged, and

quartered, and forfeit his lands and goods to the King. It

is called also treason paramount. Ann. 25 E. 3. 2. Petit

treason, or counterfeiting treason in the statute

14 Car. 2. cap. 29, Cowell, edit. 1727.

Many offences, which are not mentioned in the 25
Ed. 3. fl. 5. c. 2, before the making of this statute were


It was high treason, to have compassed the death of

the father, or uncle of the King. 32 I. 7.

If one subjete of this realm, instead of having fum-
momed another to anfwer in the King's courts, had fum-
momed him to appear before the tribunal of a foreign

prince, this was high treason. Ibid.

By the 25 Ed. 3. fl. 5. cap. 2, after declaring divers of-

fences to be high treason, it is enacted, "That because

many cases of the like treason may happen in time to

come, which a man cannot think of nor declare at

present, if any other cafe supposed to be high treason,

which is not specified above, doth hereafter happen

before any one of the Justices, such justice shall not pro-

ced to the same of treason, unless the same be laid be-

fore the King in parliament, and be declared, whether

it ought to be adjudged a treason or another felony."

Notwithstanding this clause, some justices did pre-

sume to adjudge certain offences, that are not mentioned

in this act, to be high treason: But they were for so
doing, it was very fit they should, severely punished.

3 I. 22, 23.

In confequence of the power given by this clause, di-

vers offences were by different parliaments declared to be

high treason. 3 I. 3, 14, 23.

As some of the acts of parliament, by which these

diverse offences, were penned in general terms; others of

them in particular terms; and others in obscure terms;

and as some offence, which had in some parlia-

ments been declared to be high treason, were in other

parliaments declared not to be so; the mischief, which

arose from the difficulty of knowing what was or was not,

high treason, as great as it is, so that they had to make the

by the making of the 25 Ed. 3. fl. 5. cap. 2.

In order to put a flop to these, it was by the 1 Mar.
fl. 1. cap. 1. par. 3, enacted, "That from henceforth

none act, deed, or offence, being by act of parliament

made high treason, other than the words in the bills, or

otherwise whatsoever, shall be taken, had, deemed or

adjudged, to be high treason, but only such as be declar-
ed and expressed to be high treason, in or by the act of

parliament made in the twenty-fifth year of the reign of

the most noble King of famous memory Edward the

Third, touching or concerning treason or the declara-

tions of treason, and none other; any act or acts of par-
lament had or made at any time heretofore, or after the

said twenty-fifth year of the reign of the said late King

Edward the Third, or any other declaration, or matter,

to the contrary in any wise notwithstanding."

The consequence of this clause is, that no offence is

at this day high treason, unlefs it is declared to be so by

the 25 Ed. 3 fl. 5. cap. 2, or has been made so by some

further statute subsequent to the fifth year of the reign of

Queen Mary.

And no offence is to be adjudged high treason, unlefs

it be clearly, and without argument or inference, with-
in the meaning of some act of parliament; for no fora-

nary, whereby any offence is declared to be, or made,

high treason, is to be extended to equity. Pleas. 86.
3 I. 12. 20, 21. 18 Ed. 1. c. 1. s. 1.

There can be no accurary in high treason. Bro. Treof.
Pl. C. 310.

And it seems to be always agreed, that, what would

have made a man an accurary before the fact in any other

d felony, does make him a principal in high treason. 3
Pl. C. 310.

It has been determined, that the receiving and aiding

a traitor, after the offence has been committed, does

make him a principal in treason, the act of counterfeiting the King's money, make a man a principal in high treason. Dyer 556.

Corner's case.

But the better opinion is, that the receiving and aid-

ing a man, who has been guilty of counterfeiting the

King's money, makes the person doing a principal in

this, as well as in every other species of high treason. 3
Pl. C. 310.

By the 7 Ann. cap. 21, par. 1. It is enacted, That

after the first day of July 1709, such crimes and of-
fences, which are high treason within England, shall be

considered, adjudged, and taken to be high treason

within Scotland, and that no crimes or offences shall be high

treason within Scotland, but those that are high treason

within England.

The distinction of high and petit treason was not

known to the law of Scotland; for every offence, which

made a man a principal in England petit treason, was by the law


At this day, an offence, which is in England petit

treason, is in Scotland only a capital offence: It being by

the 7 Ann. cap. 21, par. 7, enacted, "That murder un-
der trut, which was by the law of Scotland treason, shall

for the time be only adjudged and deemed to be a capital

offence."

1. Who are in the capacity of being guilty of high treason, and against whom high treason may be committed.

2. Of the different kinds of high treason.


1. Who are in the capacity of being guilty of high treason, and against whom high treason may be committed.

Every subject, who is within the age of discretion, may be guilty of high treason. 3 I. 4. 1 Hawk. P. C. 2, 35.

35. But out of the duty of allegiance to the King is so indis-


cernible from a natural born subject, that, notwithstanding

all he can do to renounce it, and transfer his subjection to a foreign prince, if he prattises any thing, which would be high treason in any other person, it is so in him. 1 Hawk. 139. 3 I. 35.

35. In the first times, if a madman has been guilty of any attempt upon the life of the King, it was high treason. 3 I. 6. 4 Rep. 124.

But
But since the statute made in the 25th year of the reign of Ed., 3, the words of which are, when a man doth commit any treason for which the King the King's Majesty shall have been declared by any person in the actual possession of the crown, it has been held that a man, who is non campus mentis, is incapable of compassing or imagining; and, consequently, that such a one cannot be guilty of 'that species of high treason, which confit in compassing or imagining the death of the sovereign of the realm,' 3 H. 6., c. 20., p. 1. It was enacted, 'That, if any person shall commit high treason, when he is of good and whole memory, and after accusation, or confession thereof shall fall to madness, the treason done by such person may be tried in his absence; and that when he shall, if found guilty, suffer such pains and forfeitures, as if he had been of good and whole memory, and had been personally arraigned.'

And pare. 2. It was enacted, 'That if any person shall be attainted of high treason, and afterwards fall into madness he shall, notwithstanding such madmen, have and suffer execution.'

But this cruel law was, as it was highly reasonable it should, soon repealed; for the design of all punishment is example, ut parva ad paucos, metus ad amuros, perpetuat: But, when a madman is executed, it is both a miserable spectacle, and an infalute of extreme inhumanity and cruelty, if the execution of such a one can be no example to others. 3 Inst. 4., 6.

The husband of a Queen regnant may be guilty of high treason against such Queen because he is, in the eye of the law, a distinct person to divers purposes from her husband. 3 Inst. 8.

An ambassador from a foreign prince may be guilty of high treason; because, as he came into the kingdom in a friendly manner, and has enjoyed the King's protection, a local allegiance is due from him. 3 Inst. 153.; 7 Rep. 6. 1 Hawk. P. C. 35.

The offence of high treason may be committed against any person, who has in the actual possession of the crown, although such person is only King or Queen de facto, and not de jure; for, as the lives and properties of the people are protected, by such King or Queen, during his or her administration of the laws, allegiance and subjunction are due in return for his protection. 3 Inst. 7. H. P. C. 124.; 3 Hawk. P. C. 35.

Nay, it has been held, That, if any offence amounting to the crime of high treason has been committed against a King de facto, and the King de jure afterwards comes to the crown, this offence is still punishable as high treason. 3 Inst. 7. Bro. Trost. pl. 10. H. P. C. 124.; 3 Hawk. P. C. 35.

By the 11 H. 7., cap. 1. It is enacted, 'That no person who attends upon the King for the time being, to do him true and faithful service of allegiance, or in other places, by his commandment, in his wars, within this land, or without, shall for the said deed be convicted for high treason.

And it is in the general true, that the offence of high treason cannot be committed against the person who has a right to the crown, so long as any king de facto is in actual possession thereof: because allegiance is only due to the latter. 3 Inst. 7. H. P. C. 104. 1 Hawk. P. C. 35.

It was indeed resolved, after the restoration of King Charles the Second, that all the acts, which had been done to prevent his acquiring the actual possession of the crown, were high treason. Kel. 15. The case of the Regicides.

But this resolution does not contradict the doctrine just laid down: For it had been first resolved, by the fame judges, that this prince, notwithstanding he had been for some years hindered from exercising the regal power, had been 'not an enemy of this state, as well as King de jure; and it is certain, that no other person has, during this time, been in the actual possession of the crown.' Kel. 15. 1 Hob. 315., 454. 1 Hawk. P. C. 36.

The crime of high treason may be committed against the person on whom the crown rightfully descends, before he becomes legally the King; it has been determined, by all the judges, that the coronation of a King or Queen is only a solemnity. 3 Inst. 7. Wauchope's case. H. P. C. 12. 1 Hawk. P. C. 36.

But, if the person so called is next heir to the crown, is of the Romish religion, or has married a papist; the crime of high treason cannot be committed against such person; for by the W. & M. fl. 2. c. 1. par. 9. is enacted, 'That every person, who is or shall be reconciled to the Romish religion, the fee or church of Rome; or shall profess the popish religion, and shall be guilty of any crime, shall be excluded, and be for ever incapable to inherit, possesse, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same; or to have, use, or execute any authority, power, or jurisdiction, within the same; and, in all and any such court or causes, the people of these realms shall be, and hereby are, abolved of their allegiance.'

2. Of the different kinds of high treason.

By the 25 Ed., 3. cap. 2. par. 1. It is declared to be high treason, when a man does compass or imagine the death of our Lord the King, or the Queen his consort, or of their eldest son and heir; and thereto be provably attained of overt deed.

This clause does not expressly mention a Queen regnant; but the construction has been, that such a Queen is within the meaning of the words our Lord the King. 3 Inst. 7. H. P. C. 12. 1 Hawk. P. C. 36.

The husband of a Queen regnant seems to be within the meaning of the words, in this clause, of the Queen his consort; as is not within the letter of the words, it has been held, that it is not high treason to compass or imagine his death. 3 Inst. 7. H. P. C. 12. 1 Hawk. P. C. 36.

This clause does not extend to any Queen dowager; for although the retain the title of Queen she is not the comfort of a King regnant. 3 Inst. 8. 1 H. P. C. 124. 1 Hawk. P. C. 37.

And if the wife of a King regnant is divorced a vinculo matrimonii, it is not high treason to compass or imagine her death, because the cestuis are to his comfort. 3 Inst. 8. 1 H. P. C. 124. 1 Hawk. P. C. 37.

If the elder son of a King or Queen regnant dies, without leaving any issue, during the life of such King or Queen, this clause extends to the next son; because he thereby becomes the eldest son and heir. 3 Inst. 8. H. P. C. 12. 1 Hawk. P. C. 37.

But it has been doubted, whether, if the eldest son of a King or Queen regnant dies, during the life of such King or Queen, and leaves issue a son, it be high treason to compass or imagine the death of such son. 1 H. P. C. 125., 126.

It is said, that the eldest daughter of a King or Queen regnant is not within the meaning of this clause. 3 Inst. 9. 1 H. P. C. 126., 127.

In one book this difference is taken, that this clause does not extend to a collateral heir apparent, who is only proclaimed heir apparent; but that, if such collateral heir apparent is declared to be heir apparent, by an act of parliament, it extends to him. 3 Inst. 9. But
As the words in this clause compass or imagine do imply a design, it follows, that the taking away the life of the person included therein is not high treason, unless it be accompanied with some circumstance of design. 3 Inst. 5. 1 Hawk. P. C. 35.

By whatever design upon the life of one of the persons comprehended in this clause is manifested by an overt act, this, although such design is not afterwards carried into execution, is high treason; for the words of the statute are death compass or imagine.

If divers meet to consult the destruction of the King, this is, in every one of them, an overt act of compaining or imagining his death. 3 Inst. 12. 1 And. 104. Kel. 17, 21. 1 Hawk. P. C. 56.

Nay, the knowledge of a design to destroy the King, if accompanied with any circumstance of intent, or approbation, is an overt act of this species of treason. 3 Inst. 14. H. P. C. 127. Kel. 17, 21. 1 Hawk. P. C. 35.

If a man, knowing that a meeting is to be held to consult the destruction of the King, goes to such meeting, this, altho' when there he fays nothing, is evidence of his intent to, or approbation of, the traitorous intention. Kel. 17, 21. The case of the Regicides. 1 Hawk. P. C. 56.

If a man, who has once been accidentally present at an assembly to consult the destruction of the King, goes a second time to such an assembly, this is also evidence of his intent to, or approbation of, the traitorous design. Kel. 17, 21. The case of the Regicides. 1 Hawk. P. C. 55.

Many other acts, besides such in which the design, in the first instance, is to take away the King's life, are overt acts of this species of treason.

If a man incites a foreign prince to invade the realm, this is an overt act of compaining or imagining the King's death; because it has a direct and natural tendency to bring his life into imminent danger. 3 Inst. 14. H. P. C. 13. Dyer 238. 1 Hawk. P. C. 35.

The assembling of men, with an intention of compaining the King to comply with a certain demand is, for the same reason, an overt act of this species of treason. 3 Inst. 16. H. P. C. 29, 571. 1 Hawk. P. C. 35.

If divers persons are assembled for the purpose of imprisoning the King, this is likewise an overt act, in every one of them, of compaining or imagining his death: Because it is very likely, that such imprisonment will end in his death, 3 Inst. 6, 12. H. P. C. 11. 1 Hawk. P. C. 35.

It has been doubted, whether an assembling of men, with a design to depose the King, is an overt act of this species of treason; because it is said, there may be a design to depose the King, without intending to take away his life. Bro. Treas. pl. 24.

But it seems to be the better opinion, the assembling of men, with such design, is an overt act of compaining or imagining the King's death; Because, if this design is carried into execution, the death of the King will in all probability be the consequence thereof. 3 Inst. 6, 12. H. P. C. 11. 2 Vintr. 316. 1 Med. 312. 1 Hawk. P. C. 35.

Coke Chief Justice was of opinion, that the levying of war against the King is not an overt act of compaining or imagining the King's death; for that such levying of war, which is by this statute declared to be one distinct species of high treason, can never be an overt act of the other species of treason; because, if it should be held to be so, two distinct species of high treason would be confounded. 3 Inst. 14.
But in another book it is said, that to prophecny the King's death does not seem to be an overt act of this species of treason. 1 H. H. P. C. 108.

And it is laid down, that to calculate the King's nativity is not an overt act of compassing or imagining his death. 1 H. H. P. C. 111. 1 H. H. P. C. 108.

It is concluded, that the words, which contain a treasonable position, does, altho' the fame are never published, amount to an overt act of compassing or imagining the King's death; for that a fictive act ager, 2 Roll. Rep. 88. William's case.

But it seems to be the better opinion, that the writing of such words, does not, at least the fame are published, amount to an overt act of this species of treason; because they may have been written merely by way of amusement, and without any treasonable design. Cro. Car. 125. 1 Hawk. P. C. 38.

It is laid down in former books, that the bare speaking of words cannot be an overt act of compassing or imagining the King's death; and, from the special acts of parliament made at different times after 25 Ed. 3. 6 c. 4. to attain persons guilty of speaking treasonable words, it is inferred, that such words were not an overt act of compassing or imagining the King's death, within the meaning of the acts; for that, if they had been such, such special act would have been quite nugatory. 3 Inst. 14. 38. 140. 1 H. H. P. C. 111. 112.

It seems to be the better opinion, that words alone may, in some cases, be an overt act of this species of treason; but the speaking of words are the most natural way of expressing the imagination of the heart. St. P. C. 2. Trel. 107. Kel. 13. 1 Leu. 57. Salk. 631. 3 Med. 35. 1 Hawk. P. C. 39. 40.

The speaking of any words, which plainly flew a design to take away the King's life, is an overt act of compassing or imagining his death; altho' such design be future or conditional, or both future and conditional. St. P. C. 2. Trel. 107. Kel. 13. 3 Med. 55. 1 Hawk. P. C. 39.

These words, if it meet the King, I will kill him, have been held to be an overt act of this species of treason. 1 Leu. 57. Accept's case.

And it is said by Holt, Chief Justice, that it is not necessary that the words should in such case be express; for that any words, provided the jury are plainly and clearly satisfied, from the tenor of them, that the speaker has been engaged in a design upon the King's life, are an overt act of compassing or imagining his death. 4 Stat. Tri. 720. Lovell's case.

It is laid down in former books, that if the words spoken are only in contempt, or in dispraise, of the King's person, as if they charge him with some personal vice, or with some personal defect, such words are not an overt act of compassing or imagining his death. Cro. Car. 125. Plutus's case. 1 Hawk. P. C. 39.

It has been held, that to say the King is a bastard, or to say another person has a better title to the crown than him, is an overt act of this species of treason; because it discovers the mind to be traitorous. Trel. 107. 2 Roll. Rep. 90. Palmer 426.

But the better opinion is, that no loose words, which are spoken without reference to an act or design, do amount to an overt act of compassing or imagining the King's death: because it is not certain, that the speaker has any design upon his life. Salk. 631. Charnecl's case. 1 Hawk. P. C. 39.

To pray that god should shorten the Queen's days, 1 Inst. 88. 2 & 6 Ed. 7. 4 & 5 Ed. 7. is certain the practice against King Philip made treason, 1 & 2 P. & M. c. 11. importing counterfeit foreign coins made treason, 1 & 2 P. & M. c. 11. impugning the Queen's title, &c. 1 El. c. 5.

Second refusal of the old oath of supremacy to be punished as high treason. 5 El. c. 1. s. 11.

Clipping and impounding money made treason, 5 El. c. 11.

Certain offences by words, &c. made treason during the life of Queen Elizabeth, 13 El. c. 1.

Treason for popish priests to remain in the kingdom, or for persons in popish feminities not popish, not to return and submit, 10 & 11 El. 1. 9.

Reconciling any person, or being reconciled to the fee of Rome, putting in use the Pope's bulls, &c. made treason, 13 El. c. 1. 23 El. c. 1. 3 Jac. 1. 4. sed. 22.

Corroding to enlade prisoners committed for treason, 14 El. c. 1.

No past attainer to be revered after execution, 28 or 29 El. c. 2.

Certain offences by words made treason, during the life of King Charles 2d, 13 Car. 2. 9. 1.

Corresponding with enemies, 3 W. & M. c. 13. 3 & 4 Ann. c. 14.

Repairing to France, 3 W. & M. c. 13. 9 W. 3. c. 1.

Corresponding with the late King's family made treason, 9 W. 3. c. 1.

Corresponding with the pretender, 13 W. 3. c. 3.

To compas the death of the Princess Anne, 13 W. 3. c. 6. f. 15.

Endeavouring to hinder the succession, 1 Ann. b. 2. c. 17. f. 3.

Officers or soldiers beyond sea, corresponding with enemies, 2 & 3 Ann. c. 20. f. 35.

Offences may be tried in K. B. 2 & 3 Ann. c. 20. f. 35.


Treason to purvue the depoping the King, or to reheve certain acts, 21 Ric. 2. c. 3. 4. &c.

For several old condemned opinions relating to treason and the prerogative, see 21 Ric. 2. c. 3. 1 H. 4. c. 3.

Nothing shall be adjudged treason but as was ordained by the statute of Ed. 3, 1 H. 4. c. 10.

Clipping, whiting, &c. made money, treason, 3 H. 5. c. 6.

Escape of prisoners committed for suflpection of treason, declared to be treason, 2 H. 6. c. 17.

Serving the King for the time being incurrs no forlorniture. 1 H. 7. c. 12.

Wilful poisoning made high treason, 22 H. 8. c. 9.

Praecipit. against the establishment of the succession made treason, 26 H. 8. c. 22. f. 8.

Other offences declared treason, 26 H. 8. c. 13. f. 2. 28 H. 8. c. 18.

Being of banbury taken away in cases of high treason, 26 H. 8. c. 13. f. 3. 5 & 6 Ed. 6. c. 11. f. 6. extended to natives of Scotland. 7 Ann. c. 21. f. 5.

Counterfeiting the sign manual, or privy signet, made high treason, 27 H. 8. c. 2.

A repeal of all treasons since 25 Ed. 3. 1 Ed. 6. c. 12. f. 2. with exceptions, 5. &c.

Prescribing, &c. against the King's title, the third offence, 1 Ed. 6. c. 12. f. 6. repealed, 1 M. 1. c. 1.

High treason to deny the supremacy, 1 Ed. 6. c. 12. f. 7.

To intercept the succession of the crown, 1 Ed. 6. c. 12. f. 9.

The third offence of affirming that the King is a heretick or uffurer made treason, 5 & 6 Ed. 6. c. 11. repealed 1 Mar. b. 1. c. 1.

With-holding the King's cattles or fences, &c. made treason, 5 & 6 Ed. 6. c. 11. f. 5. 14 Ed. c. 1.

It shall be treason to counterfeit coins current here, or the Queen's sign manual, privy signet or privy seal, 1 M. 1. b. 2. c. 6.
Whereas a wife murders her husband, a servant his master, or a miller, or an ecclesiastick a prelate, or to whom he owes obedience, every one of these is petit treason. 3 Ed. 3 H. P. C. 57. 1 Hawk. P. C. 87, 88.

As every petit treason implies a murder, it follows, that where the mere killing of a husband, master, or prelate, is not always petit treason; for, if there are not such circumstances, in the case of killing one of these persons, as would have made it murder in the case of killing any other, then it does not amount to this offence. H. P. C. 24. 1 Hawk. P. C. 88.

And if, upon an indictment for petit treason, the killing appears to have been upon such a sudden provocation, that it would, in case the fault had been committed by a stranger to the person killed, have amounted only to manslaughter, the jury may acquit the person indicted of the petit treason, and find him guilty of manslaughter. 1 H. H. P. C. 378.

Some offences which are not mentioned in the 25 Ed. 3. fl. 5. c. 2. were before the making of this statute petit treason, 1 Hawk. P. C. 87.

If a woman had procured a stranger to murder her husband, and the fault be no more than the want of a petit treason at the perpetration of the murder, it was petit treason. 3 Inf. 20. Ifl. 10. It was also petit treason, for a servant to counterfeitt the fact of his master. Ibid.

By the 25 Ed. 3. fl. 5. c. 2. after declaring divers offences to be petit treason, it is enacted, That, because divers acts of mischief happen in time to come, which a man cannot think of or declare at present, if any other cause, supposed to be treason, which is not specified above, does hereafter happen before any one of the justices, such justices shall not proceed to judgment of treason, until the case be laid before the King and parliament, and it is declared whether it ought to be adjudged a treason or other felony.

It does not appear, that any offences were, in consequence of the power given by this clause, declared in parliament to be petit treason.

And by the first of Mar. fl. 1. cap. 1. par. 3. the power itself is taken away, it being thereby enabled, That no act, or offence, shall be taken, had, deemed or adjudged, to be petit treason, but only such be declared and expressed to be petit treason, in or by the act of parliament, made in the 25th year of the reign of the most noble King of famous memory, King Edward the third, touching or concerning treason or the declaration of treason.

As this offence has been by any statute subsequent to this made petit treason, it follows, that no offence is at this day petit treason unless it is one of those, which is by the 25 Ed. 3. fl. 5. c. 2. declared to be so.

And no offence is to be adjudged petit treason, unless it is clearly, and without argument or inference, within the meaning of this statute; for a statute declaring any offence to be treason, ought not to be extended by equity. Plowd. 86. 3 Inf. 12. 21. 18 Eliz. c. 1. f. 1. f. 2.

The diffinution of high and petit treason was not known to the law of Scotland: For every offence, which was by the law of England petit treason, was by the law of Scotland murder.

At this day, an offence, which is in England petit treason, is in Scotland only a capital offence: It being by the 7 Ann. cap. 21. par. 7. enacted, 'That murder under trust, which was by the law of Scotland, shall for the time to come be only adjudged and deemed to be a capital offence.'

There may be an accessory, either before or after the fact, in petit treason. 3 Inf. 20. 21. 138.

At the Common law, an accessory to this offence, before the fact, was intituled to the benefit of the clergy.

But by the 4 & 5 Ph. & Mar. cap. 4. par. 1. it is enacted, 'That if any person, after the first day of December, 1705, with malicious, wicked, or malicious command, hire, or counsel, any person to commit or do any petit treason, every such offender shall not have the benefit of the clergy.'

It is by the 25 Ed. 3. Parl. 5. c. 2. declared to be petit treason where a wife layeth her husband.

If A. who is married to B. during such inter marriage has been married also to C. this last woman, altho' she is to be regarded as the wife of A. enfrances him, is that wife within the meaning of this clause; because the second marriage was after satis voit. 1 H. H. P. C. 381.

If a woman, after having been divorced causa adulterii vel furavit, murders the man from whom she was divorced, this is petit treason: For, as a divorce for either of these causes does not, by the law of England, dissolve the vinculum matrimonii, the continuance to be his wife, Ibid.

But, a woman, who has been divorced causa confu- gunitatis vel pereconstruit, cannot be guilty of this offence; because the vinculum matrimonii is dissolved by a divorce for either of these causes. Ibid.

If A. is to be married to B. It is sufficient to be, in petit treason, that the is, altho' the fact be committed in her absence, guilty as an accessory to petit treason, 3 Inf. 20. H. P. C. 25. 1 Hawk. P. C. 88.

But, if a wife, who has procured a stranger to kill her husband, is absent when the fact is perpetrated, she is only as an accessory to murder: For the principal is only guilty of this crime; and the maxim is, Accesnur sequitur naturam sui principis. 3 Inf. 20. 139. H. P. C. 24, 25. 1 H. H. P. 379. 1 Hawk. P. C. 88.

If a wife, however, after having procured a stranger to kill her husband, was, by agreement with such stranger, and whether the murder was committed or not, the is, although she was not in the room at the time of the perpetration thereof, guilty of petit treason: For, as the murderer, was in this case, emboled, by the expectation of having her immediate assistance, if the same had been wanted, to commit the crime, she is in judgment of law, as much a principal, as if she had stood by, with a weapon in her hand; ready to face him. Mor. 93. H. P. C. 25. 1 Hawk. P. C. 88.

If a stranger and a wife are both principals in the murder of her husband, the wife is guilty of petit treason, the stranger of murder only. 3 Inf. 20. H. P. C. 25. 1 Hawk. P. C. 88.

But, if a stranger kills her husband by the procurement of a stranger, the latter seems to be guilty as accessory to petit treason. 1 Hawk. P. C. 88. By the 25 Ed. 3. fl. 5. c. 2. It is declared to be petit treason, where a servant layeth his master.

The murder of his mistress, or of his master's wife, by a servant has been adjudged to be petit treason. Neither of these cases, it is said, lie within the latter thereof. But both of them are clearly within the meaning of this clause; for the word master signifies any person, to whom another stands related as a servant. 3 Inf. 20. Plowd. 86. 1 Hawk. P. C. 88.

If a child kills his mother, or his mother's child, this, altho' it be committed by the heinous crime, is not petit treason: Because it is not a case provided against by this statute; and the judges are restrained, by an express clause therein, from interpreting it a finittii, or a minore ad major. Plowd. 86. 3 Inf. 20. 22. 23. H. P. C. 24. 1 Hawk. P. C. 87.

But, if a child, who serves his father, or his mother, for meat, drink, clothes, or wages, murders such father, or mother, this is petit treason. 3 Inf. 30. H. P. C. 24. 1 Hawk. P. C. 87.

A servant, after having quitted his master's service a year, killed the person who had been his master. This was not petit treason, because it appeared that the crime was committed in consequence of malice conceived against the person killed while the murderer was in his service. Bros. Com. 116. Plowd. 206. 3 Inf. 20. H. P. C. 23. 1 Hawk. P. C. 88.

It has been just now shown, in treating of that species of petit treason, which conflits in the murdering of a husband, or his wife, in what case the wife is a principal in, or accessory to, petit treason, or an accessory to murder only.

It is in this place sufficient to say, without repeating them, that any circumstance, which would in the case of a wife have made her so, does in the case of a servant make him, a principal in or an accessory to petit treason, or an accessory to murder only. 5 Bat. Abr. 136.
TRE

By the 25 Ed. 3. st. 5. c. 2. It is declared to be petit treason, when a man secular or religious, flayeth his prelate, or whom he owes obedience.

If an ecclesiastick, who enjoys a benefice in the diocefe of A. within the province of B. flays the archbishop of the province of B. this, although he is not the immediate superior of such ecclesiastick, seems to be petit treason. 1 H. H. P. C. 381.

If a beneficed man enjoys benefices in different diocefes, it is petit treason to murder the bishop of either of these; because a canonical obedience is due to both of them. Ibid.

And it has been laid down, that, if an ecclesiastick slays the bishop who ordained him, this is petit treason, although he does not thereby enjoy benefice of the cure of souls within the diocefe of this bishop; because he professed, at his ordination, a canonical obedience to such bishop. Ibid.

For more learning on this subject, see 5 Est. Abr. tit. Treason.

"Tresaur. (Theofaurus.) Signifies riches and wealth; and as the King's treasurers are the stewards of the realm, the power and safety of the King in time of peace, fundamental bell & ornamentum pacis; if any mine of base metal be found in any ground, it belongs to the lord of the soil; but if it be of gold or silver it appertains to the King, who makes ground forever they be found. Cowell, edit. 1727." 4 TRE.

"Tresaurer, (Theofaurus) Is an officer to whom the treasurer of another is committed to be kept, and truly dispofed of. The chief of thefe with us is the treasurer of England, who is a lord by his office, and one of the greatest in the land, under whose charge and government is all the Prince's wealth contained in the Exchequer, as also the clerks of all officers any way employed in the collecting of the imposts, tributes, or other revenues belonging to the crown. Smith, de Rep. Anglor. lib. 2. cap. 14. See more belonging to this office, 20 E. 3. 6. 4. 5. 17 E. 4. 5. 21 H. 8. 20. and 1 E. 6. 13. This high officer hath by virtue of his office, the nomination of all eccentors yearly throughout England, and giveth the places of all customers and searchers in all the ports of the realm, with divers other matters. &c. There is also the treasurer of the King's household, who is of the privy council, and, in the absence of the Lord of the Treasury, hath power with the controller and chamber of the Middlesex, without commissio, to hear and determine treasons, imprison events of treason, murder, homicide and bloodshed committed within the King's palace. Staunty. Pl. Cor. lib. 3. cap. 5. In Plin. hist. 2. cap. 1. there is mention of the treasurer of the Roman army, which is the same as the treasurer of the king's wardrobe. 27 E. 3. flat. 2. cap. 18. 35 Eliz. cap. 4. treasurer of the King's chamber, 26 H. 8. 31. 33 H. 8. treasurer of the King's wardrobe. 15 E. 3. flat. 1. cap. 3. 25 E. 3. flat. 5. cap. 21. whole office you have well set out in Fitzis, lib. 2. cap. 14. Treasurer of the county for poor soldiers. 25 El. 4. and most corporations through the kingdom have an officer of this name that receive their rents, and disburse their common expenses, and is of great credit among them. Cowell, edit. 1727. 4 TRE.

"Treasurer in Cathedra! Churches. A dignitary who was to take charge of the vestments, plate, jewels, relics, and other treasurer of the said church. But at the time of the reformation, when some who abhorred idols did commit sacrilege, and took away the infinite treasurer of the church and conventual churches, then the office was extinguished as needful in some churches, as York, Lincoln, Hereford, but still remaining in Salisbury, London, &c. Cowell, edit. 1727. 4 TRE.

"Treasurer of the County. To be chosen by the justices of the peace, 43 Eliz. c. 2. 1st. 14. See Counties rate. 4 TRE.

"Treasurer, (Theofaurus inventus.) Signifies in our civil law as it is in the Civil, Veteran, defponsion pecuniae, cuius non estoest memoria, ut jam dominium non habet, with which definition Bracton agrees: And though the Civil law give it to the finder, according to the law of nature, yet the law of England gives it to the King by his prerogative, or to some other who claims by the King's grant, or by prescription, as appears, Bract. lib. 3. cap. 3. He, 4. 3 cap. num. 4. The punishment for concealing treasure found, is imprisonment and fine. Staunty. Pl. Cor. lib. 1. cap. 42. Fitzher. Abid. pag. 187. But if the owner may any ways be known, then it does not belong to the King's prerogative. Briton. cap. 17. says it is every subject's part, as soon as he has found any treasure in the King's or his representative, to deliver it to the coroners of the county, &c. See Kitchin, fol. 30. anno 1 & 2 P. & M. c. 15. This was antiently called findaluris, of finding the treasure. Log. Hag. 1. c. 11. See 3 Leyf. fol. 132, and 20 Vin. Abr. 414. 4 TRE.

"Tresury. Signifies sometimes the place where the King's treasures are kept; and at other times the office of treasurer. Cowell, edit. 1727. 4 TRE.

"Tributum, (Terbitium.) A tumbrel, or cucking stool. 3 Pur. Leyf. fol. 329. See Tributum. It was also a great engine to call floses to batter walls. Alsit. Paris. 1726. 4 TRE.

"Trescy, The proprietors of trees cut down or taken away how recompened and the offenders punished, 43 El. c. 7. 15 Car. 2. c. 2. f. 2. Ingroving oak bark prohibited, 1 Jas. 1. cap. 22. fett. 19. Penalty of selling oaks to be barked, 1 Jas. 1. c. 22. f. 20. The houses of persons suspected to have cut or taken them away to be searched, 15 Car. 2. c. 2. f. 3. Persons defraying plantations punished as treasurers, 22 & 23 Car. 2. c. 7. f. 5. 1 Geo. 1. st. 2. f. 48. 6 Geo. 1. 9. 39 Geo. 2. c. 30. f. 6. As felon, 9 Geo. 1. c. 50. f. 1. The neighbouring inhabitants, 1 Geo. 1. c. 6. 2 Geo. 1. c. 16. And the hundred answerable for damages, 9 Geo. 1. c. 22. f. 7. 29 Geo. 2. c. 30. f. 9. See Elizit. and 20 Finl. 35. 47. 4 TRE.

"Trent. (Trentu, i.e. Wheat,) In the stature of 51 H. 3. bread of Trent seems to be that bread which was made of fine wheat. Cowell, edit. 1727. 4 TRE.

"Trenegmianum, (Trenemium, Trensum.) The seafon for fowling fuminum-corn about March, the third mouth, to which the word may poftibly allude. For corn fowed in March is by the French called tremis et tremuts, and sometimes mars ou marviz, which the Italians call martulio or martul. Trensum was commonly opposed tolichinum, i.e. the seafon for fummer corn, barley, oats, beans, &c. to the seafon for winter-corn, wheat and rye. Cowell, edit. 1727. 4 TRE.

"Trentsne, A word used for granary, in Mon. Ang. t. 4. p. 470. 4 TRE.

"Trenchaa, (From the Fr. trancher, to cut,) A carver of meat at a table, as we often find in the patent-rolls, pensions granted by our Kings to F. S. uni trenchemantium nozarium. Cowell, edit. 1727. 4 TRE.

"Trencher, (Francie, Fr. trancher, to cut,) A trencher, or d'ke newly cut. Id. ib. 4 TRE.

"Trental, (Trentas,) An office for the dead that continued thirty days, or confanding of thirty miles, from the Italian trento, that is, trintaga, mentioned 1 Ed. 6. 14. 4 TRE.

"Trepid, A great engine to throw floses against a wall in forming a town. It is mentioned in knightes, anno 1382. 4 TRE.

"Trelpsal, (Trelpsa,) Signifies any tranfegregion of the law under treatment, felon, or mifprision of either. Staunty. Pl. Cor. fol. 38. where he says, That for a lord of the parliament to depart from the parliament without the King's licence, is neither treason nor felony, but trespass. But it is most commonly used for that wrong or damage, which is done either to the King in his fett, or by one private man to another; and in this signification it is of two sorts, trepsal general, otherwise it is termed trespass, and trepsal partial, otherwise called trepsal upon the cafe, and if the crown have to be without force, howbeit sometimes they are confounded. How to diftinguish the forms of these writs or actions, fee
In an action of trespass, the plaintiff always sues for damages, or for the value of the hurt done him by the defendant. There is also trespass local, and trespass transitory. Trespass local is that which is so annexed to a place certain and distinct from the defendant, as to traverse the place only by saying ab non loco, that he did the trespass in the place mentioned in the declaration, and aver it, is enough to defeat the action. Trespass transitory is that which cannot be defeated by the defendant’s traverse of the place, because the place is not material, but actions of trespass transitory are of a farther description to be local. Breden, lib. 4, cap. 34. num. 6. divides transfregissent in majorem & minorem. Cowell, edit. 1727.

The word trespass, which is derived from the Latin word transgressus, signifies a going beyond what is lawful; hence it follows that every injurious act in the large fence will be regarded as a trespass. But, as many injurious acts are distinguished by particular names, as trespass, murder, rape, and others, the legal sense of the word trespass is confined to such injurious acts as have not acquired a particular name. Some trespasses are not accompanied with any force; a trespass of this fort is called a trespass upon the fence: And the proper remedy for the party injured is by an action upon the fence. Other trespasses are accompanied with force, either actual or implied. If a trespass, which was accompanied with either actual or implied force, has been injurious to the public, the proper remedy in every such case is by an indictment, or by informations. And if a trespass that was accompanied with an actual force, has been injurious only to one or more private persons, the offender is in every such case liable to an indictment, or to an information; for, although the injury has in such fence been only done to one or more private persons, as every trespass accompanied with actual force is a breach of the peace, it is to be confedered and punished as an offence against the public. 5 Bac. Abr. 150.

Besides the remedy which is given by law, in the case of a trespass accompanied with actual force, for the offence against the publick, every private person, who has received any injury from such trespass, may recover a satisfaction for the same by an action of general trespass. And if a trespass has been only accompanied with implied force, the proper remedy, (this not being a publick offence,) is likewise by an action of general trespass. The writ of general trespass, upon which this action is founded, is sometimes returnable, at other times it is not. And it is at the option of the injured party to make the trespass in force, or fore out a writ of general trespass, that is, or one that is not returnable. The latter sort of writ is called viciotext write: Because the matter therein contained of is to be heard before the sheriff to whom it is directed. But, as the viciotext writ of general trespass is at this day very seldom used, it is by no means necessary to go into the particular consideration thereof. That writ of general trespass which is returnable has, from the words vi et armis therein contained, obtained the name of a writ of trespass vi et armis; and the action thereupon founded is called an action of trespass vi et armis. 5 Bac. Abr. 150, 151.

1. For what injuries an action of trespass vi et armis lies in general.

2. In what cases an action of trespass vi et armis lies for an all which was at first lawful, but becomes afterwards a trespass with force ab initio.

3. For what injuries an action of trespass vi et armis lies in general.

Wherever any unlawful act, from which a private injury has been received, was accompanied either with actual or implied force, the party injured may bring an action of trespass vi et armis. Fitzh. N. B. 93. Bro. All. for the cafe, pl. 46, Ld. Raym. 1402. Sir. 635.

But, where the injury that has been received was occasioned by a fraudulent or negligent act, which was not accompanied either with actual or implied force, this action does not lie. Bro. All. for the cafe, pl. 46. Fitzh. N. B. 93. Ld. Raym. 188, 1402. Sir. 635.

This action does not lie for any injury which is the consequence of a mere non-assignation, where no action has been done, therefore can be done.
one, be well pronounced: because that, which comes under the per se, is not to be considered as an independant substantive iuris, but as laid merely in aggravation of damages. *ld. Raym.* 174. *Courteny v. Collet.*

It is laid down in two books, that if the bailee of cattle, which have been lent him to plough his land with, kills any of them, the owner thereof has his election to bring an action of trespass vi et armis, or an action upon the case. *ibid. 57.* 

It does not moreover seem reasonable, that an injured party should at any time have been at liberty to bring which of these actions he pleases, because the judgment in them is very different. *ld. Raym.* 273. *Courteny v. Collet.*

And this is less reasonable now than heretofore; for if the injured party has in any case such an election, he may in every such case, by choosing to bring an action of trespass vi et armis, or of an action upon the case, thereby make the owner of cattle, it is also laid down, that the party injured by a rescue may have either an action of trespass vi et armis, or an action upon the case. *ibid.* 182. *Whately v. Stone.*

But in some other cases it is laid down generally, that the bailee of cattle, who kills any of them, is not liable to an action of trespass for the same. *ld. Raym.* 54. *Courteny v. Collet.*

2. In what cases an action of trespass vi et armis lies for an act which was at first lawful, but becomes afterwards a trespass with force ab initio.

It is in general true, as has been shewn under the last head, that no injury, which has been occasioned by a lawful act, is trespass with force. But in some cases an act, which in the first instance lawful, becomes after wards a trespass with force ab initio. Where the law gives a general authority or licence to do a thing, and the person, who has begun to act under either of these properly, is afterwards guilty of some positive abuse of the same, he becomes a trespasser with force ab initio. *ibid. 154.*

If S. who has disinfringed a beast damage-feasant, afterwards kills or 'fects the same, he becomes a trespasser with force ab initio; he had indeed by law an authority to disinfriter this beast: But, as this extends only to the keeping it as a pledge to enforce the making satisfaction for the loss, or damage, or hurt done by this beast, it becomes an abuse of this authority. *Rep. 146. The fix carpenters cafe. Bro. Tref. pl. 359.*

But every meddling with a thing, which has been disinfringed, does not amount to such an abuse of the general authority given by law to disinfriter, as to make the disinfriter a trespasser with force ab initio.

If a man who has disinfringed armour scourers the same, in order to preserve it from rust, he does not become a trespasser with force ab initio: For the doing of this, so far from being injurious, is beneficial to the owner. *Cra. Eliz. 783. Danemob v. Reeve.*

And, in the case of a diffrers for rent, an injurious meddling with what has been disinfringed does not make the disinfriter a trespasser with force ab initio.

For by the 11 Geo. 2. cap. 19. par. 19. it is enacted, 'that any man to prevent any unjustly due, and any unlawful act shall be afterwards done by the party disinfringing, or by his agent, the disfriffers shall not be therefore deemed unlawful, nor the party making it a trespasser ab initio.

The law gives every man a licence of going into an inn at any time he pleases; but a man to prevent law fullly into an inn, is afterwards guilty of any injurious act there, he becomes a trespasser with force ab initio: Because this is a positive abuse of a general licence in law. *Rep. 146. The fix carpenters cafe. Bro. Tref. pl. 359.*

But where a man is only guilty of a negative abuse of a general authority or licence in law, he does not become a trespasser with force ab initio: For a man, who has only been guilty of a mere non-licence, can never be a trespasser with force. *5 Bac. Abr. 155.*

If S. who has disinfrigned a beast damage-feasant, returns to deliver it on a tender of amends before the impounding thereof, this is an abuse of an authority given by law to disinfriter; and the owner of the beast may recover damages for the detention: But, as the injury arises from a non-licence, S. does not become a trespasser with force ab initio. *Rep. 146. The fix carpenters cafe. Bro. Tref. pl. 359.*

So if a man, who went lawfully into an inn, refuses to pay for the liquor he has drank there, this is a negative abuse of a licence given him by law to go into an inn: But he does not become a trespasser with force ab initio. *Rep. 146. The fix carpenters cafe. Bro. Tref. pl. 359.*

A confable, who had the warrant of a justice of the peace to search the house of I. S. for stolen goods, pulled down the clothes of a bed in which there was a woman, and attempted to search under her shirt, it was held, that by this abuse of his authority he became a trespasser with force ab initio. *Clayt. 44. Ward's cafe.*

But by the 17 Geo. 2. cap. 38. par. 6. it is enacted, "That where any disfriff shall be made by any overeer, by virtue of a warrant of disfriff, for any money justly due for the relief of the poor, the party disfriffing shall not be deemed a trespasser ab initio on the account of an irregularity done by such party.'

And in some cases a man, who is only guilty of a negative abuse of a particular authority given him by law, becomes a trespasser with force ab initio.

If a sheriff has not returned a writ which ought to have been returned, he becomes, altho' this is a mere non-licence, a trespasser with force ab initio; as to every thing that has been done under this writ. *Bra. Faux impr. pl. 5. pl. 7. pl. 12. pl. 23. 1 Jorn. 378. Salk. 409. Ld. Raym. 460.*

But, if a bailiff has by virtue of a warrant from a sherife executed a writ which ought to have been returned, he does not, altho' it has not been returned, become a trespasser ab initio: for it would be hard to punish the bailiff for the default of returning this writ; which, as it was directed to the sheriff, could only be returned by him. *Bra. Faux impre. pl. 5. pl. 22. 1 Jorn. 378. Cro. Cor. 446.*

If however, the bailiff of an inferior court has not returned a writ which ought to have been returned, he becomes a trespasser with force ab initio, as to every thing that has been done under it; because he is a principal officer, and not, as in the case of a bailiff acting under a warrant from the sheriff, a subordinate one; and consequently it was his duty to return this writ. *1 Roll. Abr. 503. pl. 18. Ld. Raym. 632.*

A man, who is guilty of an abuse of an authority or licence in law, is not, altho' this is a positive one, become a trespasser with force ab initio.

If the bailee of a beast, which has been delivered to him to be kept, kills or uses it, he is liable to make satisfaction for his abuse of an authority given him by the owner thereof: But he does not become a trespasser with force ab initio.

*Vol. II. No. 131.*
TRI

So if a breach, which has been disinnombr'd for a rent-charg, is killed or used by the disinnombrer, he does not become a trespasser with force ab initio: Because the dif-
tresch in this cafe is made under an authority in fact; for the wrong is, that it is in the cafe of a rent-
severc, incident to the rent, but must always have been
given by the grantor thereof. 1 If. 142, 143. Perk.

f. 691.

The reason of the difference, between this cafe of a pos-
tive abuse of an authority or licence in fact, and that of a
positive abuse of authority or licence in law, is, as one
book faid to be, that the abuse in the latter cafe is deemed a
trespass with force ab initio: Because the law
intends from the subsequent tortious act, that there was from
the beginning a defign to be guilty thereof. 8 Rip.

146. The six carpenters cafe.

But this reason, which equally applies to both cafes, is
by no means conclusive: For it may be as well in-
semed in the former cafe, from the subsequent tortious
act, that there was from the beginning a defign of being
guilty thereof. Perhaps the difference between the two
cafes may better accounted for in the following man-
ner. In the one, where the law has been an authority
or licence, it seems reasonable, that the fame law should,
in order to secure the persons, who are without their di-
rect affent made the objects thereof, from all positive
abuses of such authority or licence, whenever either of
these is positively abused, make the fame void from the
beginning; in the other, where the authority or licence
is made, as if he had added without any authority or li-
cence. And this agrees perfectly with the maxim Aenus
legis novemini facit injuriam. But in the other cafe, where
a man, who was under no neceffity of giving an authority
or licence to any perfon, has thought proper to give one
to thefe to a certain perfon, who is afterwards
 guilty of a positive abuse thereof, there is no reason that
the law should interfere; and make all that has been done,
under the authority or licence by him so voluntarily
given, void from the beginning: because it was his own
folly to place a confidence in a man, who was not fit
to be trusted. 5 Bac. Abr. 156.

The interpoftion of the law in such cafe would, moreover, be
quite contrary to the maxim, Vigilantibus non dormientibus foris lex. 5 Bac. Abr. 156. For more
learning on this subject, fee 20 Vin. Abr. and Bac. Abr.

iii. Trefpafs.

Trefpaffants, (Fr.) Is used by Britten, cap. 29, for
passengers.

Trefpasse, To turn or divert another way; as trefpasse
wiam, to turn the road. Cowell, edit. 1727.

Chatt. King John.

Trial, (Trias;) Is used for the examination of all
casues civil or criminal, according to the laws of the
realm, before a particular judge; of which there are divers
kinds; as matters of fact shall be tried by the jurors,
matters of law, by judges, matters of record by the
record itself. A lord of parliament, upon an indict-
ment of treason or felony, shall be tried without any
oath by his peers upon their honours and allegation; but
in appeal at the fall of any object, they shall be tried by
the high court of judiciaries. If ancient demesne be plead-
ed of a manor, and denied, this trial shall be tried by the rec-
ord of demeslay. Baftardy, excommencement, lawfel-
heds of marriage, and other ecclesiastical matters, shall be
tried by the bishop's certificare. Of the ancient manner of
trial by combat and great officials, see Combat and Office.

But also Stead. Pl. Cor. cap. 1, 2, 3, and 12; and tenet men.

Trias orbis confalit sit, tributus, eum judicium per duos
hos socios sacra, mutant, exigit. It is usual to ask the
criminal how he will be tried; which formerly was
a very fignificant question, but it is not so now, because
formerly there were ferial ways of trial, ex combat, by
battel, by oxford, and by jury. And when the criminal an-
swered the question, By god and his country, it flowed that
he made choice to be tried by a jury. But now there is
no other way of trial. Cowell, edit. 1727.

1. What is to be tried by the court; and what is to be
 tried by the record.

3. Of giving notice of trial; and of concomitancing a
 trial.

1. What is to be tried by the court; and what is to be
 tried by the record.

Every question which arifes concerning any matter of
law, is to be tried by the court in which the caufe de-
pendeth. 1 If. 125.

It is agreeable to common fenc, that civilius in arte
fas praeclarum et pravum, and it is a known maxim of
law, that ad quasdam juris non fupradjum juratares.

Ibid.

It is the province of the judges to determine what
the meaning of any word or fentence in an act of par-
liament is. Bro. Trial, pl. 143. 2 If. 617.

If a question arifes, whether a certain fentence is a
maxim of law, this is to be determined by the judges.

Bro. Trial, pl. 143.

If a man who was feiled of a house for life had at the
time of his death any goods therein, his executer or ad-
ministrator shall have free insects and ejects to fetch them
away, as being a reasonable time; and the judges before whom
the caufe dependeth shall judge what is a reasonable time.

1 If. 56.

The reasonableness of a fine, which has been afcribed
by the lord of a manor on the addition of a tenant to a
copyhold tenant, shall be defcibed by the judges upon
the construction of the fine, appearing to them. Ibid.

If a qclion arifes concerning the exiflence of a gen-
eral cuflom of the realm, this is to be determined by
the judges: Because every general cuflom is a part of

It is in general true, that if a question arifes concerning
the exiflence of a cuflom of a particular place, it is
to be tried by a jury. 1 If. 74. 2 Reg. Abr. 579.

580.

The question, What is the legal effect of a deed? is
to be tried by the court; because this depends upon
the construclion of the deed. 1 If. 252. Bro. Condition,
pl. 183. Frien. 146.

But if the question be, Whether a deed has been seal-
decl and delivered? This which depends upon a matter of
fact is to be tried by a jury. 1 If. 252.

It is the province of a jury to try the fath, whether
any rafure or interlination in a deed was made before
the delivery thereof. Ibid.

But the question, Whether the rafure or irrolina-
tion in a deed is of any thing material? is to be tried by the
court. Ibid.

Every question concerning the practice of a court is to
be tried by the fame court; for the practice of every
court is the law of such court. 9 Rol. 30. Abbot of Strata
Marcellas's cafe. 12 Abr. 573, 573.

If a question arifes concerning any matter of record,
this can only be tried by the record itself. 9 Rol. 50. Ab-
bot of Strata Marcellas's cafe. 1 If. 117. 2 Rol. Abr.
574.

The reason is that a record imports fuch verity in it-
self, that no averment contrary thereto is to be received.
The receiving of any fuch averment would also be at-
tended with great inconvenienc; for if one averment
could be received in order to contradifl a record, another
might afterwards be received in order to contradifl the
second record; and fo this might go on ad infinitum. 1

In the prmciple, that the record is joined upon the plea of
null tial record, the trial must be by the record. Bro.
Trial, pl. 46. 2 Rol. Abr. 574.

If a question arifes concerning a privilege claimed by
a city or borough under a charter, this is to be tried by the
record of the charter. Trial per Paiz 15.

The question whether a man is an attorney? is to be
tried by the record of the court in which the attorneys
Trial, pl. 76. Lid. Rysm. 1173.
The question whether an original suit was filed out is not to be tried by the record: Because until a return is made thereto the writ does not become a matter of record. 2 Web. 524. Peter v. Stafford.

If the question be general, whether the defendant did appear? This is to be tried by the record: Because every appearance ought to be entered on the record. Cres. Ellis, 131, 362.

But if the question be, whether the defendant did appear at a day certain? This is to be tried by a jury: For it is not necessary that the very day of appearance should be entered on the record. Ibid.

If the question however be, whether a person was sued at a certain day in discharge of his bail? This is to be tried by the record: because the very day of the render ought to be entered on the record. Hob. 310.

Welly v. Canning.

If the question be, whether a deed was enrolled? This shall be tried by the record. 4 Rep. 71. Hynde's cafe.

But if the question be, at what time a deed was enrolled? This is to be tried by a jury; because it is not necessary, nor was it formerly the practice, to mention the time of enrolling a deed in the inrolling. 4 Rep. 71. Hynde's cafe.


If the question be, whether J. S. was sheriff of the county at such time? This is to be tried by the record: Because every sheriff is appointed by letters patent which always are of record. 9 Rep. 316. Abbot v. Strata Melle's cafe.

But the question whether J. N. was under-sheriff to J. S. is to be tried by a jury; for the appointment of an under-sheriff is by matter in pais, and not by matter of record. Brew. Trial, pl. 113.

If a sheriff, who has returned a capi vertum, afterwards pleads to an action of escate that the party never was in his custody, the question, whether he has ever been in his custody? is to be tried by the record of the return. 2 Dods. 165.

But if a sheriff who did in fact arrest J. S. returns non est inventus, the question, whether J. S. was arrest ed? is to be tried by a jury: Because it does not in this case appear from the return that he has been arrested. 2 Rol. Abr. 574. pl. 5.

If a man justifies the having done any thing as a justice of the peace, the question, whether he was a justice of peace? is to be tried by the record of the commission of office. 2 Rol. Abr. 574. pl. 9.

If the question be, whether a man has a right to a peage on by creation? This is to be tried by the record of the letters patent creating him a peer. 9 Rep. 11. Abbot v. Strata Melle's cafe. Ed. Raym. 14. 12 Med. 57.

But if the question be, whether a man has a right to a peage by defiance? This is to be tried by a jury: For it can never appear from the record, that the person now claiming the peage is defended from the person who was first created a peer by letters patent. Ed. Raym. 14. Res v. Kadiyla. 12 Med. 57.

If a matter of record is only laid by way of inducement to a matter of fact, the trial of such matter is not to be by the record, but by a jury. Palm. 242. Bigg v. Woffon.

Every question concerning the proceedings of a court, where a court of record, is to be tried by a jury. Infl. 117.

If a question arises concerning a decree of the court of Chancery, this is to be tried by a jury; for the court of Chancery is not, so far as it is a court of Equity, a court of Record. Trial per Pari 156. See Feature of Record. 2. What is to be tried by a jury.

It is in the general true, that every question of fact is to be tried by a jury: And in some cases where a question of fact is to be tried, it is in the discretion of the court to send it to be tried by a jury. Brew. Trial, pl. 60. Bro. Appeal, pl. 47.

If any new offence be created by a statute, and the statute is silent as to the manner of its being tried, the trial thereto is to be by a jury: because this manner of trial is agreeable to Magna charta. 7 Mod. 224. Bag. v. Stormey.

Where the agreement is in general terms, that a certain fact shall be proved, the general rule is that it must be proved to a jury: For this is the most legal way of proving any matter of fact. Hob. 247. Crockbath v. Woodward. Hob. 93. 5 Rep. 108. Sid. 313. Cra. Jac. 388.

But if any particular manner of proving a certain fact has been agreed upon by the parties, the fact must always be proved in the manner agreed upon. Hob. 247. Crockbath v. Woodward. Sid. 313. 5 Rep. 108. Hob. 93.

If the agreement be, that a certain fact shall be proved before the court, it is to be tried by the witnesses to be examined by J. S. 3 Lev. 231. Byning v. Beal.

And although the agreement be in general terms, that a certain fact shall be proved; yet if it appears clearly from any circumstance attending the agreement, that the parties did not intend a proof to a jury, the fact may be otherwise proved. Cra. Jac. 388. Sid. 213.

If the agreement be that a certain fact shall be proved in two days, this is not to be proved to a jury, but by the examination of witnesses; for as a trial by a jury cannot be had within so short a time as two days, this manner of trial could not have been intended. Cra. Jac. 388. Sid. 213.

The condition of a bond dated the 23d day of August was, that the defendant should pay to the plaintiff 10l. for every 20l. which the plaintiff shoulclby sufficient proof make it appear that J. S. was indebted to him; and that one half of the fame should be paid on or before the 25th day of November then next ensuing. An action of debt being brought upon this bond, the defendant pleaded, that the plaintiff did not make it appear by sufficient proof that J. S. was indebted to him in the sum of 20l. The plaintiff replied that before the said 25th day of November he and J. S. settled an account, by which it appeared, that the sum owing by the defendant was, to be included to the plaintiff in the sum of 310l. upon a demurrer to this replication it was infituted that the proof ought to have been made to a jury: But it was held that such proof could not have been intended: Because a trial by a jury could not have been had before the time limited for the payment of part of the money was expired. Lartu. 665. 1 Lea. 37. T. Guild.

And where it is necessary that a fact should be tried to a jury, it is not necessary that it should be proved in a distinct action.

A promis was made by J. S. to pay J. N. three pounds upon his proving that a certain cock died in his battle. J. N. may be otherwise tried, this is to be proved by the witnesses to be examin'd by J. S. And it is pleaded that no such proof had been made. The plea was held to the bad: Et per cur: It was not necessary to make the proof before the bringing of an action for the money; for it may be made in such action. Mar. 431. Griffith's case. 2 Lea. 215.

A penalty was given by a statute, upon proving by two witnesses that a certain thing thereby prohibited had been done. In an action of debt for this penalty the question was, whether it was necessary to make proof of the offence by two witnesses in another action before an action could be brought. If a penalty is only to be paid to the crown, it is not to be necessary; for that such proof may be well made without the action upon the statute. Cra. Jac. 188. Aldred v. Mathew.

It is in the general true, that the question, what the intent of a party was is not to be tried by a jury; because this, not being a question of fact, cannot be well judged of by a jury.

But wherever the question does not depend upon a fact alone unless it was coupled with a certain intent, the intent as well as the fact must be tried by a jury: Because the intent in such case is the only thing material. And the jury must judge of this in the best manner they are able to form in the circumstances which attended the fact. 1 H. H. P. C. 229.

If the question be, Whether a tenantchafed his beasts from a manor after the lord who came to dilate had seen them upon the manor, with an intent to prevent their
their being disfrained? This intent must be tried by a jury. Bro. Illes, pl. 45.
If the question be, whether the intent of the defendant was to carry the wool which had been by him put on board a ship to Calais? The intent in this case must be tried by a jury. Bro. Illes, pl. 21. 1 H. H. P. C. 229.
Notwithstanding that the words for which an action is brought would in the general be actionable, the jury are to judge from all the circumstances that attended the speaking of them, whether they were spoken with an intent to flander the plaintiff; for unless there was such an intent, the plaintiff ought not to recover any damages. 1 L. 229. Graydon v. Middleton. Cre. Eiz. 297. 1 Roll. Abr. 58.

3. Of giving notice of trial; and of countermarching a trial.

Every notice of trial must be given in writing. It has been held that a notice of trial cannot be given in the country. 1 Barn. 216. Hankey v. Hoblin. Trin. 8 Geo. 2.

But in a later case the following distinction is taken, that if the notice of trial be given with the issue, it must be given to the defendant that the issue can only be decided in town: but that if it be not given with the issue, it may be given in the country. 2 Barn. 239. Topham v. Hujdick. Mich. 10 Geo. 2.

Eight days notice of trial were heretofore sufficient in any case, unless the cause was to be tried in London or Middlesex, and the defendant lived about 40 miles from these cities respectively; in which case it was necessary to give 14 days notice.

But by the 14 Geo. 2. c. 17. par. 4. it is enacted, "That no inditement, information, or cause whatsoever, shall be tried before any judge of assize or nisi prius, or at any sitting of a jury of a petit ment, if the defendant lives about 40 miles from either of the said cities respectively, unless notice of trial in writing has been given ten days at the least before such intended trial." Notice cannot be given of a trial at bar until the day appointed for trial is covered in the book of the clerk of the papers. 2 Litt. Abr. 744.

By the ancient rules of the courts of King's Bench and Common Pleas, a whole term's notice was necessary to be given before there could be any proceeding for the space of four terms.

As some doubt has arisen concerning the construction of these rules, it is by a rule of the court of Common Pleas of Easter 14 Geo. 2. ordered, "That in every cause wherein there has been no proceeding for four terms exclusive of the term in which the last proceeding was, the party who defers to proceed again shall give a term's notice to the other of such proceeding; that such notice shall be given before the eftive day of the fifth or other subsequent term: that a judge's summons, if no order has been made thereupon, shall not be deemed a proceeding; but that notice of trial, abid it was afterwards countermarched, shall be deemed a proceeding with-
in the meaning of this rule."

But abid's a cause has been at issue more than four terms, if the trial has been delayed by reason of a claim of privilege of parliament, it is not necessary to give a whole term's notice of trial. 1 Sid. 93. Poyns's case.

So if the trial of a cause, which has been at issue a-bout four terms, has been delayed part of the time by any unjustifiable conduct of Equity, it is not nec-
cessary to give a whole term's notice of trial. Ibid.

If a notice of trial has been countermarched, it cannot afterwards be continued: But a new notice must be given. 1 Barn. 220. Smith v. Holf.

If the name of the cause is not noticed in the notice of trial, the notice of trial will not be cured by inserting the name in the continuance of the notice. 1 Barn. 214. Jacob v. Mars.

A notice of trial can be continued only once; for the court will not suffer this which amounts to the giving of short notice of trial to be done a second time. 1 Barn. 206. Boyt v. Tew.

But if the full time required for a new notice of trial be given in a second notice of continuance, this is good as a new notice of trial; for the court will reject the words of continuance as forlornage. If a cause be brought for discovery de jure, a new notice of trial must be given. 2 Litt. Abr. 744.

But it is said, that if a cause be made a remainet by the judge, because there was not time to try the fame, it is not necessary to give a new notice of trial, for the defendant at his heard is bound to attend until it be tried. 2 Litt. Abr. 745.

Wherever the defendant proceeds to the trial of a cause with proviue, he is liable to all the rules as to the giving notice of trial, as the plaintiff would have been. Rep. in Pr. C. P. 173. Small v. Lawer.

Every notice of countermarching a trial must be given in writing.

A notice of countermarching a trial may be delivered in the country. 1 Barn. 216. Hankey v. Hoblin. 2 Barn. 239.

It was heretofore sufficient, to give two days notice of trial in the county if any cause which was to have been tried at any sitting in London or Westminster, Rules of K. B. Mich. 4 Ann.

It was also heretofore sufficient, to give two days notice of countermarching the trial of any cause which was to have been tried at any assizes, unless the notice was delivered to the agent in town: in which case four days notice were necessary. 1 Barn. 275. Stafford v. Thompson.

But by the 14 Geo. 2. c. 17. par. 5. it is enacted, "That where any party shall have given notice of the trial of any cause whatsoever before any judge of assize or nisi prius, or at any sitting in London or Westminster, where the trial of such cause has been countermanded, the cause shall not be brought again to try, but shall be tried in the court of Westminster, and shall not afterwards countermarch the cause in writing six days at the least before such intended trial; every such party shall be obliged to pay the like costs and charges as if such notice of trial had not been countermarched."

Bertuch & Trebuxet, (Teribicetum,) A tumbled, or cuckoo seed. Cowell, edit. 1727.

Creticae, Creticam, The fame with tentral.

TRINITY, An ancient cultus so called in the bor-
ough of Bromyard in com. Heref, because thirty burgesses paid a d. yearly rent for their houses to the bishop who was lord of the manor. Lib. Niger Heref. Lib. 3. 179. 17.

TRINITY, The English Saxon called the month of May by this name, because they milked their cattle three times every day in that month. Beza de rituone Temp. c. 17.

TRINITY, See Wholphamp.

TRINITYHOUSE, A house at Deptford, which belongs to a company or corporation of f senate, that have power by the King's charter, to take knowledge of those that destroy fea-marks, and to redress their doing: as also to correct the fault of sailors, &c. and to take care of all things belonging to the navigation, and the feats. Stat. 8 Eliz. 13. and 35 El. 6. Pilots licenced by this corporation how regulated and governed, 5 Geo. 2. c. 20. See Ships.

TRINITY, A kind of net or any engine to catch fish with. 2 Stat. 11. c. 15.

TRIMMENDYK, A threefold necessary tax, or im-
position, to which all lands were subject in the Saxon times, i.e. toward the repairing of bridges, the maintaining of cattles or garrisons, and an expedition to repel invading
T R O

invading enemies. In the grant and conveyance of
lands, they were many times exempted from all other secular
services. — Excepta trinada necesseitate—except his tribus,
part. ii. p. 25.

Lições of strict, Are such as are chosen by
the court to examine whether a challenge made to the panel,
or any of the panel, be just or no. Br. cit. Challenge.
fol. 122, and Old nat. brev. fol. 158.

Tripitum. Leg. 2. 1. cap. 64. In quibus estae
tripitum lubatere, forst jubilia tripartite, i.e. for
four. The meaning is, that as for a small offence, or
for a trivial cause, the composition was twenty shillings;
so for a great offence, which was to be purged tripitice loda,
the composition was to be three times twenty shilling,
in. tripartis. Cowell, edit. 1773.

Benedicere, to bless a quantity of land containing three
rods or perks. Id. 16.

‘Tilla, A post of fation in hunting. Id. 18.

‘Tillis, Tripitris & triptis, Is an immunity whereby a
man is freed from his attendance on the lord of a forest,
when he is disposed to chase within the forest, and
shall not be compelled to hold a dog, follow the chase,
or stand at a place appointed, which otherwise he
might be, under pains of amercement. Adamovd, part
1, pt. 86.

Tripping-truc. The third part of a county, or three
or more hundreds or wapentakes, were called a tripping
or triuplet. In more remote ages are the lands in Kent,
the rapes in Suffolk, and the ridings in Yorkshire, and those
who governed those trippings, were thereupon called
tripping-reeves, before whom were brought all causes that
could not be determined in the wapentakes or hundreds.
p. 123.

Triltrega, Was the uppermost room in the house, a gar-
et or room three stories high. 'Tis mentioned in Matt.
Paris, anno 1247.

Triumvir. A tripping-man or confable of three
hundreds. Ellinw. 1. 42.

Trone, (from Tren, a trench,) A trench or a cunol or toll taken for
weighing of wool. Fleta, lib. 2, cap. 12. fayt, That
trone is a beam to weigh with, mentioned in Weston, 2.
cap. 25. See Pidge. Montefini., 1 tom. 1796. Et fint
quisti de annu pensione, pleagio, terragio, traengis, pationis.
And indeed trone was used not only for the cunol or toll
in the weight of wool, but for the weighing of it in
a flag or publick mart, by a common trone, or legal
flandard. This trone or beam for the troneage of wool,
was fixed at Leadhall in London. Cowell, edit. 1777.

Tronato, (from Trena, i. satora,) An officer in the
city of London, who weighs the wool that is brought
there.

Truper, (Treperium, Treperarium,) A book of alternate
turns or repose in fishing masts, called by Lindewode,

Trophy money. See Stilitta.

Tuber, (from Pr. Tuvra, i. truvera,) Is an action
which a man hath against one, that having found any of
his goods, refuseth to deliver them upon demand,
Cowell, edit. 1777.

An action of trover lies where every man, who came
to the possession of any of the goods of another by actual
finding, does convert the same. And an action of trover
does, likewise lie where every man, who came to the pos-
session of any of the goods of another by delivery, does
convert the same; for alio there be not in this cafe an
actual finding, there is such a finding in law as is suffi-
cient to found this action upon. 2 Burtr. 313. 1 Inst v.
Clark.

Any of the goods of I. S. have been taken by I.
S. in such a tortious manner that an action of trespass
et armis would lie, an action of trover does likewise lie;
but I. S. can only recover in the latter action dam-
ges for the conversion of the goods; for he does, by
electing to bring this, with his own case to recover damages
50. Cro. Cor. 89. 1 Med. 31. Sir 128.
Vol. II. No. 131.
If the forces of I. S. be taken and rode by I. N. this is, altho' the forces be afterwards referred to I. S. a new conversion. 1 Roll, Abr. 5. Countess of Radclifie's cafe. 6 Med. 212.

If I. S. who has lawfully distrasred the beast of I. N. work it, this is a conversion; because it is an affambling of time, and the beast as if it was his own, which is not lawful for I. S. to do. Cre. Joc. 148. Byng haw v. Gudow. Brou. 5.

If I. S. after having lawfully distrasred the goods of I. N. for rent in arrear, had heretofore fold them, it would have been a conversion; because the sale of such goods was before the making of the statute of 2 W. & M. cap. 5, unlawful. Cre. Joc. 225. V. 194. See 5 Bac. Abr. tit. Treas.

Drop-titling. (Poind tee Jufo.) See Treas. It is called try-weight, from tryos, a city in Champagne, from whence it first came to be used here. Cowell, edit. 1727.

Truce, (Tregge.) A league or cession of arms and; and anciently there were keepers of truces appointed as King Ed. 3. constituted by commission two truce keepers between him and the King of Scots, with this clause, 


Truncks, A trunk or wooden box, fet in churches to receive the obligations of pious and well disposed people, which, in the times of popery there were many at several atars and images, like the boxes, which since the reformation were displaced nigh the churches, for to receive all voluntary contributions for the poor. — 

Colletum Testamentum suum utibus de jumentis trunctus in tugulis ecclesias adducere jura confultat. Rad. de Diceto jub anno 1166. These customary free-will offerings that were droped into these trunks or boxes, made up a good part of the endowment of vicars before the reformation, and thereby, as in many other respects, made their condition then better, than in later times. Cowell, edit. 1727.

Trutn, Is a right to receive the profits of land, and to dispose of the land in equity; per Pemberton, arg. Med. 17, in the cafe of Smith v. Wheeler. As holding the possession and disposing thereof at his will and pleasure, are signs of trust. Chan. Rep. 52. A trust is but a new name given to an use, and invented to de fraud the statute of uses. Arg. St. 40. See Ufe.

Truts and legal eastes are to be governed by the fame rules; and this is a maxim which has universally prevaild. It is so in the rules of descension, of allkinds, and thuroughout English lands; there is a pelfus fratris of a trust, as well as of a legal eate. The like rules in limitations, and also of barring entailts of trusts, as of legal eastes; per the Master of the Rolls, who faid he thought there was no exception out of this general rule, nor is there any reason that there shou'd; and that it would be impossible to fix boundaries, and shew how far, and no farther, it ought to go; and that perhaps in early times the necessity of keeping thereto was not seen, or throughly confidered. 2 P. Win. Rep. 645. Sutton v. Sutton.

Trusts being ceded in fee of certain lands devisd them to trustue in fee, in trust to pay his debts, and to convey the surplus to his children equally; the younger married and died leaving an infant son, and her husband fur- vivering; the eldest daughter brought a bill for a partitio; and the only action was, whether the husband of the younger daughter died intestate for life conveyed to him, as tenant by the curtesy? Upon which it was decreed by Lord Chancellor, that trust eates were to be governed by the same rules, and were within the same reason, as legal eastes; and as the husband should have been tenant by the curtesy, had it been a legal eate, fo shoul he be, of the trust estate. That is, the same title of property in all courts, all things would be, as it were, at fee, and under the greatest uncertainty. 2 P. Plsins. 188. Whatts v. Bates.
So if J. S. makes his will, and his wife executrix, and the son afterwards prevails on his mother (by telling her that the executrixship would be troublesome to her, &c.) to get J. S. to make a new will, and him executor therein, he promises to be a trustee for the mother, which is done accordingly; and in that will there is but a small legacy given to the wife; the son having obtained a trust from the polluting of the fund, notwithstanding the statute of frauds and perjuries, which requires a declaration of trust in writing. 1 Vern. 296. Thynn v. Thynn.

But where one pollified of leaves for years devised them to his wife, and his son took them away, and his son died; and her second husband granted the leaves away; and the son fuel to be relieved, his bill was dismissed; for it was no trust for the son. Cited by Lord Chancellor as a case he remembered in Lord Egerton's time. Chan. Civ. 310. Civil v. Rich.

With respect to raising of trust, it has been held that where a trusts is created by marriage settlement or will, or a trust of a term to raise money at twenty-one or marriage, and the person dies before the time, a court of Equity will not suffer the trustee to raise the money at law. MSS. Rep. Fry v. Fry in Chan. Trin. 27 Gen.

Where A. by his will devised his real estate to his wife for life, with remainder over, and gave a legacy to his daughter, to be paid within one month after the death of his wife, and charged upon the real estate: The daughter died in the life of the mother, unmarried; and after the wife's death the representative of the daughter was charged with her part to have this legacy paid out of the estate. For the plaintiff it was infinced, that this was different from the common case of a legacy payable out of the lands, for the time the payment was postponed out of regard to the circumstances of the fund, and not of the person. But Lord Chancellor: The general rule is that where a legacy or portion is given to be raised out of lands, payable at a certain time; if the legacy or child dies before that time comes, and before the time, when in the view of the testator he could be supposed to want the legacy or portion, it shall sink into the land for the benefit of the heir or devisee, and this rule has only been broke into in favour of the husband or children of such legatee, &c. where she was married; but that is not the present case, and as to the argument made use of from the circumstances of the fund, that is only brought as an auxiliary reason; and no case has been determined upon such circumstances alone. If it had been given out a marriage settlement or a contingency upon the failure of life of A. &c. there might have been some reason to have given it to the representative, as the testator might probably think the legatee could not be living at such a distant period. But here it depends on the death of his wife, which might happen in a reasonable time. In cases where it has been given to A. his executors and administrators, it shews the intention of the testator to make it transmissible; and where it has been charged by a condition, or a conditional limitation, and the legatee has had a remedy at law to defeat the devise of the estate to the devisees, this court will not interpose to take that remedy from him, because he is charged to the devisee to make it conclusive. But in the case of a trust created by marriage settlement or will, or a trust of a term to raise money at twenty-one or marriage, where the person dies before, this court will not suffer the trustee to raise the money at law, where there might be a remedy at law contrary to the rules of this court. The testator here, in the latter part of his will, gives legacies to his two daughters, and if either of them die, her share to go to the survivor; this looks as if he did not intend that the representative should have it even in the first bequest, and is a further circumstance to confirm the opinion given arising against the legacy outstanding the real estate. Bill dismissed, but without prejudice. Here the court had made the trust in the child who had married, and left children, it might have been real other- wise. Fry v. Fry in Chan. Trin. 27 Gen. 2. MSS. Rep.

2. What shall be deemed a resulting trust, or a trust by implication.

It has been shown under the head, that by the statute against frauds and perjuries, the 29 Car. 2. cap. 32. all declarations of trusts were to be made in writing; but it is now a saying with regard to trusts resulting by implication of law, which are left on the footing where they stood before the act; now a bare declaration by parol before the act, would prevent any resulting trust. Arg. And the court seemed to be of that opinion. 2 Vern. 294. 2l. 285. Lady Belasyse v. Campbell and others.

It was likewise ruled by Lord Chancellor Cooper, that the statute of frauds, sect. 8. which says, 'That all conveyances, where trusts and confidences shall arise or result by implication of law, shall be as if that act had never been made, must relate to trusts and equitable interests, and cannot relate to any use which is a legal estate.' Mich. 1709. in the case of Lamplugh v. Lamplugh, 1 P. Wms. 112.

If a man purchases lands in another's name, and pays the money, it will be a trust for him that paid the money, tho' there be no deed made, declaring the trust thereof; for the statute of frauds and perjuries extends not to trusts raised by operations of law. 2 Vern. 361. Ann. 1 Vern. 366. S. P. Goafyger v. Thyngh.

No rule is more certain than a man makes a conveyance in trust for such person, and such estates as he thinks fit, and makes no appointment, the resulting trust must be a trust for him who paid the money; and the interest must be in the person who had the use of the money in the purchase, for the estate must be in him who is impelled by the statute to follow the rules of law in the case of an use, and that it would be so in the case of an use is undoubtedly true, and that was Sir Edward Child's case in 6 Rep. per Lord Chancellor. Fiz. Ghi. 223. Fitzgerald v. Ed. Powisbridges.

But trusts arising by operation of law have been but of two kinds, (first) either where the conveyance has been taken in the name of one man, and the purchase money paid by another; or (secondly) where the owner of the estate has made a voluntary conveyance of it, and made a declaration with regard to one part of the estate, and has been fleasit with regard to the other part of it. Per Lord Chancellor. Bernard, Rep. in Chan. 388. Lloyd v. Splitl.

Where it plainly appeared upon the evidence of both sides, that the consideration money paid on a purchase was the price of A.'s (though mentioned in the conveyance to be paid by B.) in fact it was never paid; and it not being for the statute of frauds, this would have been a resulting trust; and B. after A.'s death executing a declaration of trust, this plainly took it out of the statute, per Lord Chancellor Cooper. 1 P. Wms. 323. Ambrose v. Ambrose.

Wherever there is a consideration there can be no resulting trust. But if a lease be made for years without a consideration, there will be a resulting trust to the lessor.

Where a daughter's portion was charged upon the father's land, he, at the request of her father, had released her interest in the land, to the intent that he might be enabled to make a clear settlement thereof upon the son. It was declared by the Lord Keeper, that if this was done by the daughter without any consideration, there would be a resulting trust in the father, whereby he should be chargeable to the daughter for so much money. Freem. 305. Lady Trefal's case.

But where a trustful purchases lands out of the profits of the trust estate, and takes the conveyance in his own name; tho' probably, if he cannot make other satisfaction for the misappropriation, these lands may be sequestrated, yet it is to be considered, he could not be charged for the use of his own. If after your trust, no more than A. borrows money of B., and it is not a trust in writing; and a resulting trust it cannot be; because that would be to contradict the deed by parol proof, directly against the statute of frauds. But if this proof be thought to be defective, it has been with the profits of the trust estate, this appearing in writing might ground a resulting trust. On appeal to the house of
And see fort. R. 26

Yet punishment, Markant. nations, deratur.
iun. ufed man's before
to reward, but it was proclaimed that he at several times declared it must be sold to make A. satisfactory; yet the court (though inclined to decree a conveyance to A. the executor being dead infant) declared it to be not, because there was no express proof of the application of the trust money. Co. Pet. 169. 18; 130, Holst, v.

In the case leading hereunto, ibid, for 23 Vin. Abr. tit. Traft, and 5 Bac. Abr. tit. Usas and Trutfs.

Trutnes of papifts, are disabled to make presents to churches, by fl. 12 Ann.

Lumbell, (Tambrellum, Turbicbemat,) Is an engine of punishment, which ought to be in every liberty that hath view of frank-pledge, for the correction of fools and unquiet women. Kitchin, fol. 13. See Turking-tool.

Ett, or Lott, In the end of words, or names, of places, signify a town, village, or dwelling-place. Cowell, edit. 1727.

Ett, (Tambelum,) Is a measure of oil or wine, containing twenty-six gallons and four quarts, or four hog-

Tungrewe, (Sax. Tungerewe, i.e. villa praepulsi,) A reeve or bailiff, qui in villis (Quo quae dicimus manusrici) domini præsidii, fuit, quique vicino dispensa & moderat. Smalman.

Tonnage or Coumage, (Tunmagium and Tenmagium,) Is a custom or impost due for merchandise brought or carried in tonnage, and such like vellics, from or to other nations, after a certain rate for every ton, mentioned in fl. 12. H. 4. c. 3. 1. 1 Ed. 6. cap. 17. 23. Car. 1. c. 12. and 12 Car. 2. cap. 4. It is sometimes used for a duty due to the mariners for unloading their ships arrived in any harbours, after the rate of so much a tun. Tonnage and poundage began in the 45th of Edward the third. Cowell, edit. 1727. See 4 Infli. fol. 32.

Turquagium, the liberty of digging turfs. Man. Anglo. 1 tem. p. 632.

Turbarb, (Turbaria, from turbus, an obsolete Latin word for a turf,) Is a right to dig turfs on another man's ground. Kitchin, fol. 94. And common of turbary is a liberty which some tenants have of privilege to dig turfs in a certain passage. Turbaria is also taken sometimes for the ground where turfs are digged. And you shall find an office brought of common of turbary in 5 Alf. pl. 9. and 7 E. 3. fol. 43. They likewise used turbary for the turf, and turbantia for the turbary. Cowell, edit. 1727.

Turfts, may be imported as they might have been before 10 & 11 Will. 3. 1 Grou. 8. 2. c. 18.

Turkey company. Any subject may be admitted on payment of 20 l. 26 Grou. 2. c. 18.

Exportation of gold and silver subject to by-laws, 26 Grou. 3. c. 18. f. 4.

Their by-laws subject to be revised by the board of trade, 26 Grou. 2. c. 18. f. 5.

No woollen goods of France to be imported into the levant feas, 32 Grou. 2. c. 34. Nor British except from Britain, 32 Grou. 2. c. 34. f. 2. See French goods.

Turking, is a sort of illy-coloured cloth. 'Tis mentioned in the fit. 1 B. 2. c. 25.

Turn or Coura, Is the sheriff's court kept twice every year, viz. within a month after Epiftler, and within a month after Michaelmas. Magna Charta, cap. 35. and 3 E. 3. c. 15. From this court are exempted only archbishops, bishops, abbes, priors, earls, barons, all religious men and women, and all such as have hundreds of their own to be kept. Stat. 25 H. 3. c. 10. Brit. 

Turn cap. 29. calls it tur, id eis, ambiti, circuitus: It is a court of record in all things that pertain to it. It is the king's seat through all the country, and the sheriff

is judge, and this court is incident to his office. See Cramp, jur. fl. 230. and 4 Infli. fl. 260. See Fleta, lib. 2. cap. 52. and Mirror of jufi. lib. 1. cap. de turmis. It is called the sheriff's turn because he kept a turn or circuit about his house, holding the same in several places. Sir Js. Danderleig's life of Wales, fl. 50.

Turns, for every year, AL. C. 9 H. 3. c. 35. 31 Ed. 3. fl. 1. c. 15.

Peers, religious persons, and women, privileged from coming to the turn, Stat. Marg. 52 H. 3. c. 10.

Articles to be impri'd of in the turn, Stat. Wall, 12 Ed. 4. in appendix.

She should not make their interloc with 12 men, who shall fett their feasts, 13 Ed. 1. c. 13.

The sheriffs shall deliver over to the juftices the indents taken in the turn, and shall not make out processes upon them, 1 Ed. 4. c. 2.

Jurons in the turn shall have 20 1. a year, treehold, or 1 l. 6s. 8d. wrig, 3. c. 4. 3. 4. 3. c. 4. 3. See County court.

Turnips, Penalties on healing turnips, 23 Grou. 2. c. 26. f. 13.

Turno vicariumus Is a writ that lies for those that are called to the sheriff's turn out of their own hundred. Rog. of wifh, fl. 173.

Waking or cutting them down, punished as a trespass, 1 Geo. 2. fl. 2. c. 19. f. 1.

Charges of profecution to be defrayed out of the tolls, 5 Grou. 2. c. 33. f. 3.

Turspikes illegally erected, to be removed by order of quarter-lefions, 5 Grou. 2. c. 33. f. 4. See Highways.

As mentioned in fl. 24. Hen. 6. c. 8. See tournaments.

Turrepine. See Drugs, fire.

Tuts, See Schools.

Tvattte, Signifies a wood grubbed up, and turned to arable. Co. On. lit. fol. 4.

Zwangthee geffe, (Holpvs duarum materiam,) If he did any harm to any, his body was not answerable for it, but only himself. Freeden, part, post, fuper. freom. annal. fl. 345. See Thirdnight aume bindache.

Twulfhundus, The fame with Thunus. Amongst the English Saxons every man was valued at a certain price; and where an injury was done either to the person or goods, a pecuniary-mild was imposed, and paid in satisfaction of that injury, according to the worth and quality of the person to whom it was done. And all men were ranked into their classes, which see in bindane: Those who were worth 1200£. were called twulfhundis; and if an injury was done to him, satisfaction was to be made accordingly to his worth. Cowell, edit. 1727.

Twelve men (Dodecem bonis legatis,) is a number of twelve persons, or upwards, to the number of twenty-four, by whole oath at to matter of fact all trials pass, both in civil and criminal causes, through all courts of the Common Law in this realm. Fifth, in civil causes, when the matter in question, then the point (that they are to give their verdict) upon is delivered likewise unto them, which we call the ifles; then they are put in mind of their oath to do right, and are by the judges, who turn up the evidence, fent out of the court by themselves, to consider upon the evidence on both sides, which they judge, and which done, they return to the court, and deliver their verdict by the mouth of their foremost; according to which, (if the matter be not arrested or stayed by the court) the judgment paffed. Cowell, edit. 1727. See Jury.

Twyfulhdene, Twyblende, twybind, twybinden. Under our Saxon government all persons had such an estimation or value put upon their heads, according to their quality or degree, and according to such estimation were reduced to their different classes, rank, or order. The lowest order was that of the twyulfu, or husbandmen, who were valued at 200 shillings, and called twulfuhenden. The middle, that of the ochreblunden, or men whose value was fixed at 600 shillings, and thence called fakhuhenden. The highest, that of the thanes or noblemen, who were rated at 1200 shillings and called twulfuhenden. For which see the laws of King Alfred, cap. 12, 30, 31, 32, and of King H. i. cap. 76, and 87. Cowell, edit. 1727.
VAD

Accusation, imprisonment, or charge of
no trespass or offence. Leg. Eberd. c. 2. There is a
Mistake in the laws of King Canute, as published by
Bromyard, cap. 56. Si quis amicus delittus vel alerentia
di tantum laborum servitut, at plebiam non habet, in prima
tithe (it ought to be tytbe) id tdt, accipitern potest
carceana, & id jus datius ad dei judicium
covell, edit. 1777.

LYTHWIT, Is a British word signifying, familia, fami-
lia, tribe, and is derived either from plys, i. e. hui
flitid demis, vel leon addicionae domus opus, or else from
tyth, which signifies, tribe, to plys. In the first deriva-
tion it signifies a place where to build a house, and in
the second a beam in the building. And tythwite is a
tribe or family, branching or influing out of another,
which we in our English heraldy call second or third
bye. So that in case the paternal flock branched
itself into several tythwits or houses, they carry no fe-
cond or younger house than this tythwite farther; and the
use of thes tylwits was to shew not only the originals of
families, as if their work had been merely to run over a pe-
digeous, but the several divisions and distances of birth,
that in case any line should make a failure, the next in
degree may make use of their interest, according to the
rules of partition in Gemelynd. Covell, edit. 1777.

Lymouth. There is a customary defcent of lands
in the honour of Tymouth, that if any tenant hath
issue two or more daughters, and die fell in fee, the
life-time of the eldest, of the male part of the
issue, and af-
to the court of the male line; and for default there-
of to escheat. 2 KB. 111, 114.

Epitaph. See Epitaphes.

V.

ACUZIA, A void place, or waife ground. Me-
monard, in Soc. Mich. 9 Ed. 1. by Sir John
Mynard.

Vacation. (Vacatio) Is all the time betwixt the end of
one term, and the beginning of another. Where
such times began and ended in our ancestor's days, see
Roger Humeon's annals, part. 2. fol. 743. Where you
shall find that this intermission was called par dei &
necrologos. Also the time from the death of a bishop,
or other spiritual person, till the bishoprick or other digni-
ty, be supplied with another, is called vacat. Wotton.
cap. 1. 24 and 13 E. 3. cap. 4. 5. Fruits of benefits
taken in the time of vacation, shall be referved to the
next incumbent, 26 Hen. 8. c. 11. See Puncary,
non term.

Vacat. See Judgment, and 21 Fin. Ab. 356.

Vacatur. A voidance, or vacancy of any ecclesiasti-
cal benefit that shall hereafter happen. As prima vaca-
tura, the first voidance, praesum vacatur, etc.

Vacaray, or Vachary. (Vaccaria, al. vachoria, va-
choria and vachoria) Is a house or place to keep cows in,
Fleet, lib. 2. cap. 41. Domus ficta que vaco vacvaria,
vel quo negatius quod ad eas attinet perpetua. Sphen.
a dairy-house or cow-paftu. A yard where a fish
may have a vacary within the forest. Cremel.
seems to be a special name of a certain compass of ground
within the forest of Aheaton. And we read of the vac-
cary of Wyndale in Com. Lawr. Rot. Fin. 35 Edw. 3.
c. 23. Covell, edit. 1777.

Vacarium. The cow-herd, or herds-man, who looks after
the common herd of cows. See his office described in
Fleet. lib. 2. cap. 2.

Vacharia dulciurn, To wage a combat; which was
when a person challenged any other to decide a contro-
versy by combat or duel, and threw down a gaunt-
let, or the like sign of defiance, which if the other took
up, this was vacharia dulcium, as it were to give and
take a mutual pledge of fighting. Covell, edit. 1777.

Vol. II. No. 132.

VAD

MADUMI Morrison, Literally a mortgage; lands of
immoveable goods to pawned or engaged to the creditor;
that he has a right to the mean profits for the use of his
loan or debt. See Glowne, fol. 10. cap. 8.

Per vacuum ponerre, To take security, bail, or
pledge for the appearance of a delinquent in some court

Vagabonds, (Vogabundus) One that wanders about;
and has no certain dwelling; an idle fellow. Rogere,
Vogabonds, and Rody beggars, mentioned in divers flu-

Vagabonds, Given to such a person able to work
prohibited, 23 Ed. 3. ft. 1 c. 7.

Vagabonds, of justice c. to bind vagrants to good
behaviour, 12 R. 2. c. 7.

Vagabonds, able to work shall be set in the Rocks, 12 R.
c. 2. c. 7.

Vagabonds, Prisoners arrived from beyond sea shall have pas-
se from the magistrates, 12 R. 2. c. 8.

Punishment of vagrants and those that relieve them, 19
3. 28 & Ed. 6. c. 16. 52 Ed. 6. c. 2. 62 Ph. H. c. 12.
14 Ed. 4. c. 14. 18 Ed. 3. 1. c. 7. 7 f. c. 1. 4.

The punishment by going, burning through the ear,
&c. repealed, 35 Ed. c. 7. f. 24.

Wandering soldiers or mariners shall forfeit to labour,
and shall have a testimonial of a justice of peace, 39
Ed. c. 1.

General provy (search to be made for vagrants, &c.
Jus. c. 1. c. 4.

For apprehending of vagrants, 13 & 14 Car. 2. c. 12.
f. 16. 17 Ann. ft. 2. c. 23.

The judges may transport rogues and vagrants, 13 &
14 Geo. 2. c. 12.

Confable may make rates for re-imbusng the charge
of conveying vagrants, 13 & 14 Car. 2. c. 14.

Vagrants paid by contables to be brought before a
justice, 11 & 12 H. 3. c. 18.

Vagrants to set down the rates for conveying vagrants,
1 Ann. f. 2. c. 13. f. 6.

Vagrants to be put into the Queen's fes service, 2
& 3 Ann. c. 6. f. 10.

Vagrants to make rates for conveying vagrants, 5 Ann.
c. 32.

General directions concerning vagrants, 12 Ann. ft.
c. 23. 13 Geo. 2. c. 24. 17 Geo. 2. c. 5.

Breaking out of house of correction felony, 17 Geo. 2.
c. 5. f. 14.

Directions concerning women delivered in the street,
17 Geo. 2. c. 5. f. 25.

Vagrants whose settlements cannot be found, may be
sent to the plantations, 17 Geo. 2. c. 5. f. 28.

End-gatherers to be deemed rogues and vagrants, 13
Geo. 1. c. 23. f. 8.

Plants within five miles of the universites, deemed vagabonds, 10 Geo. 2. c. 19. f. 1. or selling without licence, 10 Geo. 2. c. 28.

The judges may examine a vagrant upon oath, and
for want of bail commit him till the affizes, 25 Geo. 2.
c. 36. f. 12.

Method of conveying vagrants, 26 Geo. 2. c. 34.

Valeat, Valeat, or Ealed, Valed, and Valleret,
(Valeatut vel Valeatia. Qui juxta dominum vadit seu mi-
netur; Fr. Valez,) A servitor, or gentleman of the pri-
mary chamber, according to Cameron. But Selden (in his
Title of bonorum, fol. 231.) says, vales anciently signified
the young heirs which were to be knighted, or other
gentlemen of great defect or quality, but now given
to thole of the rank of yeomen. In the accounts of the
8 Z
V A S

I, the Temple, is used for a bechener's clerk, or servant; the butlers of the house corruptly call them varlets. In Reg. of writs, 25 b. valentus. If the stuff or a vale.

It is mentioned in Statuta Hanover, and the 13 Ed. 1. cap. 4.


Valeuthiria, The kindred of the plain, on the father's side, and another on the mother's side, to prove that he was a Welshman: It is mentioned in Statuta Hanover, and the 13 Ed. 1. cap. 4.

Value, (vaiutum, vaiutus,) A known word, yet W'll in his symbolism, part 2. tit. Indictiments, sect. 70. Nicely distinguishes between value and price: His words are these: The value of those things in which offences are committed, is usually comprised in indictments, which terms are necessary in the case. In the 2d. Ed. 1629, but lower, and in trifles to aggravate the fault, and increase the fine: but no price of things first natus, may be expressed, as of deer, hares, &c., as if be they not in parks and warrens, which is a liberty. Stat. 8 Ed. 4, f. 5, nor of charters of land. And where the number of the things taken is a matter of difference, as of young doves in a dove-house, young hawks in a wood, there must be said (pretii) or (ad valorem) but of divers dead things ad valorem, and not pretii; of coin not current it shall be pretii; but of coin current it shall not be said pretii nor ad valuation, for the value and price thereof is certain. Cowell, edit. 1727, part 3. Ed. 14, pag. 537.

Value of marriage, (valeur maritilogi,) Was a writ that lay for the lord, having preferred a covenental marriage, to the infant, without dispargagement, if he refused to take the lord's offer, to recover the value of the marriage. Reg. Orig. fol. 164. Old nat. brev. fol. 90. See Part.

Vaniatus, (Precarior) As vanitatis Regis, the King's foro footman: Richardus Rychste miles teutic teras Sextiatae per ferjationis off vanitatis Regis in Gufltio, dome perusus fuit parti plurarum pretii 4, d. alien triumphi per coelum pretii 4. Rur. de finibus, Term. Merch. 2 Ed. 2.

Vaniatio, (Variantia, from the French Parier, i.e. alterare,) Signifies any alteration of a thing formerly laid in a plea, or where the declaration in a cause differs from the writ, or from the deed upon which it is grounded, Gr. 2 Litt. Abr. 6. &c. Where a variance between the declaration and the writ, it is error; and the writ shall abate. And if there appear to be a material variance between the matter pleaded and the manner of pleading it, this is not a good plea; for the manner and matter of pleading ought to agree in substance; and there will be no certainty in it. The 2d. Ed. 1629, part 3. Ed. 14, pag. 537.

Vane, the pleasing is good in substance, a small variance shall not hart. 3 Mod. 227. If the record of pretii prior agrees with the declaration delivered, a variation in the issue is not material. 2 Strange 1313. Where the original writ varies from the declaration, it is not remedied by any statute of Jealits. 5 Rep. 37. There is no variance between the writ and declaration, in an action of the case, the one being for more than the other, and tho' the plaintiff had a verdic, he could not get judgment: It was held, that it was not aided by the statute 18 Eliz. for that statute helps when there is no writ, not where there is one that varies in substance from the declaration. 2 Cow. 290. In a case of varietas pretii, it was adjudged ill, and not to warrant the declaration; and thereupon the judgment was reversed. Cow. Cap. 98, 205. See 21 Vin. Abr. tit. Vaniatio.

Vaffa, (Vaffallia) Signifies him that holds land in fee of his lord; we call him more usually a tenant in fee, whereas some owe fidelity and service, and are called

vaullia juravit. Scena de voleret. sign. verb. Ligurian, faith that vaullallia is divided into homologum & non homologum. Homologum is he that waless have service with exception of a higher lord, and non homologum is he that waless without exception, all one with ligus. And the confederator, verb. Vaffallia, faith, that it is regular vaullallia, l. inferior fuishe, because the waull allia is inferior to his master, and must serve and reverence him; and yet he is in a manner his companion, because each of them is obliged to the other. Cowell, edit. 1727.

Vallaghe, Signifies the state of a vassal, or servitute and dependence on a superior lord: Ligii vaullallia became only to the King, Jeste. Is a writ that lies for the heir against the tenant for term of life or of years, for making waal; or for him in the reverson or remainder. F. N. B. fol. 20, pag. 29. See 21 Vin. Abr. tit. Vallaghe. 21 & 26. vide 6 E. 1. cap. 5.

Vallum, A waale or common lying open to the cattle of all tenans, who have a right of commonning. Parech. Antip. 171.

Vallum Forrespel vel Scrori, That part of forest or wood, which the trees and underwood were do destroyed, that it lay in a manner waale and barren. Parech. Antip. p. 351.

Vallatao, or Vallatafo, Is one that in dignity is next to a baron. Camd. Brit. pag. 109. Brafdon, lib. 1. c. 8. says thus of them. Sund & all potes regni, qui decimur in manu regis, sive in fundatione capitis, sive in fundatione vaularum, sive magnae digitallis. Vaulatao enim nihil mihiius dici potest quam sua fortitum ed vaullalliaruni. See Coins. 188.

Vallum, (Vexforum,) The lands that a waless held. Bratt. lib. 2. c. 39.

Vallal-Heny, The tenants of one of the tithings within the manor of Bradford in Wiltshire, pay a yearly rent by this name to their lord, the marquess of Winchester, which is in lieu of waale paid formerly in kind. Cowell, edit. 1727.

Venerabilis Judicatorium, Is applied to money or fines paid to the King, to defray the charge he is at in maintaining the courts of justice, and protection of the people. 3 Salk. 33.

Aporus, (Fijeros, from the French vair, videre, in- teriri,) Are such as are sent by the court to take view of any place in question for the better decision of the right. Old Nat. Breve. fol. 112. So likewise Brattion us. lib. 5. trat. 2. c. 8. It signifies all such as are sent to view those that enjoin themselves de modo legi, whether they be in true so fack as they can: appear, or whether they counterfeit. Bratt. lib. 5. trat. 2. cap. 10 & 14. Lastly, It is used for thate for those that are appointed to view an offence, as a man murdered, or a vaullallia. 21. Cowell, edit. 1727. See Ulpsr.

Veliacra, (Ministerium de Velacra,) The office of dog-leader or a coursier. Rot. Pip. 5 Steph.

Velacra, One who leads grey-hounds, which dogs in Germany are called Welters, in Italy Velatores, in France Flateurs. And lands are held per servitium innum. vel de vadium vulgarium casus duce, St. Blain's Ter.

Vemagog, pag. 9.


Venaria, Are those beasts which are caught in the woods by hunting. Leg. Canut. cap. 128.

Venatio, Was sometimes used for the exercice of hunting, but more often for the prey taken, or venison. If any hunted without licence within the liberties of the King's forests, a severe penalty was imposed at the next quartermore; which fines and amercements were due to the King, but commonly referred to the King. So when William Fitz-Nigel enjoyed several privileges as forester of Berwode, it was— Exceptis in.

Venatione, que Domino Regi communi se servitutis. Parech. Antip. p. 73.

Venationem, Is a writ judicial, directed to the under therif, commanding him to fell goods which

2
VEN

he hath formerly by commandment taken into his land; for the satisfying a judgment given in the King's court. 

Regis, The King's teller or facteman; the person who exposed to sale those goods and chattels which the defendant failed to answer and demand due to the King. 

Philippus or Laurens, a famous vendor's name. 

Dominus Regis de foetus in caen. Eius, de omnibus rebus but que vendit debeat pro debito Dominus Regis, vel eum torem. 

Eius, a famous vendor's name. 

Judic. vendit, vendem, vendere etc., vendem, vendit, vendum. 

Venu, a famous vendor's name. 

and it appears by the return to such venire, that the party has lands in the county whereby he may be diftrain'd, the diriffs infinite shall be awarded till he do appear; and he shall forfeit on every default, as much as the defendant returns upon him in fines: But if a nulli be returned, a copy, alias, or abit, an alias, or abit, a venire facias ad respondendum may be without a day certain, because by an appearance the fault in this process is cured; but a venire facias ad triennium, extum must be returned on a day certain, &c. 

The book of destraffetos; so called because of the great number of fine bills. 

In hotam, &c. 

It often occurs in the history of our English fynods, and is called venitariam. 

F. &c. pag. 332. 

Gunter, Signifies the belly; but is also used for the children by a woman of one marriage: There is in law a first and second venter, &c. where a man hath children by several wives; and how they shall take in different of lands, see Deferent. 

Venire inpetитiendo, is a writ for the search of a woman that hath life with child, and thereby with-holdeth land from him that is next heir at law. 

Regist. fol. 227. 

Sir F. W. died, his lady enfeint. P. who married Sir F. W.'s eldest daughter, and who had the greatest part of the estate settled on him upon the marriage in default of a venire facias, or a venire facias ad triennium, or a venire facias ad respondendum; but to be the remainder in use, limited to the first son of Sir F. and to disinherit the issue in venire facias. The widow of Sir F. petitioned the judges and the lords in council, to stay his proceedings, suggesting that she was with child; which was granted. Whereupon P. suggested in Chancery, that she was not with child, but by such pretence detained the evidences of the lands, and stopped his recovering a remedy, and prayed the writ de venire inpetitendo, which was granted. 

Whereupon the sheriffs of London, with a jury of women, whereas two of midwives, came to the lady's house, and into her chamber, and sent to her the women, sworn by the sheriffs before, to fear, try, and speak the truth whether she was with child or not. The men all went out, and the women searched the lady, and gave their verdict that she was with child; whereupon the sheriffs returned the writ accordingly. 


A widow married again within a week after the death of her first husband, whose cousin and heir brought the writ de venire inpetitendo, directed to the sheriff of London; who returned, that he caueth her to be searched by such matrons, who found her with child, and good pari tura, to be admitted, within seven weeks, so that if then the sheriffs might take her into custody, and keep her till the child was delivered. But because the ought to live with her husband, the court would not take her from him, he entering into a recognizance, that the should not remove from his then dwelling-house, and that one or two of the women returned by the sheriffs should see her every day, and that two or three of them be present at the delivery; and a writ was awarded accordingly to the sheriffs of Surry. 

And afterwards she was delivered of a daughter, who was found by inquisition to be the daughter and heir of the first husband. 

Venu, (Victimenum, or Fisitetum,) is taken for a neighbouring place, locus quasi vicini habitans: It is the place from whence a jury are to come for trial of causes. 

F. M. 115. 

The several general rules respecting the necessity of a venue are, that a venue is necessary in all cases where the matter is trasversable, or where it affects the right of the action; but where it merely regards the person, or concerns damages only, there a venue is not necessary. 

The other cases on the cause the defendant pleaded in abatement, that the plaintiff was an alien enemy, and laid no 

venoire: 

VEN
VENUE: And on demurrer it was adjudged to have been well pleaded, and the plaintiff might have replied, that he was born in England generally. But if such a matter is pleaded in bar, it must be pleaded with a venire, and that venire should issue, if he was born in such a place in England, and in the principal cause judgment was given, quod bills caustifiant. 2 Ed. Raym. 1243.

Pie v. Cooper.

Matters touching the person, as privilege of attorney, may be pleaded without a venire, and be tried where it is brought. 2 Ed. Raym. 1175, 1173. Scaten v. Garret.

In covenant against one as affignee, there is no need of laying any venire, because an assignment is always intended to be made on the lands assigned: per Cor. Carth. 235. Buckle v. Hild."--H. 8d. C. 113.

If the declaration executory is transferable, and therefore a venire must be laid, Civ. Elia. 880. The Lady Shandas v. Simpson.

Where the judgment is upon a nihil dictat, the want of a venire is not material to its falling aside, because the enquiror is not to be any thing besides, judgments, which may be enquired by any jurors in the county. 1 Lart. 225. Remington v. Taylor.

It is a general principle, that the want of a venire is only curable by such plea as admits the fact for the trial whereof it was necessary to lay a venire: Or by a verdict. 6 Mod. 222. 3 Salk. 381. Thus in the case of a venire is necessary to be laid over; and where in trespass a defendant pleaded a submission to an award, and that an award was made, which he had performed, but laid no venire where the performance was. The plaintiff replied another award and the defendant tendered issue upon it, whereupon the plaintiff demurred. Holt Chief Justice said, that the want of a venire was added by the pleading over. Ed. Raym. 1039. Purflove v. Bailey.

So in debt upon bond, tho' no venire is laid where the bond was made, yet if the defendant pleads a release, this admits the bond, and aids the want of a venire; per Holt Chief Justice. But if the defendant had demurred, the want of a venire had been ill. Ed. Raym. 1040. Purflove v. Bailey.

By the 16 & 17 Car. 8. c. 8. the want of a venire is aided after verdict; and this in cafes not only where there is a wrong venire, but also where the cause is tried in a wrong county, as appears from the following cases. Baltic v. Botes. S. C. Raym. 181. by the name of Craft v. Winter. And it is there added, that the defendant might have demurred upon it. Many niceties which were formerly to be observed with respect to the laying of the venire, are now removed by the 4 & 5 Ann. cap. 16. which enacts, ' That every venire ought for the trial of any illise in any action or suit, shall be awarded of the body of the proper county where such illise is triable.' And see Stat. 24 Geo. 2. c. 18. which extends this a\ to trials of illises on penal

The venire in the declaration was laid at Leek, and not at Leek in the county aforesaid. Defendant demurred, and threw the want of a proper venire for cause, plaintiff joined in demurrer, and upon argument the court gave judgment for the plaintiff. It was held sufficient according to the course of the court to lay the venire at Leek which has reference to the county in the margin; and since by the act of parliament the venire facias is to be awarded de corpore commissarii, it is not necessary that any particular place in the county be laid. 1 Barnes's notes in C. B. 342. Spooner v. M'Ward.

It is a general rule likewise, that the county in the margin of a declaration will help the venire laid in the body of it, but will not hurt it; as appears from the following case:

In the margin flood the word Norfolk, in the body of the declaration, the venire was laid at the city of Norwich, in the county of the same city throughout. The plaintiff executed a writ of inquiry of damages directed to the sheriff of the city of Norwich. Had no venire been laid in the body of the declaration, reference must be had to the margin; but where a proper venire is laid in the body of the declaration, the word in the margin shall not vitiate it, for it is a fenallel which is helped by the 4 & 5 Ann. cap. 16. 1 Barn's notes in C. B. 345. Hendc v. Horsefield.

It is to be observed however, that in all real actions the venire ought to be laid in that county where the thing is for which the action is brought; for being local, it is only triable there; whereas matters which are transtitory may be tried in any county. 2 Litt. Abr. 728, 783.

In an action of debt brought for rent due for land upon a lease under hand and seal, where there is no privity of contract, as against an affigree, the venire shall not be laid out of the county where the land lies for which the rent is due; for the action is, for want of privity of contract, a case where a venire out of the county is out of which the rents are sufficing, and not transtitory: But where the action is brought by the lessor against the affigree, there being privity of contract, the action is transtitory, and the demises may be laid to be made in any other county than that where the land lies. 2 Litt. Abr. 783, 785.

With respect to criminal cases it is ordained by the statute 21 Jac. 1. cap. 4. that all informations or penal statures shall be laid in the counties where the offences were committed. And upon this statute the following point was adjudged. 21 Jac. 4. c. 3. See 5 Bac. Abr. 327, 329.

Verdicto, (Vereditum, quod dictum verita) is the answer of a jury made upon any cause, civil or criminal, as the commonwealth bring before the court to their examination. And this is twofold, general or special; a general verdict is that (Stannf. Pl. Cor. lib. 2. cap. 9.) which is given or brought into the court in like general terms to the general issue, as in an action of deceitful, the defendant pleaded, no wrong, no deceitful; then the issue is general, whether in the giving of evidence or in the examination before the court, they upon consideration of their evidence come in and say, either for the plaintiff, that it is a wrong and deceitful; or for the defendant, that there is no wrong, no deceitful. A special verdict is, when they say at large, that such a thing and such a thing they find to be done by the defendant or tenant, so declaring the cause of the fact, as in their opinion it is proved; and as to the law upon the fact, they pray the judgment of the court: And this special verdict, if it contain any ample declaration of the cause from the beginning to the end, is also called a verdict ad large, whereof read examples is Stannf. ab. Sagra, and Co. en Lit. fdl. 328. Casuall, edit. 1777.

Verdicti de bene eff is a conditional verdict, the validity of which depends upon something subsequent to the taking thereof. 5 Bac. Abr. 284.

If the judge before whom a cause is tried has a doubt as to the finding of a venire, he may direct the jury to find one de bene eff; and if it shall upon consideration be thought right to have taken the verdict, it shall be absolute. Browne Met. 13.

If an action of debt be brought against husband and wife, and at the trial of the cause the wife make default, and a protection be call for her, the judge may direct the jury to find a verdict de bene eff; and if the protection be disallowed
A special verdict is so called, because the matter in issue is thereby found specially. 5 Bat. Abr. 286. It seems to have been always held clearly, that where the general issue is pleaded, and issue is thereupon joined, the jury may find a special verdict. Bro. Verdit. pl. 45, p. 56, pl. 85.

It is laid down in some books, that if issue be joined upon a special plea, the jury cannot find a special verdict. Bro. Verdit. pl. 45, p. 56, pl. 85.

But it is laid down in one book, that altho' there be some opinions to the contrary it is now settled, that the jury may find a special verdict in any case where issue is joined upon a special plea; for that a question of law may as well arise upon such issue as where the general issue is pleaded. 1 Id. 226, 227.

And in another book it is said to have been holden by all the justices of the King's Bench, that in all pleas of the crown and in every civil action, whether it be real, personal or mixed, in which any issue is joined, either between the King and a party, or between party and party, the jury may find a special verdict, which is insufficient to the issue specially. 9 Rep. 12. Dawran's case.

Nay, it is laid down, that the court cannot in any case refuse to receive a special verdict, provided the matter specially found be pertinent to the issue; in as much as the jury have a right to find such a verdict in every case where that appears to them to be doubtful. 1 Id. 228. 9 Rep. 12.

But however true it is, that the jury may in any case which appears to them to be doubtful find a special verdict, it is not necessary even to their own safety for them so to do in every case. 1 Id. 228. Fang. 145. Ld. Raym. 1494. Fift. 256, 257.

For if in any case the judge, before whom the cause is tried, do take it upon himself to determine a question of law, concerning which the jury might otherwise have some doubt, and to direct them to find a general verdict, they may safely do it. 1 Id. 228. Fang. 145. Ld. Raym. 1494. Fift. 256, 257.

Nor are they in such cases, altho' the law should be mistaken, liable to an attaint; for it is only said, that the jury are liable to an attaint where they will take upon themselves the knowledge of the law and find a general verdict, it follows that they are not liable thereto, unless they do no more in finding a general verdict than follow the direction of the judge. 1 Id. 227. 4 Rep. 54.

If it appear upon the trial of a person indicted for murder, that he is of insane mind, the jury may, upon being informed by the judge that such a person cannot be guilty of any crime, (for eritum num contribuit nihil voluntis suae), find a general verdict of not guilty. 2 H. H. P. C. 303. Fift. 279.

If upon the trial of a person indicted for murder the judge is, upon the whole circumstances of the case, of opinion, that the homicide is justifiable, the jury may under his direction find a general verdict of not guilty. 2 H. H. P. C. 303. Fift. 279.

Hence it appears that the jury may with safety to themselves, in any case under the direction of the judge, find a general verdict. Ld. Raym. 1494. Fift. 256, 257.

But it is likewise said, that if the jury are in any case dissatisfied with the opinion of the judge, they are not obliged to follow his direction, but may find a special verdict. Ld. Raym. 1494. Fift. 256, 257.

It is usual when a special verdict is found, for the jury to find only the matter of fact, and to submit some question of law thereupon arising to the consideration of the court. 5 Bat. Abr. 285.

But if the judge before whom the cause is tried, do in a case where the verdict ought in his opinion to be a special one, take it upon himself to determine the law, the jury may find a special verdict without submitting any question of law to the consideration of the court. 5 Bat. Abr. 285.

If, upon a trial of a person indicted for murder, the judge is upon the whole circumstances of the case of opinion, that the homicide amounts to manslaughter, the jury ought to find a special verdict; for it would be dangerous to themselves to find a general verdict contrary to the opinion of the judge. Edf. 264.

It would also be very improper in them so to do; for if their verdict should be that the offender is guilty, he who is not in the opinion of the judge guilty of murder would be liable to suffer death as a murderer; and if their verdict should be, that the offender is not guilty, he who is so in the opinion of the judge, if guilty of felony would not be liable to a forfeiture of his goods and chattels, which every person convicted of felony, notwithstanding his being intitled to the benefit of the clergy, is liable to.

But the jury may in such case under the direction of the judge find the offender guilty of manslaughter; for
When a special verdict is directed by the court, the minutes of it ought to be setted and signed by one of the counsell of each party; and these ought to be delivered to the jury before they consider of a verdict. If this be not done, the jury may, without inquiring the claim of any one, find a general verdict. 2 Litt. 972. F. 792. F. G.

When the counsel for one of the parties refused to sign the minutes for a special verdict, the court may direct the jury to find one from the minutes as signed by one of the counsel for the other party. 2 Litt. 973. G.

It is intended to submit by a special verdict any question of law to the consideration of the court, the minutes for the special verdict are, so far as they relate to a question of law, to be approved of by the judge; for it is his province to see that every question of law be fairly stated. 2 Litt. 971. F.

It is rather incumbent upon the party, at whose instance a special verdict is found, to draw it up from the minutes as settled and approved of at the trial of the cause: But either of the parties may do this; and if the other party neglects to pay his share of the expense of drawing up the special verdict, the court will not hear any counsel for him who comes on to be argued, by a Litt. 971. E.

For more learning on the subject, see 5 Bac. Abr. tit. Verdict.

The Clerk, a place, adjoining to a church, where the vestments of the minister are kept; also a meeting at such place: And sometimes the bishop and priests sat together in vestries, to consult of the affairs of the church; in reformation of which ancient custom, the minister, churchwardens, and chief men of mult pluries, do at this day make a parish verity. By custom there may be feched verities, or a certain number of persons chosen to have the government of the parish, make rates, and take the accounts of churchwardens, &c. 2 Strange 738.

And when rates are made, the parishioners must have notice of a verity held for that purpose, and then all that are able are to be made by a rate, as the statute maketh. If all be present, who in contruction of law are the whole parish. Wood's 48. 90.

And if a parishioner be flut out of the verity room by the clerk of the verity; and he makes it appear that he hath a right to come into the room, and to be present and vote in the verity, &c. for the church在其, as a remedy. Mod. Co. in L. & E. 52. 254.

Vestrymen, London are a feched number of the chief parishioners in every parish within the city and suburbs, who yearly choose officers for the parish, and take care of its concerns, &c. by statute 15 Car. 2. c. 5.

On erecting parishes for the new churches to be built in or near London and Westminster, the commissioners for building the churches are empowered to name a sufficient number of the inhabitants of each new parish to be vestry-men; and on their oaths or removal, the majority of the parishioners to choose others, &c. and the parish officers, with the vestry or principal inhabitants of the new parishes, are in the session for the making of the new parishes, 9 Ann. 2. 11. And there may be vestry-men for parishes, who are to be constituted by parish officers, to give their attent to hiring of houses for the better employing and maintaining the poor. 9 Geo. 1. The right of appointing a verity is in the parish at large. 2 Stat. 1043.

Clerg. by the plaintiff as a parishioner of G, against the defendant, clerk of the verity there, for fluting the verity door, and keeping the plaintiff out of the room, so that he could not come in to vote, &c. Upon demurrer it was insisted that action would not lie; for if he should, then every parishioner kept out might have the like action; therefore to avoid multiplicity of suits, this will not lie, and if it be not lie, the defendant shall not be answerable to him. But per cur: The plaintiff as a parishioner hath a right to be present and vote in the verity, at the election of parish officers, and as to all rates with which the parishioners are charged; so that this action is his proper remedy for the injury done by the defendant by hindering him to come into the verity room; for if it should not lie, he hath no other remedy. 3 Mod. 52. Trin. 7 Geo. 1721. Braden v. Royland.

A verity was called to consider about building a workhouse, where it was agreed to, and to borrow money for that purpose; and that whoever should be bound for it should be authenticated by the parish. This order was confirmed by another, and both signed by the vicar and several of the inhabitants. 300. C. being the sum agreed upon, was borrowed of A. to whom B. gave bond for it. An order of verity was made for raising the money, but upon appeal to the quarter-fees for some new parishioners was quashed. B. was feed on the bond, 2 paid
paid the money, and then brought a bill for relief. And the matter of the Rolls decreed him his principal, inter- est, and costs at law, and in this court; and that the defendants the vicar, churchwardens, and overseers of the parish have agreed up for the year last, and if the inhabitants refuse payment, the plaintiff to be at liberty to apply to the court: And said that he did not see why the court might not as well compel those who are not parties to pay the rate, as order tenants though not parties to pay the rents; and because the defendants had put in a fair answer, their costs were declared to be raised by the same rate; but said, that if those who had appealed to the quarter-seizons had been before the court, they should have paid all the costs. 2 Wms. Rep. (32d.) 91.

1. Benefice. A crop of grass or corn; and mention is made in ancient charters of prima voptura, and secunda ve- flura, that is the first and second crop. The word was often used for a velt, veflure, livery, delivery, &c. as an allowance of some portion of the products of the earth, as corn, grass, wood, &c. to be paid for the salary or wagons to some officer, servant or labourer, for their livery or velt. So foresters had a certain allowance of timber and underwood yearly out of the forest for their own use. 1 Russ. Antig. p. 620.

2. Veflure. (Voptura) Signifies a garment; but in the law, it is applied metaphorally to a thing delivered with a trust, or feoff; so it is taken in 1. Wilm. 2. cap. 5. And in this signification it is borrowed from the feodals, with whom in feuity signifies a delivery of pos- session by a spear or flat, and voptura possession itself, Hateman in verb. Feudal. vobc. In feuity.

3. Veffure of an Arre of Lands, is mentioned in 1at. 14. E. 3. 1. 1. is the profit of it. So in Extensa Man- neris, 5 Ed. 1. It is inquirable. How much the velfure of an acre is worth, and how much the land is worth when the wood is felled.

4. Vettium Namium, Namium, Signifies a taking or disfress, and vetium forbidden; as when the bailiff of a lord disfrains his goods, or the lord forbids his bailiff to deliver them when the sheriff comes to replevy them, and to that end drives them to places unknown; or when without any words they are so cloined, that they cannot be repleved. Divers lords of hundreds and courts baron have power to hold plea de vettia namis, in old books, and for that purpose, 2o. Sir Henry 5. Man says it is antiqua juris mihi laicus, & breui Regis novem. See Mann or Mann. Uttingly, The Kings of the English Angles were so-cal- led from king Utfa, who lived in the year 578. Mutt. Wilm. Utta militantis, A highway. 10. Brutt. lib. 4. cap. 16. 2. Ed. 1. 6. cap. 3.

5. Wal nigll, The highway, or common road, called the King's way, because authorized by him, and under his protection. Leg. Hen. 1. c. 80.

6. Vicer, (Vicarius, quasi vix fungens rectoris,) The priest of every parish is called rector, unless the prebendal tithes are appropriated, and then he is called vicar; and when reftures are appropriated, vicars are to supply the rector's place. At first a vicar was a mere curate to the improver of the church, temporary, and removable at pleasure; as those who are now parih priests in ancient times when there were no particular parishes, were only curates of the bishop; but by forgetting the vicar got a settled maintenance of glebe, and some kind of tithes, and now claim their dues either by endowment or by prescription; And where the vicar is endowed, and comes in by institution and induction, he hath curatum an- numorum actualliter; and is not to be removed at the pleasure of the rector, who in that case has no cura- tum actualliter. But where the vicar is not endowed, nor comes in by institution and induction, the rector hath curatum annumorum actualliter, and may remove the vicar. 1. Vint. 15. 3. Salk. 378. In every church ap- propriated one is to be ordained perpetual vicar, and to be canonically instituted and induced, and also endowed at the discretion of the ordinary; which endowment is a part of the rector, set out by the patron, parson, and ordinary, for maintaining the vicar: The institution and induction, &c. of vicars is done in the same manner as that of rector; and over and above they are to take an oath of due and sufficient endowment, but this the bishop may dispense with; the statutes concerning pluralities, dilapidations, &c. relate to them as well as to parsons. 1. H. 4. 2. Rol. Abp. 337. Upon endowment, the vicar hath an equal, though not so great an interest in the church as a rector; the freedom of the church, church-yard and glebe is in him; and as he hath the freedom of the glebe, he may prescribe to have all the tithes in the parish, ex- cept those of corn, &c. Many vicars have a good part of the great tithes; and some benefices, that were for- merly feathered by the church, now are, in the same way belong to the vicar than by gift, composition or prescription, for all tithes due de jure appertain to the parson; and yet generally vicars are en- dowed with glebe and tithes, especially small tithes, &c. If a vicar be endowed with small tithes by prescription, and afterwards lands, which had been arable time out of mind, is alienated, and there are growing small tithes thereon, the vicar shall have them; for his endowment goes to such tithes, in any place within the parish.

7. The King shall have the advowson of vicarages.

8. 1 Ed. c. 4. s. 25.

9. The qualifications requisite for a benefice with cure, of the yearly value of 30l. 13. Eliz. c. 12. f. 6. Where a man may be deprived for holding a doctrine contrary to the Church of England, 15. 25 E. 1. f. 5.

10. What age, and what subsistence; and reading of the articles, requisite, 13 Eliz. cap. 12. f. 3. 23 Gor. cap. 28. f. 2.


12. Reading and absent to the Common Prayer, required for a benefice with curate, 13. 14 Car. 2. c. 4. f. 6. 7. 23. Gor. c. 2. f. 28. f. 1.


14. Owners of impropriations may annex them to the par- fagonage or vicarage, 17 Car. 2. c. 3. f. 7.

15. Incumbrances not 100l. in the year may purchase to themselves and their successors, without licence of mort- main, 17 Car. 2. c. 3. f. 8.

16. Augmentations of small vicarages and curacies by re- servations in leaves of tithes perpetuated, 29 Car. 2. c. 2. f. 10. c. 11.

17. The augmentations of small livings provided for by erecting a corporation to receive a grant of the first fruits and tithings from the crown, and grants from private per- sons, 2 & 3 Ann. c. 11. 1. Gor. f. 1. c. 2. 10.

18. Provises that such grants shall not prejudice former grants of first fruits, 2. 3 & 4 Ann. c. 11. f. 3. 5 Ann. f. 2. 3. Gor. c. 1. 20. f. 5.

19. Rectors, &c. may purchase lands to the yearly value of 100l. 10 Ann. c. 11. f. 10.

20. Bishops enabled to appoint flenps for curates, 12 Ann. f. 2. c. 12.

21. Claritages, (Vicariae,) Of places did originally belong to the parsonage or rector; being derived out of it: The rector
...
the King's, in affairs of the county. Cowell, edit. 1727.

Villdrect. A videlicet in a deed may make a separation, as well as an habendum: And if there be a several habend of an annuity of 20l. to one, and so to four others; it will be to the same effect, that it says habend 100l. to them, to be equally divided, (viz.) 20l. to each, with levera reth.

Villatutis profcripfi. The making a solemn proclamation to live a free and chaste widow; of which custom in England, the practice and ceremonies attending it are well delivered by Mr. Dugdale in his Antiquities of Warwichshire, pag. 313 & 654.

Villatutis, cited in flat. 15 Hen. 6. c. 3. See Insubertinnis.

Vill et armis. Are words used in indictions, &c. to express the charge of forcible and violent committing any crime or trespass: But on appeal of death, on a killing with a weapon, the words vi & armis are not necessary, because they are implied; so in an indictment of forcible entry, alleged to have been made manu fortis, &c. 2 Hawk. P. C. 179. 1 Hawk. 150. 120, and where the omission of vi & armis, &c. is helped in indictions, see the flat. 4 & 5 Ann.

Villëam. (Fr. eves., i.e. offis) Is generally where a real action is brought against a person, and the tenant doth not know certainly what it is in demand; in such case he may pray that the jury may view it. Britton cap. 45. F. N. B. 178. This view is for a jury to see the land or thing claimed, and in controversy, &c. and lies in ejectment, waste, affines of novel difference, where at the leaf fix of the recognitores, may be made, flat. 2 12d. App. 655. Stat. 13 Ed. 1. c. 48. 12 Ed. 2. By flat. 4 & 5 Ann. c. 16. § 8. In an action brought in any of the courts of record at Westminster, where it shall appear to the court that it will be proper and necessary that the jurors should have a view, they may order special works of digging, or burning, as for example, the commandings the sheriff to have fix of the first twelve of the jurors therein named, or some greater number of them at the place in question, &c. And the sheriff shall by a special return, certify 'That a view has been had.' And by flat. 3 Geo. 2. c. 25 (the balloting a§) § 14. It is provided 'That where a view shall be allowed, fix of the jurors named in the panel, or more, shall have the view, and shall be the first sworn, (or such of them as appear,) before any drawing.' But as the having a view was not, by either of these statutes, made a matter of course, though such a practice had prevailed, and had fix of the jurors in the view, the returning of the finding, thought it their duty to take care that their ordering a view should not obstruct justice, and prevent the cause from being tried: And they resolved not to order one any more, without a full examination into the propriety and necessity of it. For they were all clearly of opinion that the rule of parliament meant that a view should not be granted, unless the court was satisfied that it was proper and necessary: And they thought it better that a cause should be tried upon a view had by any fix, or by fewer than fix, or even without any view, than be delayed for a greater length of time: Accordingly they added special words of digging or burning, as for example, that the party praying a view confected 'That in case no view should be had; or if a view should be had by any of the jurors whomsoever, (that not being fix of the first twelve) yet the trial shall proceed, and no objection be made, in a count thereof, or for want of a proper return. Since which, motions for views are become motions of course, with such additional consent annexed to them. Bur. Rep. 256.

VIIL See the form of the usual rule, and also of the modern addition, both in deeds to be tried by fpecial jurors, and those to be tried by common jurors, respectively sects. 3 & 4. Res. Vet. II. n. 132.

Villg a. (Lat. vina flosum pernum regis reginae. &c. as introduced to the face & common utilities. Ind. flat. 5. 3 Ed. 6. cap. 19.) Is used for the eve or next day before any solemn feast; because then christians of old were wont to watch, fast and pray in their churches. Cowell, edit. 1727.

Vill laica removenda. A writ that lies where two persons contented for a church, and one of them enters into it with a great number of laymen, and hold out the other vi & armis; then he that is holden out shall have this writ directed to the sheriff, that he remove the forces of the church, and not to let the sheriff bent out of the church, whether he is there by right or wrong, but only the force. F. N. B. 54. 3 If. 131. and see 5 R. 2. c. 2. And the writ vi laica removenda ought not to be granted, until the bishop of the diocese where such church is, hath certified into the chancery such refilling and force, &c. that it is laid in the New Naturæ brevium, it lieth upon a surmise made by the incumbent, or by him that is grieved, without any such certificate of the bishop. New Nat. brev. 121. A refutation was awarded to one who was put out of possession by the sheriff upon a vi laica removenda. Cro. Eliz. 4 & 5 Ann. 42.

Villëa. (Villa) Is sometimes taken for a manor, and sometimes for a parish, or part of it. Villæ est ex partibus manumans vicinatas, et cellarum ex pluribus vicinis. T. 1. Indl. 115. b. Villi and parish shall be intended all one. Cre. Rep. 3 para. fol. 263. Why's case, yet there may be two duties. See flat. 1 Ed. 1. fol. 104. Mr. Bradton tells us, Sir quis in aegro unius ficut ad eunctum, non visi ibi villæ; sed cum es praefuit templum caperit, videlicet & vicinari adiectum. Lib. 4. cap. 31. And Fortescue in Land. Leg. Anglica. cap. 34. writs that the boundaries of villages is not by houses, streets, or walls, but by a large circuit of ground, within which there may be several hamlets, woods, woods and waste ground. Fleta likewise mentions the difference between a manor and a village, a manor, a village may be of one or more houses, but it must be but one dwelling place, and none near it; for if other houses are contiguous then it is a village; a manor may consist of several villages, or of one alone. Lib. 6. cap. 51. Cowell, edit. 1727.

By intendment of law, every parifh is a vill, unless it be flown to the contrary. G. Lit. 125. b. S. P. ad. judg. 2 Salk. 51. Mich. 67. 3. Wilkin v. Lewis. The possession of a portion of a manor by the other party must hand it. L. Raym. Rep. 22. S. C.

As to vills and parishes, the law originally took notice of a vill only because the divizion of a county into parishes was of ecclesiastical distribution; but now, by a process of time, that distinction is taken notice of in civil affairs; per Car. 2 Med. 238. Titus 29 Car. 2. C. B. in case of Addisoon v. Ottowy.

Tho' a place named shall be intended a vill or town, yet always the date of a deed shall be intended to be a particular place or house; and therefore if an obligation bears date at Aesworp, &c. it shall be intended to be such place or house, and not a place by the name. Arg. and granted per 3 Jult. Lot. 4. 5. in Ward's case. If a place be named generally, that place shall be taken to be, and intended a vill. 2 Salk. 501. Mich. 10 W. 3. B. R. Pinkstone v. King. Every vill shall have confable; otherwise it is but a hamlet, per Holt Chief Justice. 12 Med. 18. in case of The King v. Housen. See Patroh.

Villaga, a title given to those country villages, where the Kings of England had a royal seat or palace, and held the manor in their own demesne, and had there commonly to three chapel, not subject to ecclesiastical ordinary. So Addisoon v. Ottowy. The villaga, commonly to there, was called villaga. So was Hedvingdon, com. Oxen. &c. Paroch. antiqu. pag. 53.

Villain, (Villanae,) Signifies as much as servus among the citizens; a man of servile or base degree, from the French villain, ville, or from the Latin villae, a country farm,
V I L

The lord shall be preferred to any other master in retaining his villain for a servant, provided he does not retain more than is necessary, 25 Ed. 3. c. 1.
The lord may allege vilainage by way of exception, or feize his villain notwithstanding a liberate probanda depending, 25 Ed. 3. st. 5. c. 18.
The court was of the exception of consuance of vilainage, 37 Ed. 3. c. 17.
Commissions to inquire of rebellious villains, 1 R. 2. c. 6.
The lord shall not be barred of his villain by his answer in law, 9 R. 2. c. 2.

V I O

The King's villains in North Wales shall be obliged to do the same services as before, 25 H. 6. Exception of vilainage, 3 Hen. 7. c. 2. f. 4. See Vilainage.

Villain estate or condition, Contradistinguished to free estate. Stat. 8 H. 6. 11. They were called vilains from vilain, because they dwelt in villages; they were also called pageants, whereby they were ranked, and they were dispensable of that servile condition, that they were usually sold with the farm to which they respectively belonged; so that they were slaves and used as such, and kinder usage made them infolent. Cowell, edit. 1727.

Villanaius regis futuritatis redivivus, is a word that lay for the bringing back of the King's bond-men, that had been carried away by others out of his manors whereo they belonged. Orig. flor. 87.

Villanous judgment, (Villanum judicium) is that which calls the reproach of vilany and shame upon him against whom it is given, as a confirimator, &c. And the judgment in such a case shall be like the ancient judgment in utmost, viz, that the offender shall not be of any credit afterwards; nor shall it be lawful for him to approach the King's court; and his lands and goods shall be seized into the King's hands, his trees rooted up, and body imprisoned, tor. Staunfor. P. C. 157. Lamb. Eren. 63. Stat. 4 H. 5. And the punishment at this day appointed for perjury may take partake of the name of villanous judgment; as it hath somewhat more in it than corporal, or pecuniary pain, &c. the differentiating the testimo- ny of the offender for ever. See Perytry.

Villain fleeces, Are fleecer of wool, that are thorn from feabeed sheep. 31 Ed. 3. cap. 8.

Villainage, (Villainum from Villain,) Signifies a servile kind of tenure belonging to land or manors, whereby the tenant was bound to do all such services as the lord commanded, or were fit for a villain to do. Ubi siiri non patet virumerque quae servitum fueri debet manae. For every one that held in villainage was not a villain or bondman: Villainage vel servitum nihil habet; idem liberum, idem legatum, villanae & ten- tures in villano fueri de dominio dominis regis. Brandt, lib. 1. cap. 6. num. 1. The division of villainage was into villainage by blood, and villainage by tenure. Tenure in vil- lainage could make no freeman villain unless it was continued time out of mind, nor even free land make a villain from villainage, Brandt, lib. 3. cap. 8. num. 3, divides it into parcel villainage, a quo pretium servitium incipit et indeterminatis, ubi siiri non patet virumerque quae servitum fueri debet manae, viz. ubi quae faceret tenetur quiexit ei pretium fuerit; the other he calls villanum facipun, and was tied to the performance of certain services agreed upon between the lord and tenant, and was to carry the lord's dung into his fields, to plough his ground at certain days, to reap his corn, plath his hedges, &c. as the inhabitants of Bictum were bound to do for those of Clun-tale in Shropshire, which was afterwards turned into a rent, now called Bictum rent, and the service excused. There were likewise villaini jactantium, which were those who held their land in成份age, and there were villaini ad- vantitii, who were those who held lands by performing certain services expressed in their deeds. Brandt, lib. 2. cap. 8. See Borage tenure.

Villainy, (Villatum a vite) A payment of a certain quantity of wine instead of rent, to the chief lord for a vineyard. Mem. Angli. 2 tom. pag. 690.

Vinegar, vinegar beer, and verjuice, Every ton of vinegar imported for defraying the expenses of coigne pays ten thillings, 18 Car. 2. c. 5. f. 6.

And every ton of vinegar imported, 8, 9, 1 I. 2. c. 9. f. 9. 2.

And if by Englishmen four pounds, 13 & 14 Car. 2. i. f. 25.

And if by strangers, fix pounds, 13 & 14 Car. 2. i. f. 25.

Every barrel of vinegar, or liquor prepared for vinegar, that hath run through rape, &c. eight thillings, 2 W. & M. jff. 2. c. 10. f. 2.

And four thillings, 4 W. & M. c. 3. f. 2. And four thillings, 5 W. & M. c. 7. f. 27.

And four thillings, 5 W. & M. c. 20. f. 10.

And every barrel of vinegar beer made of English materials, expense, 12 Car. 2. c. 23. f. 5. And expenses, 12 Car. 2. c. 24. f. 20. And expenses, 22 & 23 Car. 2. c. 5. f. 1. And three thillings, 2 W. & M. jff. 2. c. 10. f. 2. And one thilling and sixpence, 5 W. & M. c. 7. f. 27. And one thilling and sixpence, 5 W. & M. c. 20. f. 10.

And every barrel of English or foreign materials, eight thillings, 10 & 11 W. 3. c. 21. f. 9. And two thillings and four pence, 4 Ann. c. 6. f. 9. And ninepence, 8 Ann. c. 7. f. 1.

Drawback on the exportation of vinegar, 13 & 14 Car. 2. c. 11. f. 25.

Penalties on concealing vinegar, from the gauger, 7 & 8 W. 3. c. 30. f. 16. &c.

Duties on vinegar by former acts taken off, and a new duty imposed, 10 & 11 W. 3. c. 21. f. 8. &c.

What to be deemed vinegar or liquors preparing for vinegar, 10 & 11 W. 3. c. 21. f. 11.

Thirty-four gallons to be deemed a barrel of vinegar, 10 & 11 W. 3. c. 2. f. 15.

Informations against vinegar makers for a false mis- tery, &c. to be laid within three months, 12 & 13 W. 3. c. 11. f. 17.

Vinegar made for pickles for sale to pay duties, 8 Ann. c. 7. f. 4.

Vinegar made by the manufacturers of white lead exempt from duties, 8 Ann. c. 7. f. 5.

Verjuice bought or made for sale how chargeable with duties, 7 & 8 W. 3. c. 30. f. 28.

Every hoghead of verjuice to pay 5 d. 8 Ann. c. 7. f. 5.

Additional duty of 8 d. per ton on French vinegar imported, 3 Geo. 3. c. 12.

And on all other vinegar imported, 4 l. per ton.

Vineyards, The owners of vineyards may make wine of British grapes only growing there, free from any duty. See 12 & 13 Geo. 3. c. 2.

Wine, A kind of flower or border, which printers use, to beautify printed leaves in the beginning of books. See ph. 14 Car. 2. c. 32.

Wine, See Wine.

Violence, (Violentia) All violence is unlawful: If a man affault him, with a view to the intention of bribing him to hold, only, to his damage, it is felony. And where a person knocks another on the head who is breaking his hedges, &c. this will be murder, because it is a violent act be-
V I V

yon the provocation. Kel. Rep. 64, 137. there is a violence in committing riots, &c.

Glitchy, a clay that sticks in the hands, such as sheriffs, bailiffs, &c. carry as a badge or emblem of their office. Cawell, ed. 1777.


mex ex 24 acres caplt-qutaur virgata bident faciunt, quin-

guise hide fomedum miles. See Kamens's Glossary. See Yadland.

Viriditas eligendi, It is a writ that lies for the choice of a vesterer in the forest. Reg. Orig. fol. 167.

Viridis Holm. It is a court of many colours, for in the old books viridis is used for varius. Brotten, lib. 3, cap. 16.

Virilia, The privy parts of a man; to cut off which was felony by the Common law, whether the party contended o. n. Brotten, lib. 3, fol. 44.

Vifitation, (Vifitation,) It is that office which is performed by the bishop of every diocese once every three years, or by the archdeacon once a year, by visiting the churches and their rectors throughout the whole diocese; Ut populus liberum cum commiffarii suffitietur a populiordine gubernator: &c. See Reform. Leg. Ecl. p. 124. And when a vifitation is made by the archdeacon, all acts of the bishop are sus-
pended by inhibition, &c. A commissary at his court of vifitation, cannot cite lay parifhioners, unless it be chu-chwardens and sidefemen; and to thowe he may give his oath, and employ by them. No. 123. 3 Saft. 370. Proxies and procurations are paid by the parsons whose churches are vifited, &c. Ibld.

Vifitor, An inspeétor of the government of a corporation, &c. The ordinary is visitor of spiritual corporations; but corporations instituted for private charity, if they are lay, are vifitable by the founder, or whom he shall appoint, and from the sentence of such vifitor there lies no appeal. 3 Saft. 381. By implication of law, the founder and his heirs are vifitors of lay foundations, if no particular person is appointed by him to fee that the charity is not perverted. Ibld. And where founders are vifitors of hospitals, &c. The appointment of a bishop without his charriam name to be a vifitor, extends to his successors. 2 Str. 913. The vifitor in his citation must purge his authority. Ibld. He may punifh one man for acts done by him jointly with others. Ibld. Offences against the statutes of a college are not pardoned by an act of grace. Ibld. 912. See Sat. 39 Libis. 4. 1807.

The King to be vifitor of colleges and other religious foundations, which were exempt from the ordinary's vifita-

Abbey, &c. that were exempt from ordinary vifitation, to be fubjeét to fuch vifitation as the King should appoint, 31 H. 8. c. 12. f. 25.

Queen Mary impowered to make statutes for the col-

lege's churches founded by King Henry 8. 1 Mar. 8. f. 8. 

The crown to vifit Manchefer college, while the war-
denhip is held by the bishop of Chester, 2 Gei. 2. c. 6. &c. See above.

Visiò of Spameus. In ancient time was wont to be the name of the Regardor's office in the forests. Mon-

wood, par. 1. pag. 195.

Vilàne, (Vilàne,) Signifies a neighbouring place, or place near at hand. 19 H. 2. c. 6. See Innc. 11. 7. 7. 3. 3. It is to be taken per vifum forisfugi. &c. Hoved. 784.

Vita Julia, 2 Legis. A sheriff of the county is said to be fuch as a law of justice, as fuch begets, and no procès is served but by him; and after fuits are ended, he hath the making execution, which is the life of the law. 2 Lis.

Vitlarp, (Vitlaeum,) Signifies a place of land or wa-

ter, where living creatures are kept. In law it signifies

most commonly a park, warren, fift-road or parkery. Co. 2 Inf. fol. 160.

Wita ward, Is where a witnes is examined per-

nally, or by amn. See Depoifition.

Wcirus, A bulk, or chip of burthen. Leg. Ethedredi Regis, cap. 23.

Witnage, The fame with alnage. See Alnage, Al-

nager.

Wita fectra, Is the standard ell of iron kept in the Exchequer for the rule of measure. Mon. Inf. tom. 2. pag. 383.

Umpire, (Arbitrier,) One chosen by compromise to de-

liver indifferently between both parties. Litt.

Umpirage, Is where there is but one arbitrator of matters submitted to award; and usufually when the parties refer to the arbitrator of certain persons; and if they cannot agree, they are ordered to deliver their award in writing before such a time, then to the judgment of another as umpire: And this is of-

ten the effect of bonds of submission to arbitration. 1 Rol. 481. 262. See Arbitration.

Aus tom ambitus alnus. In the grant of a deed, is a new addition of other estate in the same grant before

and hath its own conclusion attending it. Hub. 175.

Uncasferaty: This is an obfolute word, mentioned in Leg. Inf. cap. 37, viz.: He who kills a thief, may make oath that he killed him in faying for the fact, & perambulates the county, the theft must not be execufed, but is, that is, his kindred will not revenge his death: From the Saxon oeis, litus, and un, which is a negative particle, and signifies without, and ait, which is oath, i.e. to swear that there shall be no contention about it. Cmew, ed. 3. 20.

Vacia terrae, Vacia agri. These phrases often occur in the charters of the British Kings, and signify some measure or quantity of land. It was the quantity of 12 modii, and each modius poffibly 100 foot square. Mon. Mgr. tom. 2. p. 198.

Unrage Piffit, Is a plea for the defendant, being fu-

ed for damages, due at a day past, to all the property in

his bond, faying that he tendered the debt at the time and place, and that there was none to receive, and

that he is still ready to pay the fame. 7 E. 6. c. 83 Dyer.

Untruth, Is a Saxon word signifying as much as in-

cognitum, unknown, and is used in the old Saxon laws for

him that cometh to an inn guest-fife, and lefs but one

night. In fuch cafe his hoft was not bound to answer for any offence that he committed, whereas he was guilt-

less himfelf; but if by fee there a second night, then he was called godf, byfer, and then muft the hoft answer for him, even as if it were of his own family. And if he tar-

ried any longer, then he was called agehine, that is,

familiaris, whom, if he offend against the King's peace, his hoft was to fee forth-coming; or if he could not

bring him out within a month, and a day, he muft satisfy for his offences. Lamb. Archb. fol. 133. num.

7. and Braton, lib. 3. cap. 10. num. 2. writes thus of the fame, Item secundum antiquam confuetudinem dicti pa-
	teri de familia alligatus, qui hafpes fuerit cam eis per-

tres metes, quia prima parte petiri dictum eccutur; secunda vero, guefta, tertia nulla hoggehine. See Dyer, 6. 58. 139. 4.

Untruth: A is a word of dower, concerning which, See Dote men inft habit.

Under-nacht, Is a word of dower, concerning which, See Dote men inft habit.

Under-Chamberlain of the Exchequer, Is an offi-
cer there that cleaves the tallies, written by the clerk of the tallies, and reads the fame, that the clerk of the tallies, and the comptrollers thereof, may fee their entries be true. This is also the name of the officer to the royal treasury, and hath the custody of Domfeay book. There are two officers there of this name. Cawell, edit. 1777.

Under-Efheator. (Sub-Ifheator,) Mentioned in Sat. 5 E. 3. c. 4. See Esheator. 87. 98. 139. 1. 21. 28. See Shrift, and

21. 29. Ione.

Under-takers, Were such as the King's purveyors employed as their deputies. Stat. 2 & 3 Pb. & Mar.
And this, but It not Is cheft, beth's the law, Csivell, y are book by two to certain and UngElD, SShD^CSI, CIIuGILDA paid, tlnioit Clnitp 24. A to unity his of my Ethelred. thinc, induced of compofition a mayfr, repairs, the patent, and the incumbrant: But there are two other sorts of it, as where one church is made subiect to the other, and when one man is made rector of both, and when a conventual is made cathedral, as you may read in the chapter licet de locate & conductus, in Linclowe's provincialis, sect. Et quin. In the first signification by the statute 37 H. 3. By reason of the consecration of two churches in one, whereof the one is not above six pews in the King's book of the first fruits, and not above one mile distant from the other. And by another statute made 17 Car. 2. c. 3. It shall be lawful for the bishop of the diocefe, mayor, or any chief officer of the corporation, or patron or patrons, to unite two churches or chapels in any such city, town, or the liberties thereof: Provided fuch union shall not be good, if the churches so united exceed the sum of one hundred pounds per annum, unless the parishioners defire otherwise, &c. Cavell, edit. 1727. Parochians of the parish united to contribute to the common charges, &c. 4 Will. & M. c. 12. See 21 Vin. Atv. 594—599.


Unity of Poliflion (Unius poliflionis) is called confolidatio faithos & proprietatis in the Civil law, and signifies an union of two rights by several titles. As for example, If I take a leafe of land from one upon a certain rent, and afterwards I buy the fee-simple; this is an unity of fæfion, by which the leafe is extinguished, by reason that I, which before had the occupation only for my rent, am become lord of the whole estate, and am permitted to possess it as my own, but felf. Cavell, edit. 1727. A leafe for years of an advowson, on the church becoming void, was preferred by the leflee, and instituted and induced; and it was held, that this was a surrender of his leffe; for they cannot stand together in one person, and in the persons of dedication one of them is extinguished. Hatt. 105. No unity will extinguish or forfeit

pend titles; but notwithstanding any unity they remain &c. 11 Rep. 14. 2 Lill. 658. Unity of poiflion extingueth all privileges not expressly necessary; but not a way to a close, or water to a mill, &c. because they are not fatisfied by the public law, or enjoyed by unity of poiflion; and a rent or efsement, do not exift during the unity, wherefore they are gone. Latch 153. 14. 1 Vent. 85. Trim. 7 W. 7.

Chancellorship, Univerfitis, is most usually taken for those two bodies which are the nurfes of learning and liberal fciences in this kingdom, viz. Oxford and Cambridge; en- dowed with great privileges, as appears not only by Stat. 2 & 3 P. & M. c. 15. 35 El. c. 21. 18 El. 6. but much more by their several charters granted by divers pious and munificent Kings of this land. Cavell, edit. 1727. By universities in general, we understand those fefenaries of learning where youth are sent to finflish their education, and to be instructed in the liberal sciences. With us, by universities, are more particularly denoted those two learned bodies of Oxford and Cambridge which are invested with several peculiar privileges. 3 Bac. Abr. 327. 127.

Each of the universities had several powers and privileges by charters from the Kings of this realm, particularly one in the eighth of Hen. 4, whereby they were authorized to hold plea of all caufes arising within the university according to the course of the civil law: But in the opinion of all the judges, the grant was held not to be good, for that the King could not by his grant alter the law of the land. To remedy this and other defects respecting their powers and privileges, a spec- ial act of parliament was made in the 13 Eliz forming all former letters patent, and all manner of liberties, franchises, or powers which they held, or of right ought to be enjoyed, &c. 4 Hift. 227. Gibb. 212. H. 257. Archibp. of York v. Schoub. By letters (not confirmed by parliament) dated 30 March 11 Car. 1, granted to the university of Ox- ford, their old privileges are explained, and larger granted, 1 Med. 194. Magdalen college cafe. Wood's ill. 54.

Their courts are called the chancellor's courts. The chancellors are usually peers of the realm, and are ap- pointed over the whole university. But the courts are kept by their vice-chancellors their affiliants or deputies; the caufes are managed by advocates or proctors. Id. ibid. By Bat. Abr. 329.

Those courts have jurisdiction in all caufes ecclefia- stical and civil (except mayhem, felony and fireftood) where a scholar, fervant or minister of the university is one of the parties in fuit, Id. ibid. and Cor. Cor. 73. Wiles & v. Bradle. But fee the petition against the grant of Hen. 4, in Young's ante, p. 358, 390.

Their proceedings are in a fimmary way according to the practice of the civil law; and in their sentences they follow the juftice and equity of the civil law, or the laws, statutes, privileges, liberties and customs of the universities, or the laws of the land at the discretion of the chancellor. Cor. Cor. 73. Wiles & v. Bradle. Heulay 25. Thomas Wileck's cafe, Hard. 526. Castle v. Littfield. If there is an erroneous sentence in the chancellor's court of the university of Oxford, on appeal lies to the congregation, thence to the convocation, and from thence to the King in chancery who nominates judges delegates to hear the appeal; the appeal is of the same nature in Cambridge. Wood's Inft. 549. 2 Ld. Raym. 1246. The King v. The chancellor, &c. of Cambridge. As by charter confirmed, as above mentioned, by act of parliament, cognizance is granted to the university by the public law, or equity, to a scholar, fervant or minister of the university, depending before the judges of the King's Bench, Common Pleas and others there mentioned, and before any other judge, tho' the matter concern the King: If an inimicos de- juris is brought by quo warranto in the exchequer against a scholar or other privileged person, the university shall
have conscience, for the court of exchequer is included in the general words, Cro. Car. 73. Willock v. Brad- 
If a debtor and accountant to the King fails a scholar by
not paying a certain sum, or an attorney fails a scholar by writ of privy, it is said that the universities
shall have no conscience, for a general grant shall not
take away the special privilege of any court. Hard. 189.
S. P. 3 Leon. 149. The lerd Anderson's cafe. 2 Dall. 184.

But in the cases where privilege is allowable, a schol-
ear, &c., cannot waive his privilege, and have a prohibi-
tion in the courts of Wythminger, for the university by
right has the converse of the plea, where one is a pri-

There was no such freedom, and a stranger is forced to sue a privileged person in their courts by reason of that right vested in

But a scholar ought to be refident in the university at
the time of the suit commenced; and no other ought
to be joined in the action with him, for in such cafe, he
shall not have privilege. Hall. 28. Thomas Willock's cafe.

Theo is it said that servants of the university are pri-

viledged, yet it has been held, that a bailiff of a college was not capable of privilege. Brown. 74. Carr v. Po
gu.

Neither is a townsman entitled to privilege, to exempt
him from an office in the town, if he keeps a shop and
follows a trade, too he is matriculated as servant to a

scholar. 2 Hen. 106. The city of Oxford's cafe.

It is to be observed, that the mayhem, felony and
freethold are above, to be the only causes excepted
in their charter; yet it has been held that in actions for
the recovery of the possession of a term, without claim-
ting title to the freehold, they shall have no privilege, be-
cause the freehold may come in question. Cro. Car. 87.
d's cafe.

It hath been disputed how far the words of the grant
intitled them to privilege in matters of Equity. And the
general principle of construction seems to be, that where
chattels only are concerned, or where damages only are
to be given, there their privilege is allowable, but where
the suit is for the thing itself, there their privilege
cannot be allowed. As in the following cases:

A bill was brought setting forth a contract under seal
with the defendant, for making a lease of certain lands in
Middlesex, and to have execution of the agreement.
The defendant pleaded the privilege of the university, to
proceed in their courts, and equity, except con-

cerning freehold, and concluded to the jurisdiction of the
court. But Lord Keeper Guilford overruled the plea,
because in this case they can only excommunicate or im-
pair, but cannot sequestrate lands in Middlesex, and to
can give no remedy; and because the charter of the uni-

versity of Oxford, empowering them to proceed in all
pleas and quarrels in law and equity, &c., ought properly
to be extended to matters at Common law only, or to
proceedings in equity that might arise in such cafes, and
not to mere matters of equity, which are originally such,
as to contract agreements in spec. 2 Hen. 362. Drap.
per. Creaster.

What clerks refting there shall be dispensed with from
residence; purveyors not to take viuallas within five miles of the universities, 2 & 3 Ph. & Mar. c. 15. 13 El.
44.

Counts to the universities, &c., in discharge of the payment of first fruits and tenth, confirmed, 1 El. c.
4. § 4.

The franchises of the universities confirmed, 13 El.
8. § 29.

On college leases a third part of the rent shall be re-

fitted in corn, 18 El. c 6. 11.

The penalty for taking reward for a vote for a scholar-
ship, &c., in any church collegiate, college, &c. 31
El. c. 6. 12.

Vol. II. N°. 133.
the reason why it is void, if with a penalty, seems to be
that the law gives validity to every act of the infant's
which may be for his benefit; but it cannot be presum-
ted to be for his benefit to enter into a penalty. Noy 85.
Lec. 87. Rigg v. Wref.

So likewise the bonds of perfons non compe mens, after of-
lace found, are absolutely void. 4 Rep. 178. Beverly's cafe.
It is said the reason why the bond of an infant or per-
son non compe is void, is because the law has appointed
no act to be done to avoid it; and the only reason why
the bond of a man which is void, is that the cause
of nullity is extrinsic, and does not appear on the face
of the deed. 2 Salt. 675. Thompson v. Leech.

And in general all bonds which are given for a pur-
pose molain in se, as to kill or rob another, are void: Like-
wise bonds given for the performance of a melain prohi-
bitum as for maintenance. And bonds to oblige perfons
to neglect their duty to the King and kingdom, are abso-
lutely void. 5 Dic. Abr. 358.

If a future lease be made to commence after the death
of tenant in tail, it is merely void in its creation; for
it is not to commence till the title of the issue com-
ences, and that is an elder title concurring with it; and
if the law should make it otherwise than void, the
word void would make him a trespasser. 2 Salt. 650.

If a bishop grants administration, and there are bona
notabiles, such administration is absolutely void, as well
as to the goods within his own diocece as elsewhere,
because he hath in such cafe no jurisdiction whatever. 5

So likewise a judgment, given by perfons who have no
good commission for that purpose, is void. 3 Leef. 239.
Void things are good to some purposes. As if for lei
20 years a lease takes a lease for 10 years, to begin presently,
upon condition that if a certain thing be not done the
lease shall be void; in that cafe, though the second lease
be void on the breach of the condition, yet the furrender
remains good. Finch's Laws 62.

So likewise if a feoffment be made, to be void on the
non-performance of a certain condition, yet after the feoff-
ment's entry for the condition broken, the feoffee shall have
an action for a trespass done by the feoffor before. Id.
ibid.

Alfo if tenant at will grants over his estate, though
the grant be void, yet it determines his will. Arg. Hard,
47. Jones v. Clark.

A fraudulent gift of goods is not void against all, for
it remains good against the donor, and is only void
against his creditors. Per Anderfen, Cro. Eliz. 445. Upt-
on v. Baffet.

So likewise a feoffment upon maintenance or champer-
nty is not void against the feoffor but against him that hath

Alfo where a feme covert or infant are bound in an
obligation with others, though the bond is void as to the
feme covert or infant, yet it is good as to the other, who
shall be sued alone, and the writ shall not abate.
Pigott.

In equity the content of the heir makes good a void
devise. Chape. Cafes 209. Id. Cornbury v. Mid-
dleton.

So likewise a devise void by misnomer of the corpora-
tion was decreed to be a good appointment of a chari-

If a leaf be made by the husband of the wife's land, and
the husband dies, the leaf is not void, but voidable

Likewise if tenant in tail make a future lease for years,
which by possibility may be to commence during the
life of tenant in tail, it is not void, but voidable as to the
issue. 2 Salt. 620. Mathil v. Clarke.

So if an infant makes a feoffment or a leaf, and dele-
vers it with his hand, it is voidable only. 2 Brumw. 248.
Plumer v. Hacket.

It is said likewise, that a deed of Exchange entered in-
to by an infant, or one non jure memoriae, is not void,
but may be avoided by the infant when arriv'd at age, or
the heir of him who is non jure memoriae. Urt. 281.

Alfo an infant's bond of submission to an arbitration

An infant's contract of marriage likewise is void only.

Voir dire, (Ferlaton dicta.) When it is prayed
upon a trial at law, that a witness may be sworn upon a
voire dire; the meaning is, he shall, upon his oath
speak or declare the truth, whether he shall get or lose
by the matter in controversy; or if he be unconcerned
his testimony is allowed, otherwise not. Cowell, edit.

Volumus, Is the first word of a clause in the King's
8. and 13 Rich. 2. cap. 16. Of protections fome are
cum clando vables, and of thefe there are feven kinds,
viz. 1. Quia prifonarum. 2. Quia meretricium. 3. Quia
inincidentes non exiit. 4. When any one fects into the
King's service beyond fea in war, is imprisonment.
Ca. an Lit. fed. 199.

Voluntarit, As applied to a deed, is where any con-
venance is made without a confideration, either of mo-
ney or employment. Thus a remainder given in settle-
m ents, to a man's right heirs, are deemed voluntary
in equity, and the perfons claiming under them call-
ed volunteers. Abr. Ca. Eq. 385. 3 Salt. 174. See
Fraud.

Voutuats, Is, when the tenant holds at the will of
the lefser, or lord, that is in two manners; one is,
when I make I a leafe to a man of lands, to hold by my
will, then I may put him out at my pleasure; but if he
fire the ground, and I put him out, then he shall have
his corn with egrets and regrets till it be ripe to cut, and
carry it out of the ground. And fuch tenant at will is
not bound to fustain and repair the house, as tenant for
years is. But if he make wilful waffers, the lefser shall
have against him an action of trefpafs. The other te-
nant at will of the lord is, by copy of court-roll, accord-
ing to the cuntrim of the manor; and fuch a tenant may
furrender the land into the hands of the lord, according
to the cuntrim, to the wife of another for life, in fee,
or in fee tail; and he shall take the land of the lord,
or his feward, by copy, and shall make fine to the lord.
Cowell, edit. 1777.

Vouuum, A vow or promise, used by Flea, for sup-
plie; to dies voutum is the wedding-day. Fleta, lib. 4.
cap. 2. par. 16. Si donaturius ad ali a vota concoverti-
 rar.

Vooucher, (Voucher,.) Signifies when the tenant calls
another into the court, that is bound to him to warranty.
New Book of Entries, verb. Voucher; Voucher de Gar-
raunf. Brit. cap. 75. And that is either to defend the
right against the demandant, or to yield him other lands.

Ac this also he must deliver at his own charge the book,
the leaf, and the deed, which the Common law doth not,
except it be specially covenanted. The places whereby
the voucher is called, is a summanatus ad warrantandum.
And if the sheriff return upon that writ, that the party
hath nothing, whereby he may be summoned, then goes
out another writ called Sequitur sub fac period.
Lamb. Explic of Saxon words, "Advocate. A rec

onstry with a 2d tenancy, is, when there is but one vouche

: And with a double voucher, is, when the vouche

other voucher, when the tenant being implicated in a partic

in London, or the like, vouche

one to warranty, and prays, that he may be su

mum, and give the substantiates or warranties for the accoun

tant's discharge. Cowell, edit. 1727.

The vouche before justice in Eyre shall be summoned for the third or fourth, St. Mariab, 52. 3. 36.

Counter-plea given in mortdancello, that the tenant was the first that entered, St. Wyclif. 1. 3 Ed. 1. cap. 40.

Not to be out of the line, Ibid.

In a writ of right, that the vouchee, &c. had no se

, since the time of whole sefin the demandant counts, Ibid.

Proceedings in foreign voucher in London, 6 Ed. 1. c. 12. 9 Ed. 1.

The counter-plea given by flat, Wyclif. 1. cap. 40. shall be received though the vouche be pretent, St. de Voe. 20 Ed. 1. fl. 1.

Averment that the vouche is dead, or that there is no such person, shall be received, 14 Ed. 3. fl. 1. c. 18. See Rule 45.

Utopian, Shall not make beds and other wares de

, 11 Hen. 7. c. 19. 5 & 6 Ed. 7. cap. 23.

 Beds filled with blocks may be carried on board ships for necessary use, 12 Car. 2. c. 32. sect. 11.

Upland, (Uplandis,) High ground, or as some call it seuera forma, contrary to moorish, marth or low ground, Lugubris.

Ufa, Is the river Ufa. Tune in retum ad Undorf

, tune sursum in Ufa ad Walking street. Du Cange.

This river was called Ufa from the goddes of that name: For it was customary amongst the pagans to dedicate hills, woods, and rivers to the goddes, and to call them after that name. And the Britains having the great left reverence for Geras and Prosperina, who was also called Ufa, did for that reason name this river Ufa: and the being the goddes of the night, from thence they compeact days by nights, and years by months:

Of which we have full former remains, as feam night, fortunis, &c. Cowell, edit. 1757.

Vulg. See Mschriftrum.

Ufis. (Ufis,) In the original signification is evident enough, but it hath also a proper application in law, and that is the profit or benefit of lands or tenements, Wyclif. Symbol, lib. 1st. feb. 49, 49, 50, 54, 52. Every deed consists of two principal parts, namely, the pre

mises, and the consequents; the premises is the former part thereof, being all that which precloked the babendum or limitation of the estate, which are the persons con

tracting, and the things contracted. The consequent is that which follows the premisses, and that is the baben

sum, in which are two limitations: The one of the estate or property, which the party passive shall receive by the deed: The other of the ufe, which is expressed in the said babendum to or for what ufe and benefit he shall have the same estate: and of the limitation of such ufe, many particulars are fet down in the same, Wyclif. Symbol, part 1. lib. 1st. sect. 308 & 327. These ufe were invented upon the flatute of Wyclif. 3. Quia emisere terramum, before which flatute no such ufe were known. Perkin's De

uves 528. And because in time many decrees were in

vent, by setting the possessio in one man, and the ufe in another: to avoid which, and divers other mischif

and inconveniences, was the flatute 27 H. 8. cap. 10. provided, which it mete the ufe and possessio together. So Co. lib. 3. Chudley's cafe, fol. 121. Cowell, edit. 1727.

An ufe at Common law was an equitable right which he referred, who conveyed a legal estate to another, up

on truth and confidence that the person to whom he so conveyed it, should never and at any time part with the rents and profits of the land, and that he would execute estates according to his direction. Gil. Law of Ufes 175. 1 Rep. 121. Chudleigh's cafe.

The feoffee therefore, or terrenant, (that is, the per

son to whom the legal estate was conveyed,) had the free

hold or floods possession in him, and the ufe; he had conveyed the legal estate to him (that is, the c Kyfug Go ufe) had neither in re, nor ad rem, for if he had enter

ted upon the land without the content of the feoffee, he had been a trespasser; so that nothing remained in him but a bare confidence or trust, for which, if it was bro

ken, he had no remedy, but by subpensa in chancery. 5 Bac. Ab. 342.

But this equitable right extended to all persons who claimed in privy under the feoffee, that is, who came into the same estate which the feoffee had to the ufe, and by contract, or by the right of a dower or common, not by a legal estate, but not by contract or agreement, and therefore claiming not by or from the feoffee, he consequently did not claim the estate as it subjunct to the ufe, but he claimed an estate above that free from and discharged of the ufe; and it would in a manner have destroyed his title, because he had no interest in it. So in this same ufe, when he did not claim the estate which was charged with the ufe: For confidence in the prim. was requi

site, as well as privy of estate. 5 Bac. Ab. 342.

Confidence in the peron, was either express or implied; as if a feoffee to an ufe had, for good consideration, enfeoffed the ufe, and the two persons had no other estate, but the ufe, the feoffee being destroyed; for the person enfeoffed not knowing that there was any ufe, no truff could be reposed in him to let the c Kyfug Go ufe take the profits; but if he had not notice, a trust might well be faid to be reposed in him, since he took the land, knowingly, charged with the ufe. So also, if the feoffeman had been made without confi

deration, tho' the person enfeoffed had no notice of the ufe, yet he would necessarily have lived to the ufe, for the law in that case would have implied notice of the ufe, and consequently the trust would have re

mained. 5 Bac. Ab. 342.

From hence it may be collected, that to every ufe at Common law there were two inseparable incidents: a privy in estate, and a confidence in the peron; and where either of these failed, the ufe was unfounded or de

stroyed. 5 Bac. Ab. 342.

The original sufes were from a title under the Civil law, which allowed of an usufructuary possessio, differing from the substance of the thing itself; and it was brought over to us from thence by the clergy, who were masters of the Civil law; for when they were prohibited from taking any thing in mortmain, and after several evasions by purchasing lands of their own ufe, the ufe was destroyed; and for the person enfeoffed not knowing that there was any ufe, no truss could be reposed in him, from the took the land, knowingly, charged with the ufe. So also, if the seoffeman had been made without con

"eration, tho' the person enfeoffed had no notice of the ufe, yet he would necessarily have lived to the ufe, for the law in that case would have implied notice of the ufe, and consequently the trust would have re

mained. 5 Bac. Ab. 342.
USE

1. Of the power of esjoy ufe at Common law, and by the Stat. 1 Rich. 3. c. 1.

It has been said in the definition of an ufe, that esjoy ufe had neither jn re, nor ad rem; for if the feeoffee broke his trufh, he had no remedy againft him but by fulpana in chancery. The feeoffees commenced in the time of Ed. 3, but it was always againft the feeoffee in trufh himfelf, and was never allowed againft his heir till H. 6. And in this point was the law changed by the Fortifying Chief Justice. Kelso. 42. b. 5 Bay. Abr. 345.

So that if the feeoffee had died, his heir was feized to hold upon his fees, and the feoffees, but as the law was taken to the time of H. 4, till at length the fulpana was granted both againft the heir, and the feeoffees of the feeoffee, about the time above mentioned, or according to some later. Id. ibid, and 46 b.

But tho' at Common law esjoy ufe had no power over the land, yet he might alien the ufe, because every one might dispose of the rights that were in him; or he might prefer a bill in chancery to make the terre tenant execute the ufe in himfelf. Gil. Law of ufe 26.

But at Common law, it esjoy ufe had entered and made no part of the fee in fee, and therefore no fees in fee of the lands, this had not been good to pass the estate to the feeoffee; because esjoy ufe ufe had not the freehold in him, and so could not pass it to another; but by his entry he was a diffeffor: yet in this cafe, if the feeoffee of the esjoy ufe had re-entered upon the purchafe, the feeoffees would not have had the lands to their own ufe; and they would not have had good to pass the ufe to the feeoffee, because he had transferred the ufe to another. Plowd. 352. b.

If esjoy ufe makes a leafe for years, rendering rent, the reversion is void, unless it be by deed, for the rendering rent to a man is an acknowledgment of the holding lands from him; but here the lands are not held by esjoy ufe ufe, but by the feeoffees who have the reversion.

But if the reversion be by deed, the feeoffees shall not have the rent reverfed, but esjoy ufe ufe shall have it. Brs. F. to ufe 338. f. 23. 339. f. 26.

If esjoy ufe makes feeoffitement, with a letter of at-
torney, the goings are called the letter given, and the attorney gives every according to law. Whether a feeoffitement was good, or whether it was not a diffeffor. Brs. F. to ufe 339. f. 28.

But by the flutute of r Rich. 3. c. 1. a power was annexed to an ufe, that esjoy ufe ufe should alien the lands.

The reafon of that flutute was, because esjoy ufe ufe in poiffelion often aliened the lands, and then the feeoffees entered, which caufed a great deal of vexation and chan- cery fuits; and therefore the flutute gave esjoy ufe ufe an immediate power of alienation, without the concern- inment of the feeoffees; which leads us more particularly to examine the power of esjoy ufe ufe. Gil. Law of ufe 37.

The flutute of r Rich. 3. cap. 1. enacts that, "Every ef- late, feeoffitement, gift, relaee, grant, leaves, and con- firnation of lands, tenements, rents, services, or here- ditaments, made or had, or hereafter to be made or had by any person or perfon, being of full age, or whole mind, at large, and not in due ture by any person or per- sons; and all recoveries and executions had or made, shall be good and effective to him to whom it is fio made, had or given, and to all other to his ufe, againft the feller, feeoffor, donor, or grantor thereof, and againft the fellers feeoffees, feeoffees, or feeoffees; and to be charg'd to the fame only as heir or heirs to the fame feller, feeoffor, donors, or grantors, and every of them, and againft all others having or claiming any title or intereft in the fame, only to the ufe of the fame feller, feeoffor, donor, or grantor thereof; all rights to the bargain, fale, chen- vant, gift, or grant made: Saving to every perfon or perfon's right, title, action, or intereft, by reason of any gift in tail thereof made, as they ought to have had, if this flutute had not been made." And all recoveries. By this flutute all flutute recoveries, as well as recoveries upon good title, are comprehended. But they are good only againft the grantors, Gr. and their heirs claiming only as heirs to the grantor, and not that they are not againft him that claims as heir to the grantor and his feme in tail per fannum dom. Arg. Pl. c. 4. a. 6. Eliza. in Manwells cafe.

Recovers. If a man recovers by erroneous judgment, and makes feeoffitement to his ufe, and the other being writ of error, and reverses the judgment, he may enter without fure facius againft the feeoffees; for it is a reco- verse in chancery that shall bind him and his heirs and feeoffees, by the flutute of r Rich. 3. Brs. Feeoffitement to ufe 337. fett. 3.

Feeoffees, donors, or grantors. Yet if esjoy ufe ufe grants a rent-charge, and the feeoffees are diffeffed, the grant shall be good againft the diffeffor; and yet he does not claim only by the esjoy ufe ufe. Arg. 2 Lor. 153. pl. 183. In cafe of Cobb's executors v. Cifnon.

Only to the ufe. This flutute did not take away the power of feeoffitements; for they may yet make feeoffitements but in cafe of the ufe ufe, he may not make feeoffitements likewise. Godd. 393. in cafe of Lord Sheffield v. Ratsell.

Saving to every person, &c. It was agreed per Cor. that thefe words are taken for tenant in tail in poiffelion, and tenant in tail in ufe; for esjoy ufe ufe in tail has no right or intereft. Brs. Feeoffitement ufe 359. f. 40.

Here it is obfervable, that there is a difference between a feeoffitement according to this flutute and a feeoffitement at Common law; in cafe of feeoffitement at Common law, the feeoffor ought to be feized of the lands at the time of the feeoffitement; but if a feeoffitement be according to the flutute of r Rich. 3, in fuch cafe the feeoffor did not need to be in poiffelion: Feeoffitement at Common law give away both efates and rights; but feeoffitements by the flutute of r Rich. 3, give the efates, but not the rights. In cafe of feeoffitement at Common law, the feeoffe is in the per, viz. by the feeoffor; but in cafe of feeoffitements by the flutute of r Rich. 3, the feeoffees are in the poiffelion, viz. by the firft feeoffees. Godd. 318. Lord Shof- feld's feeoffitement.

Another difference likeneffe is taken in Plowden between the feeoffitement of the feeoffees and of esjoy ufe ufe; for if the esjoy ufe ufe for life in tail makes a feeoffitement in fee, either with or without confideration, all the old ufees were difcontinued, and the ancient efate which the feeoffor had, is gone, and a new efate created, and thefe new ufees raised by the feeoffitement; for when esjoy ufe ufe makes a feeoffitement in fee, by this flutute he might lawfully do, he paifed an ufe in fee simple to the feeoffee; which being a new ufe to the feeoffor, all the old ufees were difcontinued, and confiderably the efate of the feeoffor must be altered; and were in the ancient efate, they were still subjeft, by the former and elder limi- tation of ufees, to the old ufees; therefore have the feeoffees, by the construction, a new efate to the new ufees; but if the feeoffees themselves had made a feeoffitement without confideration, the feeoffees had found feeoffitement to the old ufees, for here was no ufe or new efate. Gil. Law of ufe 180. cited Pl. C. 350.

By the flutute esjoy ufe ufe has no power of alienation, when he has a naked right to an ufe, and not an ufe in ufe; unlefs it be in order to confider an efate in being; because the intent of the flutute was only to give the feeoffees power to transfer their ufe; and not any other remedy to regain and revolve it; and unlefs he has the ufe he cannot pas the ufe, much lefs poiffelion to another. Gil. Law of ufe 27. Plowd. 351.

But if the feeoffor to the ufe in fee be diffeffed, and esjoy ufe ufe relapses to the diffeffor, this extinguishes the ufe, and by the flutute bars the entry of the feeoffor. Plowd. 351.

4
Also where feoffees to an use are diffident, and after the dissenter enforce cyffy que use, who enforcing a stranger; this is good, and shall bind the feoffees, for the feoffment is good to pass the possession, and right of the use, which he had in him; and the feoffees cannot estop him, or shut his hand, which by his own act has extinguished. Gil. Law of Ufes 29.

The statute likewise is to be understood of cyffy que use that has an use in fee, in opposition to him that has only a reversion or remainder of an use. If a feoffment be made to the use of A. for life, remainder to B. in fee, in any manner whatever, before the feoffees claim the whole estate for the use of A. during his life, and he has the whole advantage of it; and the statute, that gives the present possessor of the use a power of alienation, has provided an immediate remedy for the remainder man. Gil. Law of Ufes 28. Plowd. 330.

But if the tenant for life of an use aliens in fee, and dies, the feoffees may enter on the alience; for by the words of the statute, the alienation is good against cyffy que use and his heirs, and persons claiming only to his use: So when feoffees claim to the use of the remainder man, the feoffment of tenant for life, according to the authority given by the statute, is no longer valid to bar the feoffees of the entry; for their right is by the Common law. Gil. Law of Ufes 25. Plowd. 538. Delanue v. Barnard's cafe, the point refolv'd.

If there be a feoffment in fee to the use of A. for life, the remainder to B. in fee, B. has no power of alienation by statute, and may not enter on the possession of the remainder of the use, because the possession is, as said, to the use of A. only, during his life, and so the remainder man has nothign to do with the possession; and if the remainder man should enter on the feoffees and make a feoffment, either the use of tenant for life would be destroyed, or the feoffment of tenant for life, and the possession of the estate to themselves, without being subject to dower; for by the Common law, every particular estate is derived out of the fee simple by the agreement of the parties in interest; but here are no parties to such agreement, and the statute has not altered the law in this case. Gil. Law of Ufes 29. Plowd. 350. 1 Ca. 152. 8.

But if there be a feoffment for life, remainder in fee, he in remainder may take a lease for years, or grant a rentcharge to begin after the death of tenant for life; for he cannot enter and take the possession out of the feoffees; but it is an excusable contravention on which the statute operates. Gil. Law of Ufes 30. Plowd. 358. b.

So likewise if a lease for life is made to the use of A. and afterwards the reversion is granted to another for life to the use of B. and attainment is had, and afterward the reversion is granted to another in fee to the use of C. in fee. it is not good; for the tenant had the estate long after the death of the tenant, and the rent or plural, but the first estate for life to whomsoever he pleases, and B. may grant the reversion for life to whomsoever he pleases. Plowd. 350.

Where a feme covert was cyffy que use, and the husband gave a feoffment in fee, this was good during the life of the baron only, by equity and reason, though the statute of 1 R. 3. says nothing of a feme covert. Plowd. 350.

It is to be observed farther with regard to the power given over estates in use, that if cyffy que use makes a feoffment to a tenant for life, that condition, and after enters for the condition broken, he shall be freed of the estate in the land; for the whole estate is devolved out of the feoffees by the feoffment, and they cannot enter for the condition broken, because no parties to it. Gil. Law of Ufes 32. 1 Inf. 202. a.

If cyffy que use in tail aliens the land by lease and release, or seoffment, this only binds the feoffees during life, because he has no longer power of alienation; if cyffy que use however aliens by fine, this is good, and bars the entry of the feoffees after his death; for that would dissipate the estate in tail by the statute 4 H. 7. yet if he alienated the estate and left a tenant to the use, he is not tenant to the seoffment; so that would be no bar at Common law, and this is not helped by any statute.

Vol. II. No. 133.

For though a recovery here be expressly mentioned, and to bind the party himself, yet the right of the estate in tail is saved. Br. F. at Ufes 337. f. 2. 338. f. 22. id. f. 7. Gil. Law of Ufes 32.

If tenant in tail of a trust levy a fine, or suffer a recovery, this is an equitable bar of the estate, though the trust is not destroyed; but if the recoveror be a legal tenant to the seoffment; for as the fine and recovery, so the entail in a legal estate at Common law, so it follows the entail of a trust in the court of equity. 1 Chan. Cas. 49. 210. 2 Ch. Cas. 03. 64.

But if tenant in tail of a trust makes a mortgage, or acknowledges judgement on a statute, the remainder and fine and fettles a jointure, the jointrefh shall hold it subject to the mortgage or judgment, in the same manner as if the mortgagor or conusor had been tenant in tail of the legal estate, and after the mortgage or judgment had received a fine and made a jointure; because the subsequent declaration of the use of the fine is merely the act of the tenant in tail, and he cannot by any act of his own make a subsequent conveyance take place of one precedent; and the rather because the feme claims under that fee which tenant in tail got by the recovery or fine; and that fee was subject to all the charges he had laid upon it. 1 Ch. Cas. 119. 120.

If cyffy que use makes a lease for years, referring rents, he shall have an action of debt upon the contract, but he shall not aver, because the legal estate of the reversion is still in the feoffees, since he has put the estate out of the husband; but the equitable estate is in him, and he may disafford it, and the rent and seoffees shall pass upon sale willed by donee tenant, and enter for a forfeiture, &c. Br. f. Pris. to Ufes 357. f. 6. 338. f. 18.

Also if cyffy que use makes a lease for years, referring rent, this shall go to his heirs; for since the statute has given him power to make estates at law, they are governed by the rules of Common law. Br. F. at Ufes 332. b. f. 18, 23, 39. Gil. Law of Ufes 54.

So likewise, if cyffy que use makes a lease for years, referring a rent with a clause of re-entry for non-payment of the rent, and the tenant may enter, cyffy que use may enter; for he only can take advantage of his own condition, and since the statute allows the act of re-entry by allowing him power to make leaves, he may ever keep the possession against the seoffees; que reus tamen. Br. F. to Ufes 338. f. 18.

A gift in tail for years, or for a lease for years, to an use, is good, notwithstanding the statute of R. 3. for the statute is intended to avoid gifts of chattels to uses, to defraud creditors only; and so is the preamble and intent of this statute. Br. F. Pris. to Ufes 340. f. 60. For we learning on this subject, see 5 Bac. & 22 Vin. Abs. tit. Ufes.

2. Of the alterations introduced with respect to conveyances to uses by statute 27 Hen. 8. c. 10.

This statute enables that, Where any person or persons fland feized, or at any time hereafter shall happen to be seized of or in any honours, castles, manors, lands, tenements, rents, services, seoffments, remainders, or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recover, covenant, contract, agreement, will or testament, in any manner or means whatsoever it be; in every such case, all and every such person and persons, that have or shall have any such use or trust in fee simple, tail, for life, or years, or otherwise, or any use, confidence, or trust in a source or receiver, shall have from henceforth all and be feised, and be demised and adjudged in lawful fenn, estate and possession of and in the fame honours, &c. to all intents, &c. of and in such like estate as they had or shall have in the use, &c. of and in the same; and the estate, title, right and possession of such person or persons or persons as were or hereafter shall be seised of all lands, tenements, or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body polit.
tie, be from henceforth clearly deemed and adjudged to be in him or them, that have or hereafter shall have any freehold in the same, truth, after such resolution, manner, form, and condition as they had before in or to the use, confidence, or trust that was in them."

*Where any perfmy or perfons?* The word *permy* [excludes] all corporations. Lord Bacon's *Reading on the Statutes* 334. 335.

> S, T, R, V. This word faid excludes chattels and rights. It likewise excludes contingent ufees, because the feifin cannot be put to a fee-fimpie of an ufe; and when that is limited, the feifin of the fetttee is fpent.

Lord Bacon's *Reading on the Statutes* 335.

> *Or other berelations?* This word (hereafter Ginz) is to be interpreted in this fome things whereunto inheritance is in effe; for if I grant a rent-charge de nova for life to an ufe, this is good enough; yet there is no inheritance in being of this rent. It likewise excludes annuities and ufees themfelves, fo that an ufe cannot be to an ufe.

Lord Bacon's *Reading on the Statutes* 335.

> *Title in remainder or restorer.* The flate having faid spoken before of ufees in fee-fimpie, in tail, for life or years, addeth, or otherwise (in remainder or reverter) whereby it is manifeft, that the fift words are to be understood of ufees in poiffeffion.

Lord Bacon's *Reading on the Statutes* 337.

**In lawfull feifin, estate and poiffeffion** The words (lawfull feifin, estate and poiffeffion) intended not a poiffeffion in law only, but a feifin in tail; not a title to enter into the land, but an actual estate.

Lord Bacon's *Reading on the Statutes* 338.

> S. T. 2. Where divers poffeffors fhall be jointly feied to the ufe or truft of any of them, thofe which have fuch ufe or truft, fhall be adjudged to have only fuch poiffeffion, poiffeffion, and feifin of lands, &c. as they had in the ufe or truft, faving to all poffeffors other than thofe which be feied to any ufe or truft, all ufe."

Syll. 3. "Alfo faid to all thofe poffeffors which fhall have no constitutive rights as they might have had to their own proper ufe."

Upon this faving claufe the following cafe has been determined. The husband being feied in fee made a leafe to O. and S. but it was in fecret confidere for the preferment of his wife; and afterwards be made a feoffment to O, and others of the fame land to other ufees. It was faid by the advice of Way, Anderson and Mac- bowd, that the term was not extinguifhed by feoffment, by reafon of the provif. and because O. had this leafe to his own ufe, it is not extinguifhed by the feoffment which he took to the ufe of another. *Med. 196. pl. 420. Cheneys cafe.* Consequently the lands were feasually in truft to the ufe of the wife, and education of their fons and daughters, notwithstanding that divers covenants were therein contained, and a rent was reserved; and fays that the feoffment made afterwards was to the ufe of the husband himfelf, and his faid wife for their lives, with remainder over; and that the fame was held accordingly before. before.

Syll. 4. 5. "Where any be faied to any ufe or intent that another fhall have a yearly rent out of the fame lands, cada my guf ufe of the rent fhall be deemed in the poiffeffion thereof of like efate as he or fie had that ufe."

A man, in confideration of natural love and affection, covenanted to stand feied to the ufe of himfelf for life, the remainder to B. his fon in tail, and to the intent that B. fhould have a rent illufing out of the lands, during the life of A. the fon dies and his executors brought death for the arrears which was to the ufe of the remainder. It was faid by the words of the flate B. in this cafe had a good rent, as well upon covenant as by a feoffment, or bargain and fale.


The defign of this law was utterly to abolifh and de- fine the ufees in reft of conveyance ufees; and the meanes they took to do it was to make the poiffeffion fall in with the ufe in the fame manner as the ufe was limited; and where they were all freedhols, it was thought they would be then subject to the rules of Common law; but the method has not anwefed the legiflators defign; for it has introduced fome few forts of conveyances quite oppofite to the rules of Common law; for now where-ever any ufe is raifed, the flate gives fhippe ufe of the poiffeffion; fo that it is only neceffary to form an ufe, and the poiffeffion Polaffes without any livery or record, and might be with in the hands of public tenants, and now the ufe (by the name of trust, which were the fame before the flate) remains feparately in fome perfons, and the poiffeffion separately in others, as it did before the flate, and are not brought together but by a decree in Chancery, or the voluntary conveyance of the poiffeffion to the ufe. So that the principal ufe of the flat. of 27. H. 8. is effentially upon persons and the poiffeffion, and not to bring together a poiffeffion and ufe, but to introduce a general form of conveyance, by which the conufors of the fine, who are as donors in the cafe, may execute their intents and pur- pose at pleafure, either by transferring their efates to flangers, by enlarging, diminishing, or altering them, to and amongst themfelves, at their pleafure, without obferving that rigid and strictnefs of law for the poiffeffion of the conufors, as was required before the flate.

*Vanh. 50.* Dixon v. Harrifon.

In this cafe, there are, three ways of creating an ufe or a truft which till remains as at Common law, and is a creature of the courts of Equity, and subject only to their controul and direction. To, where a man faid in fee raifes a term for years, and limits it in truft for A. For this the flate cannot execute, the termor not being faied. To. Where lands are limited to the ufe of A. in truft, to permit B. to receive the rents and profits; for the flate can only execute the fift ufe. 3dly, Where lands are limited to ufees in fee, but not fuch lands to fuchs and per- fons; for here the lands muft remain in them to answer their part- pofees; and thofe points were agreed to. 1 Mor. Equ. Co. 7. 8, 9. To.

But before we confider the particular alterations in- troduced in the mode of conveying property by the 27. H. 8. it may be neceffary to premise in general, that, since the flate, the limitation of ufe is in many cafes governed by the rules of law. As if a feoffment is made to the ufe of J. S. and his heirs male lawfully be- gotten, with remainder over; this does not pafs an ef- tate-tail, but a fee-fimpie, fince the flate; for fince the flate has brought ufees into poiffeffion, they ought to be governed by the rules of efates in poiffeffion, as to the words that are effential to creating fuch ufees. Now, if the limitation of the land to the ufe of an efate, there is no fuch efate at Common law to far as to allow an efate in being, without words neceffary to create it; and here nobody islimited from whence the heirs of the tale may proceed. Alfo no fee-fimpie can be created in ufees, without the word heir, fince the flate, for the fame reafon. *Gil. Laws of 75. 1 Rep. 87. 6.*

So if a man makes a feoffment to the ufe of himfelf for years, the remainder to B. in tail, remainder to his own right heirs, and after B. dies without issue, leaving the fecoror, the remainder to his right heirs is void, be- cause it being confumptive, there is no efate of freedom to support it, for there is no tenant to the prætsis, and the other having a perpetual tenant to the praetice was an inconvenience the flate expressly defign'd to redrefs, and consequently to this rule the flate has submitted all ufees. 2 Real. Mor. 791. *Gil. Laws of 76.*


To a man who makes a leafe to the ufe of A. for life, the remainder to his fifth fon in tail, the remainder to B. in fee; if A.'s, his wife being prime- ment enfent, and a fon is afterwards born, he fhall take nothing; for if the remainder does not vell at the deter- mination of the particular efate, ithall never vell; for in the power of the lands to the growing of an efate, and nature and being of efates that were forfeited at Common law, and a remainder ex vi termini supposes a particu-
lar estate, of which it doth remain. *Gil. Law of Uss. 177.* But fee to 10 11 12 3. r. 16, for preferring consenting remainders to after-born children.

So if a man makes a feoffment in fee to the use of A., his fon for life, and afterwards to the use of every person that shall be heir to life, it is not good to the heir; for it is against the rules of Common law, that a perpetual freehold for life only should descend, because it creates a perpetuity, and it feems in this case, as if Chancery (since there is supposed a good consideration) would be bound to execute a fee in A. according to the interest of the parties. *1 Rep. 136. 2. Chid. 3. c. 74.

*Gil. Law of Uss. 77.* In some cases however, the statute operates against the rules of law. As if a man makes a feoffment in fee, to the use of A. in fee; but upon payment of 100l. or any other sum to the use of B., in fee, if the contingency happens, the fee shall be executed in B., for though, according to the rules of Common law, a fee cannot be limited on a fee, because a fee-fimple is the largest estate that can be limited; and therefore will not bear a remainder over, by way of limitation; and tho' this cannot be confined a conditional estate; because to avoid maintenance, the Common law allows no stranger to take advantage of a condition: Yet the necessities of commerce and family settlements induced the Chancery to pass by this rule, and the statute has executed the possession in the same manner and form as the party had the use of before, and have a use now to the same use before the statute, he cannot have an absolute and unconditional estate, since the statute; for that is to fet up an estate directly contrary to the express words of the statute. *Gil. Law of Uss. 73.* *See 5 Bar. & Ab. and 22 Vin. Abr. tit. Uss.*

After action, is the purifying or bringing an action, which in what place and county it ought to be, *See Br. & 5. 64.*

Uffet, (Offiarius), from the French Hasquier, A door-keeper of a court, is an officer in the Exchequer, of which sort there are four that attend the chief officers and barons at the court at Westminster, the justices, exchequers, and all other accountants, at the pleasurable of the court. There are also officers in the King's house, as of the privy chamber. *See Bankrot.*

Ufufciption, (Ufucapit). The enjoying a thing by continuance of time, or receiving the profits, long possession, or enjoyment, *Cowell, edit. 1727.*

Usurious contract, is any bargain or contract, whereby any man is obliged to pay more interest for money than the law allows. *See Fov.*

Usurpation, (Ufurpati). Is the using that which is another's; an interception, or disputing a man in his right and possession, &c. And usurpations in the civil and canon law are called intrusions; and such intruders having not any right shall subnit, or be communicated and deprived, &c. *See Benfoc's Contempl. Gibb. Codex 817.* The usurpation of a church befpre is, when one that hath no right, pretences to the church, and his clerk is admitted and inftitted into it, and hath quiet possession six months after institution, before a quare impedit brought: It must commence upon a praecoxation, not collision; because by a collation the church is not full, but the right patron may bring his writ at any time, to remove the usurper. *1 Inst. 222. 6 Rep. 30. And by usurpation, the fee of an advowson may be gained, as well as the avavasance upon which the usurpation is made: And the true patron cannot remove the interception, though he brings his writ against the right of advowson, which he is driven to for recovery of the inheritance. *6 Rep. 49.* It has been formerly held, that upon an usurpation the usurper gains a fee-fimple in the advowson; in like manner as he who enters into land during a vacation, and claims the same as his inheritance, by warranty and without title or act of law. The statute will not take away the entry of the successor; nor more than the usurpation on a vacancy take away his right of presentation when the church becomes void. *2 Ca. Ind. 360. 17 Ed. 3. p. 37.*

At Common law the patron in fee was put out of possession by an usurpation, and to recover the advowson it fell by a writ of right; but he hath no remedy for the preceding possession or for the right of possession, unless he brings his writ of right of advowson, and re-continue the advowson: If the patron had the advowson in tail, or for life, this turn and also his whole advowson went. *2 Salt. 383.* An usurpation upon a leafe for years, gains the fee-simple, and puts the true patron upon the same footing as the true patron in fee, if he in reversion after the determination of the lease for years, may have a quare impedit when the church is void, or may present; and if his clerk is instituted and indicted, then he is remitted to his former title; yet till that is done, the usurper hath the fee, and the writ of right of advowson lies against him. *Hutt. 3 All. 2 389.* Upon the statute, *1 Eliz.* If an usurpation be on a bishop, it shall bind him; but his succeflor may present to the next avoidance, or bring a quare impedit, although he is out of possession: All usurpations shall bind the bishop who suffereth them, not their successors. *1 Leon. 20. 2 Cro. 673.* No one can usurp but the king; so as he shall be obliged to bring a quare impedit: tho' it will not do to defeat his estate in an advowson, as to bind his inheritance, and put him to a writ of right. *3 Salt. 389.* One co-partner or jointant, &c. cannot usurp upon the same advowson, nor take the same patron; there are two patrons of churches united, if one prevails in the other; they are an usurpation; for they are not as co-partners, who are privy in blood. *Dyer 259.* *17 Ed. 3.* If one presents to a church in time of war, the precentor shall not put the rightful patron out of possession: And a precentor, which is void in law, as in case of simony, or in a church that is full, *See 3 W. & M. 105.*

Usurpation of franchises, is when a subject unjustly uses any royal franchises, &c. And it is laid to be an usurpation upon the king; who shall have the writ of quo warranto against the usurpers. *Jac. See 2nd Ura sip.*

Usury, in a strict sense, is a contract upon the loan of money, to give the lender a certain profit for the use of it, upon all events, whether the borrower made any advantage of it, or the lender suffered any prejudice for the want of it, or whether it be repaid on the appointed time or not: Yet, as to a merchantman, to demand a certain interest for the use taken by a lender against a borrower, came under the notion of usury, whether there were any contract in relation thereto, or not; as where one in possession of land, made over to him for the security of a certain debt, retains his possession after he hath received all that is due, from the profits of the land. *Hawk. P. C. 245.*

Antiently it was held to be absolutely unlawful for a Christian to take any kind of usury; and that whatsoever was guilty of it, was liable to be punished by the confefsion of the law, and the civil laws, and that if after death any one was found to have been an usurer while living, all his chancellies were forfeited to the King, and his lands escheated to the lord of the fee. *Hawk. Pl. Crem. 245.* But per Hole Chief Justice, Jewish usury, being 40 per Cent. and more, was prohibited at Common law, but not under the Statute of 21 Hen. 8. 420.

Alfo it feemeth to have been the opinion of the makers of some acts of parliament, as 5 Ed. 6. cap. 20. *13 Eliz. cap. 8. j. 5. and 21 Jac. 1. cap. 17. j. 5.* that all kinds of usury are contrary to a good conscience. *Hawk. P. C. 245.*

And therefore it feemeth formerly to have been the general opinion, that no action could be maintained on any promise to pay any kind of use for the forbearance of
of money, because that all such contracts were thought to be unlawful, and consequently void. 1, ibid.

But it is feemeth to be generally agreed at this day, that the taking of reasonable interest for the use of money is in itself lawful, and consequently t'at a covenant or promis to pay it, in consideration of the forbearance of a debt, will maintain an acton; for why should not one who has an estate in money, be as well allowed to make a fair profit of it, as another who has an estate in land? And what reason can there be, that the lender of money, shall not as well make an advantage of it as the borrower? Neither do the paffages in the Mofcal law, which are generally urged against the lawfulness of all usury, if fully confidered, fully prove the unlawfulness of it; for if all usury were against the moral law, why should it not be as much fo in repect of foreigners of whom the Jews were expressly allowed to take it, as in repect of thefie of the fame nation, of whom alone they were for- bidden to receive it? From whence it seems feorly to follow, that the prohibition of it to that nation was merely political, and confefionally doth not extend to any other nation. Hawk. P. C. 245.

By the 37 H. 8. c. 9, and the 13 Elze. c. 8. The rate of interest is not to exceed 10l. in the 100l.

By that. 21 Jac. 1. c. 17. f. 2. None shall upon any contract, or obligation, indur any further rate of time, or other commodities, above the rate of 8l. for 100l. for one whole year; on pain to forfeit the treble value of the money, or other things fent. Snlt. 5. This law fhall not be continued to allow the practice of usury in point of religion or confcience.

By that 12 Cor. 15. 67. 2. None shall take directly or indirectly, for the loan of money, or other commodities, above the value of 6l. for the forbearance of 100l. for one year, and fo after that rate, and all bonds, contracts, &c. whereupon more shall be referred, shall be void. They that receive more, shall forfeit the treble value of the money or other things lent. 6. 109. c. 6. 20. Eliz. Act. 64. That no pefon upon any contract, which shall be made after the 29th of September 1714, fhall take for loan of any money, wares, &c. above the value of 5l. for the forbearance of 100l. for a year; and all bonds and aurance for payment of any money to be lent upon usury, whereupon or whereby there shall be referred or taken above five pounds in the hundred, shall be void; and every pefon which shall receive, by means of any corrupt bargain, loan, ex- change, cheviance, shift, or interest of any wares, or other things, or by any deceitful way, for forbearing or giving day of payment for one year, for their money or other things, other than 5l. for 100l. for a year, he shall forfeit the treble value of the monies or other things lent.

It seems to be now fettled, that the statute of 12 Ann. cap. 16, which reduces the interest of money to 5l. per Cent. has not a retrospect to any debts contracted before; but that they fhall carry interest according to the inter- est allowed, or agreement made at the time of the debt contracted. And ferjeant Hawkin, from the ftructure made of former statutes, fays, that a contract made before the statute is no way within the meaning of it, and therefore it is lawful to receive 6l. per Cent. in repect of any fuch contract. Hawk. P. C. 246.

The expofitions which have been made of the former statutes being very applicable to the law, which is alfo in the fame words, the proper construction of it will be well collected by a due attention, to the following heads.

5 Bab. Abr. 411.

1. What kinds of agreements or contracts shall be deemed usurious, and what not.

2. What kind of hazard or cautéty will bring an agreement or contract out of the statute of usury.

3. In what cases securities fhall be forfeited or avoided on account of interest.

4. In what cases forfeiture of treble value shaft be incurred on account of interest.

5. What kind of agreements or contracts shall be deemed usurious, and what not.

It hath been resolved, that an agreement to pay double the fund borrowed, or other penal on the non-payment of the fund borrowed, on any day, is usurious, be- cause it is in the power of the borrower totally to discharge himself, by repaying the principal according to the bai- gain. Hawk. P. C. 245.

But if it were originally agreed, that the principal money should not be paid at the time appointed, and that such clause was inferred only to evade the statute, the whole contract is void, for the construction of cases of this nature must be governed by the circumstances of the whole matter, from which the intention of the parties will appear in the making of the bargain, which, if it was in truth usurious, is void, however it may be dif- guided by a specious allowance. Hawk. P. C. 248.

So if both principal and interest be fecured, yet if it be at the will of the party who is to pay it, it is no usury; Per Duddridge J. As if I lend to one 10l. for two years, to pay for the loan thereof 30l. and if he pay the principal at the year's end, he shall pay nothing for interest, the principal fiay the party has his election, and may discharge himself by paying it at the fifth year's end. Cris. Jac. 609. pl. 20. Roberts v. Trennary.

But if a man contracts to pay more interefl than the statute allows, if the plaintiff requires it; though the plaintiff never does require it, yet it is within the statute of usury. Hedgeborough v. Rojas.

Nevertheless it has been held, that if one contract to have more than the statute allows, but he takes nothing of the interest contracted, he is not punishable by the statute; but if he takes any thing, if it be but a billiog, it is an affurance of the statute, and he shall render for the whole contract. Cries. Eliz. 20. pl. 5. Pollard v. Self.

So if I lend 100l. without any contract for interest, and afterwards at the end of the year the borrower gives me 20l. for the loan thereof, the same is within the statute; for my acceptance makes the offence without any contract or bargain, Per Cen. J. Le. 66. pl. 125. in Six Wed- afton Day's cafe.

Where a man for 100l. fells his land, upon condition that if the vendor or his heirs repay the fund before the fall of Effer, or fuch like, then next following, that then he may re-enter, this is no usury; for he may repay the next day, or any time before Effer, and therefore he has no gain certain to receive any profits of the land. Brad. 158. pl. 147. 158. 158.

But where B. delivered wares of the value of 100l. and no more, and took a bond, with a condition to re- deliver the wares to B. within a month, or to pay 120l. at the end of the year; the obligation was adjudged void by the statute of usury. Ms. 397. pl. 520. Rid- dards v. Clapton cited it as adjudged in B. of K. tischer's cafe.

If so A. comes to borrow money, and B. lays he will not lend money, but he will tell corn, &c. and give day for payment at fuch a rate, which rate exceeds ten pounds in the hundred, it is usury. Ms. 398. pl. 520. cites it as B. of K. tischer's cafe.

If one gives the profits of his lands, worth 10l. for interest for a year of 100l. though he receives part of the profit daily, this is not usury above 10l. for the 100l. Per Popham, Gawdy, and Yelverton, but Fenner v. contra. Ms. 644. pl. 850. Wesley's cafe.

So where one mortgaged land for 100l. and took bond for the interest of 8l. a year, payable half-yearly. The question was whether that makes the bargain usurious against the statute, because, as it was infulfed, the use ought not to be paid until the end of the year, and con- tracting to have half of it half-yearly is not warrantable by the statute; but the court hold that it is not any usu- rious contract, contrary to the statute, because the 100l. is lent for a year, and the reservation is not of more than what is permitted by the statutes; and the referring it half-yearly is allowable; for he does not receive any interest for more or less time than his money is forborn.
It was adjudged for the plaintiff, and affirmed in error, Cra. C. 283. Gryffith v. Whitehead. It is to be observed, that the loan of money for lawful interest allowed by the statute, shall not be construed to be within the purview of it, in respect of any expectations which the lender may have of a voluntary gratuity to be given him for his trouble, and he be no kind of agreement relating to it. Hawk. P. C. 240. s. 18.

But a contract referring to the lender a greater advantage than is allowed by the statute, is equally within the meaning of it, whether the whole be referred by way of interest, or in part only under that name, and in part by way of a more usual interest, at a rate plainly exceeding the known value. Id. ibid.

A bankrupt having borrowed a great sum of money of the defendant for one quarter of a year, he was to give the defendant 5 l. for every 100 l. that he borrowed; and some folk being the security, he was to give him one pound more for every 100 l. for that quarter, for the use of his warehouse. The question upon the trial was, whether this contract made between the bankrupt and the defendant was a usurious contract? and the jury having found a verdict for the defendant, Germaine Chofaro moved for a new trial; for he said the verdict was against law. Holt Chief Justice said he thought it was a wrong verdict, and it was thereupon ordered to be moved again. *Holt's Rep. 706.

Lee and Blance v. all v. Harrison. If a sum of money is given in consideration of an annuity, though the yearly payment exceeds the rate of interest, yet it is not usurious. Thus, where A. aks to borrow of B. upon interest, and B. refused to lend him the money; but said that for an annuity or rent he would; and so it was agreed, and a rent granted for twenty-three years, amounting to more than the statute allows for interest, &c. it seems this is not usury within the statute. *Add. 121. pl. 159. Finch's cafe.

If A. gives 300 l. to have an annuity of 5 l. affurred to him for 100 years, if A. and his wife and four of his children shall live; and also, that it is not within the statute of usury. So if there had not been any condition. But care is taken, that there be no communication of borrowing of any money before. Held per tattur. *4 Le. 208. pl. 334. Fuller's cafe.

So where A. on the 17th of July 1759 lent 100 l. to B. and engaged with him by the statute, if A. and his heirs be an annuity of 20 l. a year, on condition that if the said B. the grantor paid to A. at Christmas 1580 the said 100 l. that then the annuity should cease. Adjudged this is not within the statute; for nothing was to be paid for interest within a year and a quarter after the grant; and if the 100 l. were not paid by the said B. the annuity was to continue without paying anything; & so that it is only a plain bargain, and a conditional purchase of an annuity. *5 Rep. 69. Barton's cafe.

But if it had been agreed between A. and B. that notwithstanding such power of redemption, the 100 l. should not be paid at the day, and so that the clause of redemption was inferred to make the statute, then this had been an usurious contract and bargain within the statute; for in truth the contract be usurious against the statute, no colours or shews of words will serve, but the party may fliew it, and he shall not be concluded or estopped by any deed in any other matter whatsoever; for the statute gives advantage in such cases. *5 Rep. 69. Barton's cafe.

Where A. for 100 l. granted a rent of 20 l. for eight years, another of 20 l. a year for two years, if B. C. and D. should live long in. Replevin the defendant avowed for the rent, and the plaintiff pleaded the statute of usury, and set forth the statute and a special usurious contract, as it was; and it was laid to be upon a loan of money. then it was usury; but if it be a bargain for an annuity, it is no usury; but that this was alleged to be upon a lending. *Brew. 180. Cotterell v. Harrington.

So where in debt upon bond, the defendant pleaded the statute of usury, and that he came to the plaintiff to borrow of him 120 l. to the rate of 10 l. per Cent. who refused to lend the same, but corruptly offered to deliver 120 l. to him, if he would be bound to pay him 20 l. per Annum during the plaintiff's wife's and his fon's lives: whereupon he entered into the bond. Resolved that this, being an absolute bargain, in consideration of the payment of 20 l. per annum during two lives and no longer, and no agreement to have the principal money, was out of the statute of usury; but if there had been any pretence of the re-payment of the principal, either not expressed within the bond, it had been an usurious agreement within the statute; and judgment for the plaintiff. *Cra. J. 252. pl. 7. Fountain v. Grymes.

A. after the statute 12 Car. 2. s. 2. 3 June 13 Car. 2. agreed to lend B. 100 l. and that for the forbearance thereof, B. the defendant should pay to A. the plaintiff 210 l. 20s. 6d. upon the 20th day of January and 20th of July by equal portions annually, next after the 20th day of the then inchoate month of July, till the 120 l. be paid; which exceeded the rate of 6 l. per Cent. And for the further security B. gave a bond of 200 l. and conciliated a judgment. *Tyig- den J. said, that the contract here was not usurious; it being a purchase of an annuity for three years. *Sid. 182. pl. 1. Rowe v. Belfays. It is to be observed, that if the agreement of the parties be honest, it is made otherwise by the mistake of a scrivener, yet it is not usury. *2 Med. 307. Ballard v. Odby.

2. What kind of hazard or crazy will bring an agreement or contract out of the statute of usury. It has been held, that if principal and interest be in hazard upon a contingency, it is no usury, though the interest do exceed the allowed rates per Cent. And when there is an hazard that the plaintiff may have less than his principal, it is no usury. Thus, if S. lend 100 l. to have 120 l. at the year's end upon certain, if the casualty goes to the interest only, and not to the principal, it is usury; for the party is for to have the principal, and to have come what will; but if the interest and principal are both in hazard, it is not then usury. *Per Duddridge J. Stow, 8. Martin v. Adris. *Cra. 765. 508. pl. 20. Roberts v. Trowneay.

Debt upon obligation of fifty pounds; the defendant pleaded the statute, and showed that it was agreed between the plaintiff and defendant, the 14th December, that the plaintiff should lend the defendant 30 l. to be repaid the first of Jult following, and that the plaintiff should have three pounds for the forbearance, if the plaintiff's son be then living; and if he died, then to pay but 20 l. of the principal money. The court intiimated that the plaintiff should not have this usury; wherefore the plaintiff who had demurred, became non sui. *Mar. 397. pl. 528. Reynolds v. Clayton.

So where A. agreed with I. S. to give him 10 l. for the forbearance of 20 l. for a year, if B. his son was then alive. It was held by three justices (Glynais abjente) to be usurious, by reason of the covenant, and agreement, and it is the intent makes it fo or not. *Cra. E. 645. pl. 13. G. B. Button v. Devonham.

Likewise where the obligor was bound in a bond of 300 l. conditioned to pay 22 l. 10s. pr. annum, at the end of the first three months after the date, &c. and 6 l. in the pound at the end of the first six months, at the end of pr. annum, together with the principal itself, in case the obligor be then living; but if he dies within that time, then the principal to be lost: This was adjudged an usurious contract, because there was a possibility that the obligor might live so long; and there is an express provision to have the principal again. *3 Saik. 390. pl. 3. Mayen v. Adderton's wife.

But where the bargain is merely casual, and the whole depends on a contingency, there the contract is not usurious. Thus, Mr. Spencer being in possession of an estate of 7000 l. a year, and of a personal estate in goods and plate, &c. worth 20,000 l. and owing about 20,000 l. to tradesmen being about 30 years of age, of a hale constitution, but impared by irregularity, and the Dutches of Marlborough his grandmother, being then 78 and of a good constitution, made the defendant a proposal, that for 5000 l. paid
paid down he would engage to pay 10,000l. if the survi\nval the Dutchess, which after some deliberation was ac\ncepted by the defendant; and Mr. Speaker gave him a bond for
the payment of 10,000l. in six months after the death of
the Dutchess, in case he should be then living; the Dutch-
ness lived six years after and then died, giving Mr. Spe\ncer, or the Court, a valid bond for the money.

3. In what cases securities shall be forfeited or avoided
on account of usury.

Here it is to be premised that it is not material, whe\nther the payment both of the principal, and also of the
ufurious interest be secured by the fame or by different
conveyances, but all writings whatsoever, for the
strengthening such a contract, are void. Hawk. P. C. 246. f. 11.

Where a bond was made for more than legal interest,
at the payment the obligor takes only legal interest;
he shall not be punished for the contract; but
perhaps the bond shall be void. 2 Le. 39. Arg. in Van Hen\nbeck's cafe.

Where A. borrowed of B. 80l. and was bound in a
bond to pay him 90l. at the end of the year; per Cur:

Tho' the 90l. was tendered, and B. did tell the fame, yet
if B. takes but 80l. it is not usury, within 5 Eig.
to make a treble forfeiture; but yet in that case the obli-
gation itself is void. The bond is void presently, and if
he receives excessive interest, he shall forfeit the treble

Where the first contract is not usurious, it shall never
be made fo by matter ex post facto. Per Williams J. Bullrt. 17. Thus,

In debt upon an obligation, where the statute of usury
was pleaded, it was laid by Pipham, upon the evidence,
that if a man lends upon a bond, within the space of
20 years, for the use of it, if the obligor pays the 10l. twenty
days before it be due, that does not make the obligation
void, because it was not corrupt. But if upon making
the obligation it had been agreed, that the 10l. should
have been paid within the time, that would have been
usurious for the 10l. for the whole year, when
the 10l. was to be paid within the year, and
verdict was given accordingly. Noy 171. Dalton's cafe.
S. P.

Likewise if a man makes an usurious contract with
another, and gives him unlawful interest, and agrees to
give him the bond for the principal, and after, by a subse-
quent agreement, gives it him for one sum, to whom the
lender owes so much, in satisfaction of his debt; this bond is not void by the statute; per
Holt Chief Justice, 7 Mol. 119. The Queen v. Sewel, alias Beau.

So if a man lend money on a legal interest, and after
a subsequent agreement is made for more interest, which
is usury; that will not avoid the first contract, per

But if a second bond be made after the forfeiture of a
former, and conditioned for the receipt of interest ac-
cording to the penalty of the forfeited bond, this is as much
within the statute as if it had been made before the
forfeiture; for if such a practive should be allowed, nothing
could be more easy than to elude the statute; and tho' the
whole penalty be due in strictness to the obligee, yet
the true principal debt is in confidence no greater after
the forfeiture of the bond, than it was before. Hawk. P. C. 246. 2.

A bond made, to secure a jufir debt payable with in-
terest, shall not be avoided by reason of a corrupt agree-
ment between the obligors, to which the obligee was no
way privy: As where A. being indebted to B. in 100l.
agrees to give him 30l. for the forfeiture of that 100l.
for a year, and gives him the bond for 60l. for payment of
the interest; and for the payment of the bond enters in
a bond of 200l. together with B. for the payment of a
treble debt of 100l. due from 'B. to C. Hawk. P. C. 246. f. 11.

So where W. was indebted in 100l. to A. upon an
usurious contract on a bond, and A. being indebted to
E. transferred the debt to E. and W. became bound for
the fame usurious debt to E. whose debt was just, and
he ignorant of the usury. It was adjudged upon
great deliberation, that the obligation by W. to E. was
not avoidable for the usurious contract made between
W. and A. because it was given to E. for a true debt, and he
knew nothing of the usury, tho' the ground between A. and
W. was usurious. Mon 752. pl. 1035. Ellis v. Warren.

Likewise an allurance made in pursuance of a fair ag-
reement for such interefl as is allowed by the statute,
shall not be avoided by the fault of the scrivener who
draws it up in such a manner as to bring it within the ex-
ceptions of the statute; As where the parties agree
that 5l. shall be paid for the loan of 100l. for one years
and the scrivener in drawing the bond for it, doth, with-
out the knowledge of the parties, who are illiterate per-2
sons, make the 5l. payable at the end of half a year; or
where on a loan of 100l. agreed to be paid with com-
mon interest, a mortgage is made for the 100l. with a
proviso, that it shall be void on payment of 105l. at the
end of one year, without any covenant for the mortga-
gor to take the profits, till default be made of payment, to that in the mortgage the mortgagee is invested both to interest and profits. Haweck P. C. 247, f. 17.

It is to be observed, that a fine levied, or judgment suffered, in pursuance of an onerous contract, may be avoided by an averment of the corrupt agreement, as well as any common specialty, or parcel contract. And in an affidavit if it appear, either upon evidence, or from the plaintiff's own express showing in his declaration, that the contract was usurious, he cannot recover. But a specialty cannot be avoided by usury appearing on evidence, or on the face of the condition, but it must be pleaded. Haweck P. C. 248, f. 20.

So if a judgment be given upon an onerous contract, and it is a part of the agreement to have a judgment, yet the defendant may avoid such judgment, by a special averment, or by his de facto brought on the same. Vin. Ab. tit. Usury 304.

Where A. mortgaged to B. on an onerous contract for 200, and before the day of payment B. is ousted by C. and B. brings action against C. C. cannot plead the statute of usury, for he has no title; the estate being void against the mortgagee. Per Ripam. Le 307, p. 427, Carter v. Claypole.

But where A. lent B. 45l. on a pledge of jewels, and it was agreed to pay 9l. for it for 3 years; afterwards B. gave a bond for the same money; per Holt at nisi prius, it is not in the power of the bond or not. Far. 119, The Queen v. Sewell alias Bevan.

4. In what cases forfeiture of treble value shall be incurred on account of usury.

Though the receipt of higher interest than is allowed by the statute, by virtue of an agreement subsequent to the first contract, does not void a discharge fairly made and agreeable to the statute, yet it subjects the party to the forfeiture of treble value. Haweck P. C. 247, f. 12.

But the receipt of interest before the time when it is in statute due, being voluntarily paid by the debtor for the greater convenience of the creditor, or for any other such like consideration, without any manner of corrupt practice, or any previous agreement of this kind at the making of the first contract, does not make the party liable to the forfeiture of the treble value. Haweck P. C. 247, f. 12.

An information upon the statute 12 Car. 2. c. 13. set forth, that the defendant, 16 November 20 Car. 2. lent I. S. 20l. till June next following, and that afterwards (viz.) ad finem termini prædicti he took of the said I. S. 29l. in a year thereof, which is more than the statute allows. The defendant took the bond from the defendant. And it was moved, that this corrupt agreement ought to be within the statute at the making the contract, and not at the end of the term, as laid in the information. Tewfalen took a difference upon the two clauses in the statute, that if the lender contracts for more, so that the agreement is corrupt at the time of the loan, all the assurance is void; but if he contracts for no more than the statute allows, but will afterwards take more, the assurance shall not be avoided, but the party shall forfeit the treble value. But judgment was stayed till the other side moved, because the court would not drill the case. The King v. Allen.

In debt upon bond the defendant pleaded, that after the making the bond the defendant corruptive receipt so much, viz. more than the statute allows, and that therefore the bond was void. But adjudged upon demurrer, that the plea is not good; for the bond here was not for the payment of the money (upon or for usury) as the words of the statute arc; but for any thing appearing to the contrary, it was for payment of a just debt, and fo the bond was good when made, and therefore an usurious contract after cannot make it void; but it is a forfeiture of the treble value by the latter clause of the statute. Sound, 134. Ferri v. Shinn. 3 Ed 350. pl. 4. S. P. accordingly.

A. (when money was at 8l. per Cent.) lends money and takes bond for the same, and then the statute 12 Car. 2. is made, and he will continue the interest on that bond, the bond shall not be avoided by such acceptance of interest, but the party shall forfeit the treble value by the statute; per Tewfalen Justice. Raym. 197.

So in debt on an obligation conditioned to pay on a certain day; the defendant pleaded the statute 12 Car. 2. c. 13. and said that the contract was usurious; but per Car. the contract being made after the bond forfeited to receive interest according to the penalty, which was double the principal, it doth not void the obligation that was good at first, but only subjects the taker to other penalties; and judgment for the plaintiff, nifi. 3 Ed 142, pl. 13. Radish v. Manning. For more learning on this subject, see 31 Edw. 1, W. 11, 1 & 2. Vin. Ab. tit. Usury.

W. Hat, Othello, is the eighth day following any case of theft, as the usats of St. Michael, the usats of St. Hilary, the usats of St. John Baptist, &c. as you may read 51 Hen. 3. concerning general days in the bench; and any day between the theft and thegetParameter, is said to be within the statute. The use of this is in the return of writs, as appears by that statute. At the usats of the Holy Trinity, Prævale to the statute 43 E. 3. 124.

Utenhill, (Fr. Utenfli,) Any thing necessary for our work and occupation; houhold stuff. Cowell, edit. 1727.

Utenhulgh, (For extra captas, filieta, extra dominium, vel jurisdictionem,) An ancient privilege or royalty granted to a lord of a manor, by the King, which gives him power to punish a thief dwelling out of his liberty, and committing theft without the same, if he be taken within his fees. Bristain, lib. 2. trad. 2. cap. 35. says thus, utenigeb dictum extraurum locorum, visum adinde de terres alienarum & qui captus fuerit in terra infat qui atque talibus Herbertoterat. See Dittonhulgh.

Uletagato caiendno when utletagat in uno comice catu & poleta fugit in aliis, is a writ, the nature whereof is sufficiently expressed by the name. See Leg. Ord. 1373. 124.

Uletagh, (Uletagius,) An outlaw, signifies Benedict extra legum. Fleta, lib. 1. cap. 47. See Dullatag.

Ulatar or Ulatawp (Uletaria vel utlatagia,) See Ulatiawp.

Ulatyep, (Sexx,) Signifies an escape of a felon out of prison. Fleta, lib. 1. c. 47.

Ulatum, see Miftie de utram.

Utter-brothers, (Fratres confili,) Are such, who for their long study, and great industry bestowed upon the knowledge of the Common law, are called from their contemplation to practice, and in the face of the world to take upon them the protection and defence of clients. These in other countries are called licentiiarii in jure. Cowel edit. 1727. See Barrister.

Ulfitub, A wound in the face. Id. lib.

Ultius de Luca, The image of our crucified favour kept at Lucca in the church of Holy Crofs. Eadmerus, lib. 1 & 2. tells us, That William the conqueror often wrote per factionem vultum de Luca, visu. pag. 16, 19, 47, 51, 54. And Austinbury writes the same thing, lib. 4. p. 121, & 124, and lib. 1 & 2. Dugdii Post, Actis, reg. 1727, 277.

W. W. W.
We will retain the word to save, ever, that is, to conduct or convey over sea. Civil edit. 1727.

Wage, (Vadare, from the French gager, dare pignor,) signifies security for the performance of any thing; as wage delinquents, which for in gage, to wage into Co. Lit. 294.

Wager of law, is a particular mode of proceeding, whereby in an action of debt brought upon a simple contract between the parties, without deed or record, the defendant may discharge himself by swearing in court in the presence of commissary and jury, and this being his word is not to be questioned in manner and form as he hath declared. And this his wager, his word, is sometimes called making his law. 5 Batt. Abr. 428.

The reason, wherefore in an action of debt upon a simple contract the defendant may wage his law, is for the reason that his word is his bond. He is not to be questioned before witnesses, and all the witnesses may die, so the law doth allow him to wage his law for his discharge; and this is peculiar to the law of England, and no mischief followeth hereupon; for the plaintiff may take a bill or bond for his money; or if it be a simple contract, he may bring his action upon his own accord and without the consent of the defendant. And when the law was passed and the defendant cannot wage his law. 2 T. L. 45.

It hath been said however, that the only true reason of wager of law, is the incommodeliness of the ground of the plaintiff's demand, and it sufficeth that the nature of the defendant's discharge be of equal validity with the ground of the plaintiff's demand, he being an officer of the law. Per Ruffell Jus. 12 Mad. 570. The city of London v. Wood.

Originally it was not only a privilege of the defendant to discharge himself, but one which the plaintiff had when he had no witness of his debt, or, to put the defendant under a necessity of giving him his oath to discharge himself; so it was a kind of equity in law, that the plaintiff might put him to his oath that he owed nothing to him, or confess the debt, rather than the plaintiff should lose his debt, in cases where he had no witness of it at all, or had some who were then dead. Per Holt, Chief Jus. 12 Mad. 578. The city of London v. Wood.

The plaintiff's bare assurance was formerly sufficient to put the defendant to wage his law; but it is provided by Magna Charta, that 'No bailli shall put any man to his law, nor to an oath, upon bare saying without witness, brought in.' Before this, as has been premised, the plaintiff, on his declaration upon bare assurance, might make the defendant swear there was nothing due. At this day, if the defendant produce witnesses to prove his demand, the court may put the defendant to wage his law; and in such case the defendant is not at liberty to cross examineth, no more than where the plaintiff in a prohibition produces witnesses to prove his fuggellion. 2 Saull. 683. Mud v. The Mayor of London.

The manner of wagering of law is thus: He that is to do it, must bring six compurgators with him into court, and stand at the end of the bar towards the right hand of the Chief Justice; and the Second affi his, whether he will wage his law. If he answers that he will, he lays his right hand on the book, then the Judges admonish him and his compurgators to be advised, and tell them the defendant may present a falk oath, and if they will per- sist, the Secondary says, and he that wageth his law repeats after him: Hear this ye Justices, That I A. B. do not owe to C. D. the sum, &c. nor any penny thereof in manner and form as the said C. D. hath declared against me: So help me God. The compurgators then swear not to believe that they believe, whether he will or not persist, the Secondary says, and he that wageth his law repeats after him.

But if the defendant takes the oath the plaintiff is called by the cryer thrice; and if he do not appear he becomes nonsuit, and then the defendant goes out without taking his oath; and if he appear, and the defendant swears that he owes the plaintiff nothing, and the compurgators do give it upon oath that they believe he swears true, the plaintiff is barred for ever; for when a person has waged his law, it is as much as if a verdict had passed against the plaintiff: If the plaintiff do not appear to hear the defendant perform his law, so he is in non-

Wages of law shall not be required without witnesses, M. C. H. 3. c. 28.

For the plaintiff fe nihil receptis, &c. St. Will. 12.


Granted in treason committed by compulsion in an insurrection, 6 R. 2. 2. c. 5.

Where the plaintiff fuggets an account taken, the Justices may take him or her to a oath, and admit the defendant to his law, 5 H. 4. c. 8.

Trials in Wales to be by wager of law or verdict of five men, 24 & 25 H. 8. c. 26. 74. See 5 Batt. Abr. tit. Wager of law, and 15 Vin. Abr. c. 58.

Wagers. By statute 7 Ann. c. 17. All wagers laid upon a contingency relating to the late war with France, and all securitis, &c. therefore were declared to be void; and perons concerned to forfeit double the sum laid.

Wagges, Is what is agreed upon by a master to be paid to a servant, or any other person which he hires to do business for him. 2 Litt. Abr. 677. The wages of servants, labourers, &c. is to be ascertained by justices. 5 El. c. 4. 1 Jac. 1. cap. 6. And justices of peace may order payment of wages for his master, &c. but not in other cases. Mad. C. 204, 205. The statute of labors extends to covenant wagers in husbandry; that is, an order of justices was quashed in B. R. because made upon the servant's oath, without other evidence. 2 Lev. Ram. 1305. See servants. Wages of seamen, vide pl. 4 & 5 Ann. I. Tit. 1. cap. 25. For the better adjudging and more easy recovery of the wages of certain servants, vide pl. 20 Geo. 2. c. 19. 27 Geo. 2. cap. 2. 7. See Law boilours, Manufacturors, Servants, and 22 Vin. Abr. 456.

Waggoners and Wagggoners. See Carts, Highways.

Wails, (from the Sax. Wafian, Fr. Chois guier, Lat. Bona Voia) Are goods which are stolen and warfare for them, the goods being put out of the way, for fear of being apprehended; which are forfeited to the King or lord of the manor. King. 81. If a felon in pursit waves the goods, or having them in his custody, and thinking that pursit was made, for his own ease and more speedy flight, flies away and leaves the goods behind, many of them hold the King's servant in the same case, who, being the lord of the manor, within whose jurisdiction they are left, who hath the chassis of the case, may seize the goods to the King's or lord's use and keep them; except the owner makes fresh pursit after the felon, and sue an appeal of robbery within a year and a day, or give evidence against him whereby he is attainted. &c. In which case, the owner shall have restitution of his goods so stolen and waved, 21 H. 8. cap. 13. 5 Rep. 109. Goods waved by a felon, in his flight from those who pursue him, shall be forfeited: And though wails is generally spoken of goods
goods stolen; yet if a man be pursu'd with hooe and cry as a felon, and he flies and leaves his own goods, there will be forfeited in goods stolen; but they are properly fugitive's goods, and not forfeited till it be found before the coroner, or other wife of record, that he fled for the felony. 2 Hawk. 450. 5 Rep. The law makes a forfeiture of goods waved as a punishment to the owner of the goods, for not bringing the felon to justice: But if the goods be not properly fugitive's goods, there is no forfeiture: If a felon steals goods and hides them, and afterwards flies, these goods are not forfeited; so where he leaves stolen goods any where, with an intent to fetch them at another time, they are not waved; and in these cases the owner may take his goods where he finds it so, without felony, for his own use. But, in 5 Rep. 109. Mar 785. Waifs and frays are said to be nullis in bonus; and therefore they belong to the lord of the franche where found. Britton, cap. 17. We read of plaita corona and wail in the manor of Upton, &c. in Com. Sala. See 22 Fin. Atr. 408—410.

Wain (plantanum). A cart, waggon, or plough to till land.

Wainable, i. e. That may be ploughed, or manured, land tillable. Chart. fam. dat.

Wainage, (towainage) according to Sir Edw. Coke, signifies the contentment of a villan; or the furniture of his whole estate. And the villan of any other, if he fall into our mercy, shall be amerced for his wainage. Magna Charta, cap. 14. Wainage has also been used for tillage. Mon. Ang. temp. 2. p. 612. See Cuttage.

Walter, (soulorum) In the general signification, is to forfake, but is specially applied to a woman, who for any crime, for which a man may be outlawed, is termed waived. Reg. Orig. 132.

Walter, signifies the passing by of a thing, or a refu- fal to accept it; sometimes it is applied to an effate, or something conveyed to a man, and sometimes to a plea, &c. And a waiver or disaffrage as to goods and chattels, in the face of a goods, will be difficult. Lit. lett. 710. If a jointure of lands be made to a woman after marriage, the may waive this after her husband's death. 3 Rep. 27. And an infant, or if he die, his heir may by waiver avoid an effate made to him during his minority. 4 Inst. 23. 348. But where a particular effate is given with a remainder over, where regularly he be that hath it may not waive it, to the damage of him in remainder: Though it is otherwise where one hath a reversion for; that shall not be hurt by such waiver, 4 Steph. Atr. 197. After special issue joined in an action, the parties cannot waive it, without motion of court. 1 Ke. 225. Aijatement on a will, for payment of duty, to be waived, and the party to aijin in perfect, after demurrer for this cause. See 2 Ke. 135.

Wale, The eve feast of the dedication of churches; which in many country places, is observed with fealing and rural diversions. St. Pardub. Antiq. 669.

Waltman, (Shafk watchman) the chief magistrate of the town of Rippen in Yorkshire, is so called. Cami.

Wals, (Walla) is part of England on the west side, formerly divided into three provinces, north Wales, south Wales, and west Wales, and inhabited by the offspring of the ancient Britons chafed thither by the Saxons, called in to affi them against the Picts and Scott, Lamb Stati. Wallæs, 12 Ed. 1. England and Wales were originally but one nation, and fo they continued till the time of the Roman conquest: But when the Romans came, thofe Britons who would not submit to their yoke, betook them- selves to the mountains of Wales, from whence they came ago. The Saxons made inroads against them in divers feizions here: After this came the Saxons and gave them another disturbing, and then the kingdom was divided into an heptarchy; and then also began the Welsh to be dillinguished from the Englifh: Yet 'tis observable, that though Wales had prises of their own, the King of England was over them; for to him they paid homage. Camd. 67. 2 Med. II.

Vol. II. No. 134.

The King is sovereign lord, and shall do right in default of the lords, St. Hiftm. 1. 3 Ed. c. 17. United to England, St. Wallæs, 12 Ed. 1.

Direction for execution of the office of sheriff, coroner, &c. in Wales, St. Wallæs, 12 Ed. 1.

They shall be intendent to the judges of Cheffers, and anwer in the exchequer there, 12 Ed. 1.

The lords of the marches shall be attendant to the crown of England, 28 Ed. 9. 2 Wallæs, 12 Ed. 4.

Wolves disabled from purchasing lands in the next English counties, 2 H. 4. c. 12. and to find surety for their good behaviour, ibid.

If the Wefh do not restore difficiles taken in England upon requets, repfals to be made, 2 H. 4. c. 16.

If Wolvesman to be convicted at the fuit of a Wulfman in Wales but by an English jury, 2 H. 4. c. 19. 4 H. 4. c. 26.

Minifters and vagabonds in Wales, 4 H. 4. c. 27. Wolves not to go armed, 4 H. 4. c. 29. 26 H. 8. c. 6. f. 4.

Vestil and armour shall not be carried into Wales, 4 H. 4. c. 80.

Wolvesmen not to be officers in Wales, 4 H. 4. c. 32.

For felonies in South Wales, the countries where the felons were born shall make satisfaction, unless they apprehend them, 9 H. 4. c. 7.

In Wolvesmen shall sufFeftual answer to indictions where they are taken, and not dilclaim the feignory, 9 H. 4. c. 4.

The lords in Wales shall be commanded to take and execute thofe that are outlawed for felonies in England, 2 H. 5. f. 2. c. 5.

Taking Englishmen or their goods and carrying them into Wales made treafon, 2 H. 6. f. 3. 27 H. 6. c. 4. Extended to the delivery of Langefly, 28 H. 6. c. 4.

Penalty of importing goods into Wales, and then into England, without paying fuffum, 20 H. 6. c. 7.

Wolvesmen outlawed for felony or treafon, and flying to Herefjordshire, shall be pursu'd with hooe and cry, 23 H. 6. c. 4.

Grants of fairs, and licences to bake and brew in north Wales, repealed, 25 H. 6.

For the strict cufody of jurats in Wales, 26 H. 8. c. 4.

The penalty of ferrymen transporting offenders over the Severn, 26 H. 8. c. 5.

Penalties committed in Wales shall be tried in the next English county, 26 H. 8. c. 6. 34. & 35 H. 8. c. 26. f. 85.

Reftrictions of the government of the lords marches, 26 H. 8. c. 6. f. 2.

Wolvesmen not to bring arms to court, 26 H. 8. c. 6. f. 3.

Batteries committed by Wolvesmen in Gloucefjordshire, Herefjordshire, and Salop, punifh'd by a year's imprifon- ment, 26 H. 8. c. 12.

Directions for the ordering of clerks conivit in Wales, 26 H. 8. c. 12.

For the appointing of juflices of peace in Wales and Cheffers, 27 H. 8. c. 4.

Appointment of juflices of peace in Wales and Cheffers, 27 H. 8. c. 5.


Wolvesmen might enjoy effates transferred to them by the fixture of ufe, 25 H. 8. c. 10. f. 18.


The lordshipp marches divided into counties, 27 H. 8. c. 26. f. 3. &c. 28 H. 8. c. 3. 33 H. 8. c. 13.

The county of Monmouth dijolved from Wales, 27 H. 8. c. 12. f. 4.

A preffent and council established in Wales like those in the North, 32 H. 8. c. 50. 34. & 35 H. 8. c. 26. f. 4. taken away, 1 W. & M. c. 27. 9 to 10 W. 3. c. 16.

Grants of fees over the counties of Wales afoartened, 34 & 35 H. 8. c. 26. 21 Jac. 1. c. 10. 9 F.
W A L

What members of parliament shall be sent for the shires and boroughs in Wales, 34 & 35 H. 8. c. 26. f. 110.
Execution of judgment in inferior courts shall not be stayed by writ of false judgment, 34 & 35 H. 8. c. 26. f. 114.
Their election and the payment of their wages, 35 H. 8. c. 11.
The courts of Welfington, may award process of outlawry into Wales and Chester, 1 Ed. 6. c. 10.
The Sheriff of Wales and Chester shall appoint deputies in the King's Bench and Common Peace, 1 Ed. 6. c. 10. f. 3.
Title of marriage goods in Wales taken away, 2 & 3 Ed. 6. c. 13. f. 16.
The liberties of the Lords marchers confirmed, 1 & 2 P. 3. M. c. 15.
The statutes of tales de circumstantibus extended to Wales and the counties palatine, 5 Ed. c. 25. directions for returning issuable upon jurors in Wales, 5 Ed. c. 25. f. 3.
The bible and common prayer to be translated into Welsh, 5 Ed. c. 26.
Offences committed in Merionethshire not to be tried in Anglesea, 8 Ed. c. 20.
The Crown authorized to appoint two or more justices of assize in the several counties in Wales, 18 Ed. c. 5.
For the inflamation of fines and recoveries in Wales, 27 Ed. c. 9.
The King's power of changing the laws in Wales repealed, 21 Jac. 1. c. 10.
The common prayer in Welsh and in English to be kept in the churches in Wales, 13 & 14 Car. 2. c. 4. f. 27.
Court of presidient and council in the marches of Wales taken away, 1 W. & M. p. 1. c. 27. f. 2.
The manner of appointing sheriffs in Wales, 1 W. & M. c. 27. f. 3. 3 Geo. 1. c. 15. f. 20 & 22.
Errors in pleas personal to be redressed in the same manner as in pleas real, 1 W. & M. c. 27. f. 4.
The King may appoint any number of justices of peace in Wales, 5 W. & M. c. 4.
The inhabitants of Welfington empowered to bequests their personal effects, 7 & 8 W. 3. c. 38.
The statute 22 & 23 Car. 2. c. 9. f. 126. Extended to Wales, and the counties palatine, 11 & 12 W. 3. c. 9.
Sheriffs in Wales and the counties palatine shall not hold to bail on process from Welfington unless the debt be sworn to be 20l. 11 & 12 W. 3. c. 9. f. 2.
Judgment signified in the courts of great felons to be docketed, 8 Geo. 1. c. 25. f. 6.
And to be good against purchasers only from the time they are signified, ibid.
In personal actions under 10l. in the courts of great felons, the defendant to be served with the copy of the writ, and if he do not appear, the plaintiff may enter his appearance, 6 Geo. 2. c. 14.
Wales and Berwick included in England in acts of parliament, 20 Geo. 2. c. 42. f. 3.
Murders and felonies in any part of Wales may be tried in the next English county, Stram. 553.
Curtailor lies to Wales on inducements for misdemeanors, Stram. 704.
Habest Corpus granted of course, to a prisoner from Wales to an English county, Stram. 945.
Prohibition to the great felons, to stay a suit on a subject carried out of the jurisdiction, Stram. 630. See 22 Vin. Att. 412. 416.
Wales territor, The learned Spelman says, signifies Wales parts: But by others it is interpreted parentela hominis inter se; the same with Wales territor.
Watlinns, (t. c. ferrow) A servant, or any ministerial officer. Log. Inst. c. 34.
W A R

Walkers, Are forcers within a certain space of ground, assigned to their care in forests, &c. Crimes, jurispr. 145.
Wall, sea-Wall, A bank of earth. See Water's gate.
Wallingham, The demeine lands in Wallingham may be let by copy, and shall be copyholds. 35 H. 8. c. 13.
Waltham blacks. In the reign of Geo. 1., there sprung up a set of desperate villains called Waltham blacks, headed by one whom they called K. John; who blacking their faces, and using other disguises, robbed forests, parks, and warrens, destroyed cattle, levied money on their neighbours, by threats and menaces to fire their houses, and kill their persons and directed divers other violence; but they were suppressed, and declared felonies, by stat. 9 Geo. 1. cap. 22. See Black art.
Wang, (Sx.) We use for the cheek, or jaw wherein the teeth are set: Hence Chaucer called the cheek teeth or grinders, wangs or wng-teeth, which is recorded in this old way of feeling writings:
And in wittnes that this is sooth, I bite the wax with my wng-taung.
Wanlass, or driving the wanlass, is to drive deer to a stand, that the lord may have a shoot; which is one of our ancient customary tenures of lands. Blount's Ten. 140.
Wapentake, (from the Sax. wepen, i. e. armatura, and ta£, thing) Is all one with what we call a hundred; specially used in the north countries beyond the river Trent, Bradt, lib. 3. Lamb. The words seem to be of Danish original, and to be so called for this reason; when first the kingdom, or part thereof, was divided into wapentakes, he who was the chief of the wapentake or hundred, and whom we now call a high confable, as soon as he entered upon his office, appeared in the field on a certain day on horse-back, with a pike in his hand, and all the chief men of the hundred met him there with their lances, and touched his pike; which was a sign that they were firmly united to each other, by the touching their weapons. Hveden. Bita. 2. But Sir Thomas Smi® says, that antiently mutlers were made of the towers of the several inhabitants of every wapentake; and from those that could not find sufficient pledges for their good abearing, their weapons were taken away, and given to others; from whence he derives this word. Rep. Angl. lib. 2. cap. 16. Camb. Brift. 159. 2 Inft. 90. Stat. 3. H. 5. cap. 7. H. 6. cap. 10. 15 H. 6. cap. 7. Wapentake haec ille quindecim de feptembus good quindecim Wapentakes. Ms. in Biah. Cotton.
Wapping, An act was made for the partition of Wapping Marsh. Stat. 25 H. 8. cap. 9. And perfons flaying themselves from debts, and obstructing the execution of writs in Wapping, Stepsy, &c. to be guilty of felony by 7 Geo. 1. cap. 23.
Walk, (Bellum) A fighting between two Kings, Princes or parties, in vindication of their just rights; alse the state of war, or all the time it lasteth. By our law, when the courts of justice are open, so that the King's Judges distribute justice to all, and protect men from wrong and violence, it is said to be a time of peace; But when by invasion, rebellion, &c. the peaceable course of justice is ftopt, then it is adjudged to be a time of war: And this shall be tried by records and judges, whether justice at such a time had her equal course of proceeding or no; for time of war gives privilege to them that are in war, and all others within the kingdom. 1 Lev. 11. 33.
Wages

Merchants in time of war shall be free, if ours are free in the enemies county, M. C. 9 H. 3. c. 30.
None shall be charged to arm themselves, otherwise than as usual; nor to go out of our country, except in cases of hidden necessity, 1 Ed. 3. 2. c. 5. 4.
H. 4. c. 13.
WAR

Wages shall be allowed to the conductors of soldiers, 1 Ed. 3. 3. 6. 2. 7.

None shall be bound by writing to come to the King with a bill of sale, 1 Ed. 3. 6. 2. 7.

Soldiers shall have wages from the day that they go out of their counties, 18 Ed. 3. 3. 7. 4. 6. 2. 11.

Covenants of persons retained in the King's service to be exacted by the Exchequer, 5 R. 2. 2. 1. 11.

The duty of those who have lands or pensions for maintaining the King's service, 4 H. 3. 12. and officers, 11 H. 3. 7.


The custody of castles, &c., taken from those who had them by patent, 2 3 Ed. 3. 6. 5. 16.

The French ordered to depart the realm, and the Queen implored to revive their patent of denization, 4 3 Ed. 3. 6. 10.

War, A certain quantity or measure of ground, Mon. Angl. tom. 1. p. 172.

War, (Belligium) Is variously used in our old books:
A ward in London is a district or division of the city committed to the special charge of one of the Aldermen; and in London there are twenty-six wards according to the number of the Mayor and Aldermen, of which every one has his ward for his proper guard and jurisdiction.

War, The custody of a town or castle, which the inhabitants were bound to keep at their own charge.

Wardage, (Wardegium) Seems to be the same with wardship.

Warden, (Gardinianus, Fr. Gardien) Is he that hath the keeping or charge of any persons or things by office; as the wardens of the fellowships or companies in London.

Warden, (Warde) is a ward in the marches of Wales, &c.

Warden, (Wardens) 14 H. 8. cap. 2. Wardens of the marches of Wales, &c.

Warden of the peace, 2 Ed. 3. 3. cap. 3. Wardens are officers charged with the King's exchange.

Warden of the peace, 2 Ed. 3. 6. 1.

Warden, (Wardens of the King's writs and records of his court of Common Bench) Is, Wardens of the lands for repairing Rokeyber bridge, 18 Eliz. cap. 7.

Warden of the manors and lands, 14 Car. 2. 3. cap. 3. Warden and Minor Canons of St. Paul's church, 2 Ed. 3. 1. 25 Car. 2.

Warden, (Warden of the Fleet prison) 28 Eng. 9. 5. 3. See Guardian.

Wardmote, (Wardmout) Is a court kept in every ward in London, ordinarily called the Wardmote court; and the wardmote inquest hath power every year to inquire into, and present all defaults concerning the watch, and require of the watch and their officers, etc., to that end; and for providing against fire; persons selling ale and beer be honest, and suffer no disorders, nor permit gaining, &c., that they sell in lawful measures; and search for be made for vagrants, beggars, and idle persons, &c., who shall be punished.

Warrant, (Warrantis, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.

Warrant of arrest, (Warrantia, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing, and may be used for the arrest of persons.

Warrant of execution, (Warrantia, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.

Warrant of peremptory, (Warrantia, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.

Warrant of recovery, (Warrantia, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.

Warrant of seizure, (Warrantia, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.

Warrant of suit, (Warrantia, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.

Warrant, (Warrantis, &c.) Is a writ or order in writing, commanding or requiring the execution of a thing.
left his advantage, F. N. B. 134. Term. de Leg. 372, 588. And if a person do infue another of lands by deed with warranty, and the feoffee make a feofment over, and taketh back an estate in fee, the warranty is determined; and he shall not have the writ warrantia charte, because he is in of another estate. And thereupon one makes a feofment against him in the orfe, the seffor, the sefso, the feoffee shall not have a warrantia charte upon this warranty against the feoffor or his heirs, if he be implieded by them, but the nature of it is to rebut against the seffor and his heirs. Dal. 48. 2 Litt. Acr. 684. This writ may be sued forth herefor, to have it implied, that he is implieded by him. See 201. Writ doth suppose that he is implieded; and if the defendant appear and say, that he is not implieded, by that plea he confesseth the warranty, and the plaintiff shall have judgment, &c. and the party shall recover in value of the lands against the voucheer, which he had at the time of the purchase of his warrantia charte; and therefore it may be good policy to bring it against him before he is sued, to bind the lands which he had at that time; for if he have aliened his lands before the voucher, he shall render nothing in value. N.ow. Nat. 298, 299. If a man recover his warranty in warrantia charte, and after he is implieded; he ought to give notice to him against whom he shall sue; and if the defendant, or any person for him, doth flate what plea he will plead, to defend the lands, &c. And where one upon a warranty doth vouch and recover in value, if he is then implieded of the land recovered, he may not vouch again, for the warranty was once executed, 23 Ed. 3. 12. In a warranty to the seffor in land, made by the feoffees upon voucheer, if special matter be dethewed by the voucher, when he entered into the warranty, viz. That the land at the time of the feofment was worth only 10l. and now at the time of the voucher it is worth 200l. by the industry of the seffor; the plaintiff in a warrantia charte, &c. shall recover only the value as it was at the time of the sale. 7th. Cas. 701. Sec. 28, 5 F. Fin. 428.

Warrantia dicti is a writ judicial, and lay for him who was challenged to be a ward to another, in respect of land said to be holden in knight's service, which when it was brought by the ancesfers of the ward, was warranted to be free from such thraldom, and it lay against the warrantor and his heirs. Reg. Judic. fol. 26. But new warrants, made 12 Car. 2, cap. 24, it is become altogether out of use.

WARRANTIA BICI, is a writ lying in a cause where a man having a day assigned personally to appear in court to any action wherein he is sued, is in the mean time, by commandment, employed in the Kine's service, for that he cannot be there to give his day. The writ is directed to the justices to this end, that they neither take nor record him in default for that day. Reg. Orig. f. 18. Of this read more, F. N. B. fol. 17. and Glanvill, lib. 1. c. 8.

Warranty (warrantia) is a premise or covenant by deed made by the bargainer, for himself and his heirs, to warrant or secure the bargains and his heirs against all men for the enjoying any thing agreed on between them. And be that makes this warranty is called warrantor, by Boston, lib. 2. cap. 19, and 37; and this warranty paffeth from the ferry to the buyer, from the seffor to the seffor, from him that relateth, to him that relieves from an alienation of the lands, and from him to Wh. Sym. part 1. th. F. Footnotes, f. 267, 268. See Glanvill, lib. 3. par tatum. Boston, lib. 5. tract. 4. Britton, cap. 105. and Co. 4. Rep. fol. 11. Note's cafe. Warranty is either real or personal's real, when it is annexed to lands or tenements granted for life, &c. And this is either in deed, as by the word securit, or by the word feud, or by some other amplifications personal, which either reposes the property of the thing told, or the quality of it. Real warranty, in respect of the estate, is either lineal, collateral, or commingling by diffusion, for which see Easom in the first chapter of his Tenures, and Co. lib. 3. Firmae's cafe, fol. 78, Canby, edit. 1747.

A warranty (concerning freeholds and inheritances) is a covenant real annexed to lands or tenements, whereby a man and his heirs are bound to warrant the same, and either upon voucher, or by judgment in a writ of war-

vanitia charte, to yield other lands and tenements to the value of thefe that shall be evidenced by a former title, or else it may be used by way of rebutter. 1 Inst. 365. 4.

Warranties in their more general divisions are of two kinds, first, a warranty in deed, or an express warranty, which is of a nature, that a man's life is made by deed, which has an express clause of warranty contained in it, as when a coufors, feoffor or lessor, coventies to warrant the land to the coufors, feoffor or leefee. Secondly, a warranty in law, or an implied warranty, which is when it is not expressed by the party, but tacitly made and implied by the law. 1 Inst. 365.

A warranty in deed is either lineal or collateral. A lineal warranty is a covenant real, annexed to the land by him who either was owner of or might have inherited the land, and from whom his heir lineal or collateral might by possibility have claimed the land as heir from him. 1 Inst. 370.

A warranty in law may not only be annexed to freeholds, or inheritances corporeal, which pass by livery, as houses and lands, but also to freeholds or inheritances incorporeal, which lie in grant, as advowsons; and to rents, commons, eftovers and the like, which issue out of lands or tenements: And it may not only be annexed to inheritances in effe, but also to rents, commons, eftovers, &c. newly created. As a man (some fame) may grant a rent, &c. our land for life, in tail, or in fee with warranty, for though there can be no title precedent to the rent, yet there may be a title precedent to the land out of which it issues before the grant of the rent, which rent may be avoided by the recovery of the land, in which case the grantee may help himself by a warrantia charte upon the especial matter. And to a warranty in law may extend to a rent, &c. newly created; and therefore if a rent newly created be granted in exchange for another, the exchange is good, and every exchange implied a warranty in law. And so a rent newly created may be granted for owely of partition. 1 Inst. 360.

If a man sold of rent-fee, illusing out of the manor of Dale, took a wife, and the husband reliefseth to the tenant, and warranteth tenantment per primam. In like wise the wife brings a writ of power of the rent, the tenant shall vouch, for that albeit the release enured by way of extinguishment, yet the warranty extended to it, and by the warranty of the land, all rents, &c. illusing out of the land, that are suspended or discharged at the time of the warranty created, are warranted alfo. 1 Inst. 360.

But a warranty doth not extend to any lease, though it be for many thousand years, or to eftates of tenant by statute flable, or merchant or eftate, or any other chattel, but only to freeholds or inheritances. And this is the reason, that in actions which lice for years may have, a warranty cannot be pleaded in bar as an action of the same nature; 3. 1. 2. or upon the statute of 5 R. 2. and the like. But in such actions, which none but a tenant of the freehold can have, as upon the statute 8 H. 6. 6., or the like, there a warranty may be pleaded in bar. 1 Inst. 389. 4.

A war-
WAR

A warranty may be made upon any kind of conveyance, as upon fines, feoffments, gifts, &c. Also a warranty may be made by a feoffment or reversion made to the tenant of the land, although he who makes the release or confirmation has no right to the land, &c. And yet some have holden, that no warranty can be railed upon a bare release or confirmation, without the presence of the land itself, or transmission of the possession. But the law is otherwise, and a feoffee may be freed of lands in fee, and B. releaseth to him, or confirms his estate in fee with warranty to him, his heirs and assigns, this warranty is good, and both the party and his assignee shall vouch. 1 Inst. 385. a.

The word warranty, or warrant, is the only apt and effectual word to make an express warranty, or a warranty in deed, and therefore this word is used in fines. 1 Inst. 384.

The words defends, or acquits, although they are commonly used in deeds, yet of themselves without the other will not make a warranty. Id. Ibid. Lit. f. 730. 5 Rep. 17. 18. Spencer's cafe.

The words dedi & confeii, or dedi only, in a feoffment make a warranty, when an estate in fee or inheritance paffes by the deed. 1 Inst. 384.

But the word confeii only, or demif & confeii, do not make such a warranty, in the case of a freehold or inheritance. 5 Rep. 18. Spencer's cafe.

And by force of the statute of Bigamia, cap. 6. Dedi is made an express warranty during the life of the feoffor. 1 Inst. 384. 4 Rep. 61. Nisbe's cafe.

If a man by deed warrants land to J. S. and his heirs, and the warrantor does not bind his heirs to the warranties; or does not warrant to J. & S. his heirs, but to J. S. and his assigns, these are good warranties. Dyre 42. 1 Inst. 383.

But if a man makes a feoffment in fee, and warranty to the feoffee only, without naming his heirs, there the warranty is good only for life, because it is taken directly. And yet if the feoffee recovers in value, he shall recover fee-simple, because he loses fee-simple. Dyre 47.

If a man makes a feoffment to one and his heirs, and binds himself and his heirs to warranty against all people, and does not lay with certainty to whom, nor for how long he will warrant, yet the feoffee will have a fee simple in the warranty, as he had in the land: But if the intent of the warranty appears plainly by express words, the warranty shall extend no farther. Id. Ibid.

2. What shall be deemed a good warranty in deed.

A warranty in deed, or an express warranty, as has been said, is created only by the world warrant. And it is to be premised, that to every good warranty in deed, in order that it may bar and bind, the following circumstances are requisite. First, that the person that warrants, be a person able; for if an infant makes a feoffment in fee of land, and thereby binds him and his heirs to warrant the land, in this case although the feoffment be only voidable, yet the warranty is void. 1 Inst. 367. 6.

But if a man of full age and an infant make a feoffment in fee with warranty, this warranty is not void in part, and for that reason, if the feoffee for the whole against the man of full age, and void as to the infant. Id. Ibid.

Secondly, that the warranty be made by deed in writing; for if a man makes a feoffment by word, and by word binds him and his heirs to warrant the land; this is not a good warranty. So if a man gives lands to another, or agrees to be bound for him and his heirs to warrant it; this warranty, although the will be in writing, is void, because a will in writing is no deed. 1 Inst. 386.

Thirdly, That there be some eflate to which the warranty is annexed, that may support it; for if one covenants to warrant another, and makes him no e£late, or makes him an eflate that is not good, and coe

WAR

Likewise, if the eflate to which the warranty is annexed is determined, the warranty dependant on it is determined. For if a man make a gift in tail, and warranteth the land to him and his heirs; and afterwards tenant in tail make a feoffment, and death without issue, he shall not rebut the donor in a formond in reverter, because that the eflate to which the warranty is annexed is determined. Id. Ibid.

Fourthly, that the eflate to which the warranty is annexed, is such an estate as the grantor is able to support it, and therefore that it be a lease for life at the least: for if one makes a lease for years of land, and binds himself and his heirs to warrant the land; this is no good warranty, neither will it have the effect of a warranty; but this may amount to a covenant, on which an action of covenant may be brought. 1 Inst. 378. 5 Rep. 17. Spencer's cafe.

Fifthly, that the warranty depends upon him that is heir of the whole body by the common law to him that made the warranty, and not upon another; for if tenant in tail in borough-english discontinues the tail, and has issue two sons, and the uncle relieves to the discontinue with warranty, and dies; this is no good warranty to bind the younger fon. 1 Inst. 12. Lit. fett. 735.

So if in this cafe tenant in tail discontinues the tail with man and wife, &c. having two sons, and dies feoffed of other lands in the tail, and through fee simple, the value of the land in tail; the younger son is not barred by this warranty. 1 Inst. 12. Lit. fett. 735.

So if one gives his land to the eldest son and the heirs male of his body, the remainder to the second son, &c. and the eldest aliens with warranty, having issue a daughter and dies; this is not a good warranty to bar the second son. Lit. fett. 178.

So if tenant in tail has issue two daughters by divers venters, and dies, and they enter, and a stranger diffiues them, and one of them relieves all her right, and binds her and her heirs to warrant it; in this case the warranty is not good to bar the other, because they are of half blood only, and the one cannot be heir to the other according to the course of the common law. Lit. 737.

So if two brothers be by demi-venters, and the eldest relieves with warranty to the difflcer of the uncle, and dies without issue; this is no good warranty to bar the younger brothers; for a warranty, it has been said, must depend upon him that is heir at the common law to him that made it. 1 Inst. 387.

Sixthly, it is necessary that he that is heir do continue to be so, and that neither the defcent of the title nor the warranty be interrruped, for if one binds him and his heirs to the warranty, and after is attainted of treason or felony, and dies; this warranty does not bind his heir. Lit. fett. 745.

Seventhly, that the eflate of freehold that is to be barred be put to a right before or at the time of the warranty made, and that he to whom the warranty does defend have then but a right to the land; for a warranty will not bar an eflate of freehold or inheritance in aff, in inquisition, in reversion or remainder, that is not displaced and put to a right before or at the time of the warranty made, though after at the time of the descent of the warranty, the eflate of freehold or inheritance be displaced and devolved. 10 Rep. 96. Seymour's cafe.

And therefore, if there be a father and son, and the son be the eldest, and the father, has a right of inheritance, is a tenant in tail, and makes the father the eldest, for the remainder of the land of the father, and the father makes a feoffment in fee with warranty, and dies; this shall not bar the fon of the rent, common, &c. Ibid.

And although the son, after the feoffment with warranty, and the death of the father, had been dissifed, and so being out of possession, the warranty had defended upon him, yet this warranty shall not bind him. Id. Ibid.
WAR

Sir, if my collateral ancestor relieves my tenant for life with warranty, and dies, and this warranty descends upon me, this shall not bind my reverion or remainder. Id. ibid.

But if in the case before the fon be delivered of the rent, &c., and affirms himself to be delivered by the bringing in of his affize, (for otherwise he shall not be rated to be out of possession of a rent, or the like) and after the father relieves with warranty and dies, in this case the collateral warranty shall bar and bind the fon of his rent, &c. Id. ibid.

And if the left cafe my tenant for life be delivered, and my ancestor related to the defeer with warranty, and dies; this is a good warranty to bind and bar me. Id. ibid.

Eighthly, that the warranty does not take effect in the life-time of the ancestor, and that he is bound by it; for the heir shall never be bound by an express warranty, but where the ancestor was bound by the fame warranty, and therefore a warranty made by will is void. Lit. 734.

Ninthly, that the heir claim in the same right that the ancestor does; for if one be a successor only in case of a corporation, he shall not be bound by the warranty of his ancestor. Hence it is ag'in v. Newbery Wha Mr, etc., 27 R. 323.

Tenthly, that the heir that is to be barred by the warranty be of full age at the fall of the warranty; for if the ancestor makes a feoffment, or a release with warranty, and the heir at this time be within age, and after he dies, and the warranty defends upon him within age, this warranty shall not bind him: But if he become of age after the warranty of the ancestor, and before his death; in this case the warranty may bar him; therefore he must take care not to suffer a defcent, after his full age, before his entry. 1 Rep. 140. & Chubb's cafe.

3. What shall be deemed a good warranty in law.

Warranties in law are so called, because in judgment of law, they amount to a warranty without the use of the word warrant. Thus the words deal & censess, or deal only in a feoffment, make a good warranty in law, to the feoffee and his heirs during the life of the sefessor. 1 Inf. 384.

But the word censess only in a fine or feoffment, does not make a warranty in law. A warranty in law may be good in its creation, albeit it be without deed; for if a man by his own will and testament devises lands to another man for life, or in tail, rendering rent; to this estate there is a warranty in law annexed. 1 Inf. 386.

And albeit there be an express warranty in the deed, yet this does not take away the implied warranty of the law. 1 Inf. 385.

Every partition and exchange implies it, in a special warranty in law. 1 Inf. 102. 384.

If one makes a gift in tail, or lease for life of land, by deed or without deed, referring a rent, or of a rent-service by deed; in these cases there is annexed an implied warranty against the donor or lessor, his heirs and assigns. 1 Inf. 334.

So when donor is allsigned to a woman, there is a warranty in law included, which is that the tenant in dower being impeached, shall vouch and recover in value a third part thereof she is dowerable. 1 Inf. 384.

And this warranty in law is of the nature of a lineal warranty, and shall bind as a lineal warranty only, for such a term as is annexed to the collateral title. 1 Inf. 384.

And hence it is, that this warranty and affists in some cafes is a good bar; as if a tenant in tail exchanges for other lands which are descended to the ifuue, and he has accepted of them, or if not, that other lands are defended to him. Id. ibid.

But if tenant in tail of lands make a gift in tail, or lease for life, rendering rent, and dies; this is no bar. And yet if other affists in fee-simple defends, this warranty in law and affists is a good bar. Id. ibid. See 5 Brev. Abr. tis. Warrant.
The statute of Marlebridge, 52 H. 8. c. 1., inserted in 1.2. 2.3. 2.4. 2.5., states that farmers, during their term, shall not make waste, fale, nor exiue, of house, woods and men, nor of any thing belonging to the tenants that they have to farm, without special licence had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convicted, they shall fulle fall damage, and shall be punished by amerciament grievously.

This act provided remedy for waste done by leasee for life, or leyse for years, and it is the first statute that gave remedy in such cases: for the rule of the Register is that there are five manner of writes for waste, viz.: two at the common law, as for waste done by tenant by tenement his bane or by tenant by statute, or by tenant by statute or special, as against tenant for life, tenant for years, and tenant by the curtesy.

This statute is a penal law, and yet because it is a remedial law, it has been interpreted by equity. Arg. 10 M. de Bed. 281. In case of Hammond v. Webb.

Farmers] Here farmers do comprehend all such as hold by lease for life or lives, or for years, by deed or without deed. 3 P. 5. and it has been resolved as a point that it should extend to strangers, Arg. 10 M. de Bed. 281. In case of Hammond v. Webb.

Altho’ the Register says sient that per statuum de Marlebridge, cap. 23. data factum autem prohibito vestri vestri tenantem annullat, which is true; yet the flat extends to farmers for life also, but this act extended not to tenant by the curtesy, for he is not a farmer, but if a lease be made for life or years, he is a farmer tho’ no rent be reserved. 2 Iyi. 145.

Shall not make waste] By these words they are prohibited to suffer waste, for it has been resolved that this act extends to waste emitting, tho’ the word is fictitious, which literally imports actio waste. Arg. 10 M. de Bed. 281. In case of Hammond v. Webb.

Nor of any thing] Houset, woods, and men were before particularly named, and their words do comprehend lands and tenant to farm. 2 Iyi. 145.

Also these general words have a further signification, and therefore, if there had been a farmer for life, or years, of a manor, and a tenancy had echeated, this tenancy fo echeated did belong to the tenements, that he held in farm, and therefore this extended to it, and the leffer shall have a writ generally, and apposse a leaf made of the lands echeated by the leffer, and maintain it by the special matter. 2 Iyi. 145.

Special licence by vertue] This grant ought to be by deed, for all waste tends to the disfigurement of the leffer, and therefore no man can claim to be dispunishable of wafes without deed. 2 Iyi. 146.

Likewise this special grant is intended to be obique immission vestri; without impeachment of waste. 2 Iyi. 146.

Told full damage] And this must be understood in such a probation of waste upon this statute as lay upon a tenant in dower at the common law, and single damages were given by this statute against leffe for life, and leffe for years. 2 Iyi. 146.

But waste may be committed not only in houses and lands, but in gardens, orchards, timber-trees, dovecoues, barns, mangers, or other subjets of property, as will be shewn. 1 Iyi. 53. a.
W A S

Weals in trees and woods.

Trees are parcel of the inheritance, and therefore, if a lease stiffeneth his term, and except the trees-terms, it is void; for he cannot except what doth not belong to him by law. 5 Rep. 12. Sanders's cafe.

The leflee, after he has made a lease for life or years, may have the trees, or reasonable coverors out of them, so another and his heirs; and the same shall take effect after the death of the leflee. But such a gift to a stranger is void during the estate for life, because of the particular prejudice which might be done to the leflee. 11 Rep. 48. Lifer's cafe.

If the leflee shall have a particular interest in the trees, but the general interest of the trees doth remain in the leflee: for the leflee shall have the waffe and fruit of the trees, and the shadow for his cattle, &c. But the interest of the body of the tree is in the leflee, as parcel of his inheritance. Therefore if trees are overthrown, by the leflee or any other, or by wind or tempest, or by any other means disjoined from the inheritance, the leflee shall have them in respect of his general ownership.


With respect to timber-terms, such as oak, ash, elm, (which are timber-trees in all places) waffe may be committed in them with the cutting them down, or lopping of them, or doing any act whereby the timber may be destroyed, or whereby the waffe may be taken away. Also in countries where timber is scant, and heches or the like are converted to building for the habitation of man, they are also accounted timber. 1 Iftl. 53. a. 54. a. Thus, waffe may be committed in cutting of heches in Buckinghamshire, because there by the custom of the country it is the left timber.

2 Rolls. Abr. 814.

So waffe may be committed in cutting of birches in Berkshire, because they are the principal trees there for most part. Ibid.

If the tenant cut down timber trees, or such as are accounted timber, as is aforesaid, this is waffe; and if he suffer the young germis to be destroyed, this is a destruction. So it is, if the tenant cut down underwood (as he may by law), yet if he suffer the young germis to be destroyed, or if he flut up the same, this is destruction. 1 Iftl. 53. a.

If leflee or his servants waffe a wood to be open, by which beasts enter and eat the germis, tho' they grow again, yet it is waffe; for after such eating they never will be great trees, but shrubs. 2 Rolls. Abr. 815.

If a termo: cuts down underwood of hazel, Willows, maple, or oak, which is fesonneable, it is not waffe. 2 Rolls. Abr. 817.

If trees are seelisable wood to cut from ten years, it is waffe to cut them down for houfe-boot. Ibid.

But if the ashes are Gros of the age of nine years, and able for great timber, it is waffe to cut them down. Id. ibid.

If oaks are seelisable, and have been used to be cut always at the age of twenty years, it is not waffe to cut them at such age, or under, for in some countries, where there is a great plenty, oaks of such age are but seelisable wood. Id. ibid.

But after the age of twenty-one years, oaks cannot be said to be wood seelisable, and therefore it shall be waffe to cut them down. Id. Ibid.

The cutting down of willows, beech, birch, afo, maple, or the like, flanding in the defence and safeguard of the houfe, is destruction. If there be a quicker fence of white thorn, if the tenant flut it up, or suffer it to be destroyed, this is also destruction: And for all thefe and the like destructions, an afection of waffe lieh. 1 Iftl. 53. a.

The cutting of horn-beans, hazels, willows, fallow, tho' of forty years growth, is no waffe, because these trees would never be timber. Per Meade Jultt. God's 4. pl. 6.

But the leflee covenant, that he will leave the wood at the end of the term as he found it; if the leflee cut down the trees, the leflee shall presently have an afection of covenant: For it is not possible for him to leave the trees at the end of the term. So that the impossibility of refraining the covenant shall give a present afection on a future covenant. But it is otherwise in the case of a houfe; for those, tho' the leflee commit waffe, yet he may repair the waffe done, before the term expires. 5 Rep. 21. Myne's cafe.

The cutting down of trees is justifiable for houfe-boot, hay, broad-hoaves, hedges, &c. &c. 1 Iftl. 53. b. Rep. c. 206. Br. Waffe, 130. By the Common law leflee shall have them, tho' the deed does not express it; but if he takes more than is necessary he shall be punished in waffe. Br. Waffe, pl. 130.

The tenant may take sufficient wood to repair the houfe, the fences, hedges and ditches as he found them, but he cannot make new. 1 Iftl. 53. b.

Cutting of dead wood is no waffe. 1 Iftl. 53.

But converting trees into coals for fuel, where there is sufficient dead wood, is waffe. Id. ibid.

Waffe in digging for gravel, mines, &c. If the tenant digs for gravel, lime, clay, brick, earth or flone, hid in the ground, or for mines of metal or coal, or the like, not being open at the time of the leflee, it is waffe. 1 Iftl. 53. b.

If a man hath land in which there is a mine of coals, or the like, and maketh a leflee of the land, (without mentioning and ordering for the waffe of the mine) for years, the leflee for so many mines as were open at the time of the lease made, may dig and take the profits thereof. But he cannot dig for any new mine that was not open at the time of the lease made, for that would be adjudged waffe. 1 Iftl. 54. b.

Likewife, if there be open mines in the land, and the owner leaves it to another, with the mines in it, he may dig in the open mines, but not in the close mines; but otherwise it would be if there was not any open mine there; for then the leflee might dig for mines, otherwise the grant would take no effect. Id. ibid.

If a leflee dig flate-flone out of the land, it is waffe. And, digging for stone's whiles in a quantum, is waffe, tho' the leflee fill it up again. 2 Rolls. Abr. 816. 66. Molle v. Molle.

Likewise, if he have a leflee of land, in which there was a coal mine, but not open at the time of the leflee; if the leflee open it, and assigns his interef, it is still waffe in the assigner: but where the leflee is of lands; and all mines in it, there he may dig in it. 5 Rep. 12. b. Sanders's cafe.

But if leflee of land, with mines of coals, iron, and flone, digs the coals, iron, and flones, so much as is necessary for him to use without selling, it is not waffe. 2 Rolls. Abr. 817.

If a leflee digs earth, and carries it out of the land, afection of waffe lies. Id. ibid.

If a leflee digs for gravel or clay, for reparation of the houfe, not being open at the time of the leflee, it is not waffe, any more than the cutting of trees for reparation. 1 Iftl. 53. b.

Waffe in gardens, orchards, fifth-pounds, dove-houses, parks, &c. If the tenant cut down or destroy any fruit-trees growing in the garden or orchard, it is waffe: But if such trees grow upon any of the ground, which the tenant holdeth out of the garden or orchard, it is no waffe. 1 Iftl. 53. a.

A hedge also is no waffe. Id. ibid.

Likewise, destruction of saffron heads in a garden, is not waffe. Br. Waffe, pl. 143. cites 10 H. 7. c. 2.

If the tenant of a dove-house, warren, park, vivary, etangues, or such like, takes so many that to much flore is not left as he found it at the time of the demief, it is waffe. 1 Iftl. 53. c. 2. Rep. c. 206.

Likewise if the leflee of a pigeon-house stops the holes, that the pigeons cannot build, it is waffe. 1 Iftl. 53. a.

So likewise, sufferings the pales of a park to decay, whereby the deer are dispersed is waffe, Id. ibid.

Likewise the cloathing the box-root of a box or other, plant in the same, and plant in low ground there, it is waffe. 66. Molle v. Molle.

The breaking a weare is waffe, and fo of the banks of a fifth-pond, so that the water and flill run out. 66. Molle v. Molle.
W A S

Wafle with respect to houses. Wafle may be done in houses, by pulling them down or proflrating them, or by burning them unlawful, but by the fplinters, slates, or other timber of the house are rotten.

1 Isl. 53. a. Default of coverre of an house is wafle, though the timber be flanding. 2 Roll. Abr. 815.

But if the house be uncovered, when the tenant cometh in, it is no wafle in the tenant to pull the fame to fall down. 1 Isl. 53. a.

Though there be no timber growing upon the ground, yet the tenant at his peril must keep the houses from wafte. 1 Isl. 53. a.

If a fellefe raifeth the house, and builds a new house, if it be as long and wide as the other, it is wafle. 2 Roll. Abr. 815.

So if he rebuilds it more large than it was before, it is wafle; for it will be more charge for the leffor to repair it. 1 Isl. 53. a.

But if a fellefe of land makes a new house upon the land where there was not any before, this is not wafle; for it is for the benefit of the leffor. 2 Roll. Abr. 815. But according to lord Coke, if the tenant build a new house, it is wafle; and if he fuffer it to be wafle, it is a new wafle. Yet if the house be proflrated by enemies or the like, without default of the tenant, or was ruined at his coming in, and fall down, the tenant may build the fame again with fuch materials as remain, and with the other timber, which he may take growing on the ground, for his habitation; but he muft not make the house larger than it was. 2 Roll. Abr. 815. 1 Isl. 53. a.

If the house be uncovered by tempeft, the tenant muft in convenient time repair it. 1 Isl. 53. a.

If a fellefe flings down a wall between a parlour and a chamber, by which he makes a parlour more large, it is wafle; it cannot be intended for the benefit of the leffor, nor is it in the power of the fellefe to tranfufe the house.

2 Roll. Abr. 815.

So if a fellefe pulls down a partition between chamber and chamber, it is wafle. Bro. Waflte, 143.

Or if a fellefe pulls down a hall or parlour, and makes a fable of it, it is wafle. 2 Roll. Abr. 815.

If a fellefe pulls down a garret over head, and makes it all one and the fame thing, it is wafle. Id. Ibid.

If a fellefe permits a chamber ftrene in defpite pro defftitu playfratium, per quod prafum maherum deuentium patriminium, & camera illa turpijhima & fadljfima deuentim, aotion of wafle lies for it. Id. Ibid.

So if a fellefe permits the wall to be in decay for default of daubing, per quod maherum deuentium patriminium, aotion of wafle lies for it. Id. Ibid.

Breaking of a pale or of a wall uncovered, is not wafle.

Bro. Waflte, pl. 94.

But breaking of a wall covered with thatch, and of a pale of timber covered, is wafle. Id. Ibid.

Burning the house by negligence or miscarnce, is wafle. 1 Isl. 53. a.

But by the 6 Ann. c. 31. No aotion is to be perfecuted againft any perfon in whose house or chamber, any fire accidentally begins.

If the tenant do or fuffer wafle to be done in his houses, yet if he repair them before any aotion brought, there lieth it only at the hazard against the fellefe, who cannot plead quod non facit volunt, but the special matter. 1 Isl. 53. a.

Wafle in things annexed to the freehold. The removing a poft in a house is wafle. 42 Ed. 3. 6.

So the removing of a door. Id. Ibid. 1 Isl. 53. a.

The breaking of a wall is wafle. Id. Ibid. 42 Ed. 3. 6.

The digging up a furnace annexed to the fractured tenement, and felling it, is wafle. Bro. Waflte, pl. 143.

The removing of a bench is wafle, though annexed by the tenant himself. Bro. Waflte, pl. 143. 1 Isl. 53. a.

If waflenot annexed to the house be taken away, it is wafle. Id. Ibid.

Of tables dormant and fixed in the land, and not to the walls by tenant, and taken off within his term, wafle does not lie; for the house is not impaired by it. Per Kingsmill J. and Grevil Serj. Bro. Waflte, pl. 104.

W A S

Beating down a wooden wall, or fuffering a brick wall to fall, is no wafle, unlefs it be expressly allledged, that the walls were exped or covered. 1 Dyer 198. b. pl. 31. Earl of Bedford v. Smith.

If wafle be affigned in pulling up a plank door and margers of a fable, plaintiff muft fhow that the fame were fixed. Id. Ibid.

If leffes ereeds a partition, he cannot break it down without being liable to the action of wafle for he has joined it to the tenant tenement. 4o. 178. Coxe's cafe.

Shelves are parcel of the house, and not to be taken away; and though it is not fhewed that the shelves were fixed, it ought to be intended that they were fixed. Per Coe. Chief Justice. 2 Biff. 113. Lady St. John v. Piatt.

Pavement is a ftucture, for they use lime to finifh it.

Id. Ibid.

If the tenant fuffers the groundles to wafle, in his de-

fault of defence or removing the water from off them, or of dirt or dung or other wafles which lies or hangs upon it, the tenant fhall be charged, for he is bound to keep it in as good cafe as he took it. Ow. 43. Sirchiofcorne v. Hatchman.

2. What wafle shall be deemed execufable, and juftifiable.

It may be observed in general, that wafle which en-

sues from the act of God is execufable: Thus if a house falls by tempeft, the tenant fhall be execufed in aition of wafle; but if it be uncovered by tempeft, and stands, there, if the tenant has fufficient timber to repair it, and does not, the leffor, if the leafe be made on condition of re-entry for wafle, may re-enter, but not immediately upon the tempeft, for it is no wafle till the tenant fuffers it to be fo long unperpared, that the timber be rotted, and then it is wafle. Per Hell. Br. Cond. pl. 40.

Likewise, if a house be abated by lightning, or thrown down by a great wind, or by fall of wafle, 1 Isl. 53. a.

So if apple-trees are torn up by a great wind, if leffee afterwards cuts them, it is not wafle. Bro. Waflte, pl. 39.

If the banks are well repaired by the leffor, and the water notwithftanding subverts them, and surrounds his meadow, by which it is become rough, it is not wafle. 2 Roll. Abr. 820. Contra. 20 H. 6. c. 1. k.

The leffor cannot give trees during the tenant's leafe. But if he grants them to a stranger, and commands the tenant to cut and deliver them, who does it, this fhall excufe him in an aition of wafle. And yet the tenant was not committed to obey and execute this command. Per Dole, 828. 13.

Tenant in tail may commit wafle in houses as well as in all other parts of the eftate, notwithstanding any re-

ftraint to the contrary, and no inflance can be fhewn, where a tenant in tail has been refrained from committing wafle by injunction of the court of chancery. Coel. Temp. Id. Tab. 16. Glemerey v. Bifuller.

If tenant in tail grants all his eftate, his grantee is diufpofable of wafle; fo fuch grantee's grantee is also diufpofable; Per Clerk J. 3 Le. 121. pl. 172. Aione.

If a man devife land to two in tail, and after the one devifee dies without issue, by which the reversion in fee of one moiety reverts to the heir of the donor; but the other devifee is tenant for life of the whole, and after he commits wafle, action of wafle lies againft him by the heir of the donor for the one moiety. 5 Bro. Abru. 849.

But he cannot plead, of wafle does not lie againft tenant in tail after poftibility, for the greatness of the eftate of inheritance which was once in him; and also, at fome fay, be- cause the eftate was not within the flature by the creation.


If lands are given to the husband and wife, and to the heirs of his body, the marriage with the wife, the remainder to the husband and wife, and to the heirs of their two bodies begotten, and the husband dies without issue; the wife fhall not be tenant in tail after poftibility; for the re-

mainder in special tail was utterly void, for that it could 9 11 never
never take effect. For so long as the husband should have iuife, it should inherit by force of the general tail; and if the husband die without issue, then the special cannot take effect, inasmuch as the issue which should inherit in the husband, if he should die, shall be begotten by the husband, and to the general, which is larger and greater, hath frustrated the special, which is lefser; and the wife, in that cafe, shall be punished for waffe. 1 Jef. 28. b.

It has been agreed, that tenant for years may cut wood; but it has been doubted, if tenant at will may; but it seems, that as long as tenant at will is not countermanded he may cut feamons wood, &c. Brs. Woffle, pl. 114.

Where a man leaves a wood which confists only of great trees, the leflee cannot cut them. Hibard's Rep. cafe 296.

Nevertheless, if the leflee cuts trees for reparation, and sells them, and after buys them again, and employs them in reparation, yet it is waffe by the cafe. 1 Jef. 53. b.

So if leflee cuts trees, and sells them for money, tho' with the money he repairs the house, yet it is waffe. Id. ibid.

As the cutting of timber-trees for reparation by lefsee, there is no difference whether the lefsee or leflee cove-
nants to repair the houses; for in either cafe it is not waffe, if leflee cuts them. 8o. 3d. pl. 89. Answ.

If a house be proflrated by enemies of the King, or fuch like, without default of the leflee, the leflee may rebuild it again with the fame materials that remain, and may keep it, if, after the time appointed for the lefsee to rebuild it, he mufi not make the house larger than it was. 1 Jef. 53. a.

So if the house was ruinous at the time of the lefsee, and fell within the term, this is not waffe in the tenant. 1 Jef. 53. a. Brs. Woffle, pl. 130.

But the leflee shall not cut trees to make a new house where there was not any at the time of the lefsee. Hb-

bart's Rep. cafe 296. So if a lefsee suffers a house to fall for default of co-

verying, which is waffe, he cannot cut trees to repair the house. Brs. Woffle, pl. 59.

And in general, if the tenant suffer the house to be waffe, he cannot justify the felling of timber to repair it. 1 Jef. 53. b.

If a house be ruinous at the time of the leflee, tho' the leflee is not bound to repair it, yet he may cut trees to repair it. 1 Jef. 54. b.

The tenant may likewife dig for gravel or clay for reparation of the house, tho' the foil was not open when the tenant came; and this is juftifiable as well as cutting of the trees. 1 Jef. 53. b.

So with regard to a flable, if it fall without default of the leflee in the time of the lefsee, the lefsee may take trees of the heir to make a new flable, if it be of nec-

essity. Brs. Woffle, pl. 69.

But if the flable flall in default of the lefsee, in time of the lefsee, he cannot in time of the heir cut trees to make a new flable. Brs. Woffle, pl. 67.

Cutting wood to burn, where the tenant has fufficient hedge wood is waffe. F. N. B. 59. (M.)

Where leflee for years has power to take hedge-boot by affignment, yet he may take it without affignment; for the Surgeon does not take away the power which the law gives him. Dy. 19. pl. 115.

If lefsee accepts his trees in his lefsee, the lefsee flall not have fire-boot, hay-boot, &c. which he should have otherwise; and the property of the trees is in the lefsee himself. 4 Ler. 162. pl. 269. Sir Richard Lebowne's cafe.

Yet it has been faid, that lefsee for years, the trees being excufed, has liberty to take the fhrowds and lop-

pings for fire-boot; but if he cuts any tree, it fhall be waffe, as well for the lopping as for the body of the tree. Np. 29. Rich v. Makepeace.

A leflee that has fire-boot to his house in another man's land, cuts wood for that intent to make his boot-

wood, and the owner of the land takes it away, an ac-

tion of trover and conversion lies againft him by the te-

If the leflee is bound in a bond of 100 l. and the lef-

fee cuts twenty oaks, and sells them, and pays the obli-

ges for his lefsee, yet waffe lies againft him for cutting them down, tho' the money was applied to the ufe and profit of the lefsee. Dyer 36. pl. 38. Melonver v. Spink.

If A. hath common of eftovers in the wood of B. for house-boot, and he cuts down four trees for that purpose, and in the working they prove unfit for the ufe, as for poles of a house, &c. It was held, that A. cannot con-

vert this timber to any other ufe, &c. neither can be fell, but he other fit wood with the money; and he can-
a bishop, master of an hospital, parish, &c. have an action of wafe done in the time of their predecessors. 1 Inst. 341. a. 1 Inst. 53. b. 356. a.

If a lease be made to A. for life, the remainder to B. for life, remainder to C. in fee; no action of wafe lieth against the first lessor during the estate in the mean remainder, and the second lessor during the estate in the remainder. Other wise if B. had a mean remainder for years, for that would be no impediment, the recovery not destroying the term of years. 5 Rep. 76. 77. 1 Inst. 54. a.

If feeble for years commit wafe, and the years do expire, yet the lessee shall have an action of wafe for treble, and the estate lying vacant within, but if the lessor accepteth of a surrender of a lease after the wafe done, he shall not have his action of wafe. It is said that if a tenant repairs before action brought, he in reversion cannot have an action of wafe; but he cannot plead that he did no wafe, therefore he must plead the special matter. 1 Inst. 285. a. 283. a. 1 Inst. 306. 35. 5 Rep. 119. 2 Cr. 638.

Likewise, by 11 H. 6. c. 5, where tenants for life, or for another's life, or for years, grant over their eftates, and take the profits to their own use, and commit wafe, they in reversion may have an action of wafe against them. 2 Inst. 769.

He in the remainder as well as the reversioner may bring this action, and every privilege of the first lease, mediate or immediate, is within this act. 5 Rep. 77. Pegler's case. 2 Inst. 302.

It has been said, that there are five writs of wafe, to wit, a common law, an act for wafe done by tenant in dower, or by guardian; three by statute, as against tenant for life, tenant for years, and tenant by the curtesy. It has been said, however, that tenant by the curtesy was punishable for wafe by the Common law, for that the law created his eftate as well as that of the tenant in dower; and the law gives this upon the clause to the contrary, viz. 1 Inst. 54. a. 2 Inst. 145. 299. 301. 305.

But on this subject the authorities in the books are very contradictory, as the reader will perceive by attending to the note subjoining to the following clause of the statute of Gloucester, 6 Ed. 1. cap. 5, which enacts, that "A man from henceforth shall have a writ of wafe in the chancery against him that holdeth by law of England, or otherwise for term of life, or for term of years, or a woman in dower."

No action of wafe lay before the statute of Gloucester, but against tenant in dower and guardian, and by the statute of Henry the fifth it is given against tenant by the curtesy, tenant for term of life, and tenant for term of years. Br. Wafes, pl. 88. Lord Coke says, a reason is required, (that seeing as well the eftate of the tenant by the curtesy, as the tenant in dower are created by act in law,) wherefore the prohibition of wafe did not lie as well against tenant by the curtesy as the tenant in dower, at the Common law; and the reason he assigns is this, for that by having fife the flate of the tenant by the curtesy, is originally created; and yet after that he shall do homage alone in the life of his wife, which proves a larger eftate; and seeing that at the creation of his eftate the person who does the wafe lay not against him after his wife's decease; but in the case of tenant in dower, the person is punishable at the first creation of her eftate, 2 Inst. 145. But 2 Inst. 299. says, that at the Common law, wafe was punishable in three perfons, (viz.) tenant in dower, tenant by the curtesy, and the guardian, but not against tenant for life or tenant for years; and the reason of the diversity was, for that the law created their eftates and interests; and therefore the law gave remedy against them; but tenant for life and years came in by demife and lease of the owner of the land, and therefore he might in his demife provide against the doing of wafe by his lease; and he might institute his lessee, was his negligence and default.

Shall have a writ of wafe? Neither this act, nor the statute of Mesherbidge, doth create new kind of wase, but gives new remedies for old wase, and what is wafe, and what is not, must be determined by the Common law. 2 Inst. 303. 301.

Against him? If two are joint tenants for years or for life, and one of them does wafe, this is the wafe of them both as to the place wase done, notwithstanding the words of the act are, (him that holds), a 2 Inst. 302.

Holds by the law of England? Here tenant by the curtesy is named for two caufes. ib. For that albeit the common opinion was, that an action of wafe did lie against him, yet some doubted of the same in respect to this word, (tenant) in the writ, for that the tenant by the curtesy did not hold of the heir, but of the lord Paramount, before this act, the wafe of ground was thereupon doth recite this statute; 2dly, for that greater penalties were inflicted by this act than were at the Common law. 2 Inst. 301.

Or otherwise for term of life, or for term of years? A lefsee for his own life, or for another man's life, is within the words and meaning of this law, and in this point this act introduces that which was not at the Common law. 2 Inst. 301.

If tenant for life takes husband, the husband does wafe, the wife dies, the husband shall not be punished by this law; for the words of this act be (a man that holds, &c. for life) and the husband held not for life; for he was feigned but in right of his wife, and the eftate was in his wife. 2 Inst. 301.

He in the remainder as well as the reversioner may bring this action, and every privilege of the first lease, mediate or immediate, is within this act. 2 Inst. 302.

Tenant for years of a moieties, 3d or 4th part, pro indivis, is within this act; and so it is of a tenant by the curtesy, or other tenant for life of a moieties, &c. 2 Inst. 302.

Or a woman in dower? This is to be understood of all the five kinds of dowers whereas Littleton speaks, viz. dower at common law, dower by the custum, dower ad usu et occision, dower ad officium patri, dower de la plus rele. and against all these the action of wafe did lie at the Common law. 2 Inst. 303.

If tenant in dower be of a manor, and a copyholder thereof commits wafe, an action of wafe lies against tenant in dower. 2 Inst. 303.

After a man's decease, an occupant for life, because he has the eftate of the lefsee for life, and holds for life, as the statute mentions. 6 Rep. 37. 6. Dean and chapter of Worcester.

If lefsee for life be attainted of treason, by which the lefsee is forfeited to the King, who grants it over to I. S. and he afterwards does commit wafe, he comes in the lefsee, yet action of wafe lies against him. 2 Roll. Ab. 526.

So if a man defiles the tenant for life, and does wafe, yet action of wafe lies against the tenant for term of life; for he may have his remedy over against the defi- lefsee. Br. Wafes, pl. 88.

Likewise, if an eftate be made to A. and his heirs, during the life of B, A. dies, the heir of A. shall be punished in an action of wafe. 1 Inst. 54. a. f(1)

But an action of wafe does not lie against tenant by statute merchant, elegit or rapiile, because it is not an eftate for one years, and the statute mentions those who hold in any manner for life or years. Contra, Fitz. Nar. 58. H. and there said, that in the Register is a writ a gainst him. 6 Rep. 37.

Some books give the reason of it to be, because the courier, if he commits wafe, may have a venire facias of common law, shall be recovered in the debt. Fiz. Nar. 58. b. (K.)

If a man makes a lefsee for years, and puts out the lefsee, and makes a lefsee for life, and the lefsee for years enters upon the lefsee for life, and does wafe, the lefsee for life shall not be punished for it. 2 Inst. 303.

If lefsee for years makes a lefsee of one moiety to A, and of the other moiety to B. and A. does wafe, the actio
action shall be against both; for the waste of the one is
the waste of the other. Broom, 236. Anq. 2.
An action of waste lies against a devisee, and the
writ may not issue at law from the devisor, for it is within equity of
the statute. Br. Waife, pl. 132.
No action of waste lies against a guardian in loco parentis,
but an account or trespass. 1 Inst. 54. S. P. contra,
F. N. B. 59. (E)
If an eate of lands be made to baron and feme, to
have them during the coverture, &c, if they waste,
the feoffor shall have writ of waste against them. Lit.
fl. 381.
If feme liffes for life marriages, and the husband does
waste, action lies against both. 2 Roll. Abr. 827.
And, if in the above case, the husband dies, action
of waste lies against the feme for the waste he committed.
Id. Ibid.
But if tenant in dower marriages, and the husband does
waste and dies, the feme shall not be punished for this.
Id. Ibid.
Likewise, if baron and feme are leptees for life, and
baron does waste, and dies, the feme shall be punished
in waste, if the agrees to the eate. Id. Ibid. 1 Inst. 54.
Kcl. 113.
But if the waves the eate, the shall not be charged.
2 Roll. Abr. 827.
So upon lease for years made to the baron and feme,
waifte lies against both. Id. Ibid.
And if baron and feme are joint-lettees for years, and
baron does waste, and dies, action of waste lies for this againft
the feme. Id. Ibid.
Upon lease for life, to baron and feme, waste lies
against both. Id. Ibid.
Likewise, if feme commits waste, and then marries,
the action shall be brought against both. Id. Ibid. And
the writ may be Quad fierunt wastam, or Quad uer,
If baron, feized for life of his wife in right of his wife,
does waste, and after the feme dies, no action of waste
against the baron in the tenequies, because he was seized
only in right of his wife, and the frank-tenement was in
the feme. 1 Inst. 54. 5 Rep. 75. b.
But if the baron, poifomed for years in right of the
feme, does waste, and after the feme dies, action of
waste lies against the baron, because the law gives the
term to him. 1 Inst. 54.
In such a fee simple, or fo feoffment in fee to the use of himself
and his wife, and to his heirs; there were underwoods on
the lands, which were usually cut at 21 years growth;
A. suffered them to grow 25 years, and then died; per
tot cur; This shall bind the wife; for where the law
limits a time for a tenant for life to fell underwood, if it be
not mortified at that time, it shall not be felled by a tenant
for life afterwards, but it shall be waife. Godh. 445.
lb. 6. Anon.
Leffe for years of lands bought trees with liberty
to cut them down within 80 years. Afterwards the leffe
bought the inheritance, and devised to his wife for life,
remainder to the plaintiff in fee, and made his wife exe-
cutioner, and died; the cut down the trees; adjudged that,
an action was maintainable; for though the trees were
once challets in the leffe, yet by purchasing the inheri-
tance they are again united unto the land. Ow. 49.
Anon.
4. In what cases in general, waste may be restrained by
injunction in equity.
If a tenant for life plant wood on the land, which is of
so poifous a quality that it destroys the principles of
vegetation, without an express power in his lease, where
it is usual to have such powers, it may be considered as
waste, and the court of chancery may grant an injunc-
tion. 5 Barr. Abr. 493. MISS. Rep. Marquis of
Pears v. Darrell, Canr.
If there be leffe for life, remainder for life, the reve-
raison or remainder in fee, and the leffe in possession waste
the lands, though he is not punishable for waste by the
Common law, by reason of the mean remainder for life,
yet he shall be restrained in chancery, for this is a parti-
cular mischief. 3 H. 5. 180. S. P. contra
But if such leffe in his lease an express clause of
without imposition of waste, he shall not be injoined in
equity. 1 Vern. 23.
If A. is tenant for life, remainder to B. for life, re-
mainder to and other fons of B. in tail male, re-
mainder to and other. 1 Inst. 545. S. P. contra
And if any fort brings a bill against A. to stay waste, or A.
demurs to this bill, because the plaintiff had no right to
the trees, and no one that had the inheritance was party;
but the demurrer will be over-ruled, because waste is to
the damage of the public, and B. is to take care of the
inheritance, and though he be a jointinterf, if he has a par-
ticular interef himself, in cafe he comes to the eate.
Dorpe v. Champneys, 1 EG. Coyo. Abr. 450.
On a motion for an injunction to stay a jointreus, who
was tenant in tail after possibility, &c. from committing
waste, it was urged, that the being jointreus within the
11 H. 7, ought in equity to be restrained from cutting
timber, that being part of the inheritance, which, by
the statute, he is restrained from aliening; and the court
granted an injunction against willful waste in the use of
the house, and pulling down houses. Id. Ibid. Cook
v. Whitley.
But where a jointreus, who had a covenant that her
jointure should be of such a yearly value, which fell short,
though her estate was not without imposition of waste;
but the court would not prohibit her committing waste,
so far as to make up the defect of her jointure. But
quere, if an action of waste be brought against her, if
chancery will injin the action. Id. Ibid. Carew v. Car-
creu.
It seems to be a general principle however, that tenant
in tail, after possibility, shall be restrained in equity from
doing waste by injunction, &c. because the court will
not give any man a disparition; & per chan. Finch.
And he took a diversity where a man is not punishable for
waste, for the estate of the heir at law, right of the wife
in Undeloue's cafe, 24 Car. 1. Ruled by lord Roll, to warrant
that disposition, 2 Shaw 69, pl. 53. Abrabai v. Bubb.
A. devised lands, on which timber was growing, to
his wife for life, remainder to B. in fee, paying several
legacies within a limited time, and in default of payment
the remainder to C. he paying the legacies; and on the
death of B. by the court gave him leave to cut timber for
the payment of the legacies, though it was opposed by
the tenant for life and the devisee, he making satisfaction
to the widow for breaking the ground by carriage, waste, &c.
So there has been created a term for 500 years, in trust
for himself and his wife for life, remainder to trustees for
paying of debts and annuities; and by will devolved the
reversion thereof to A. for life, without imposition of
waste, remainder to his frith and other sons in tail male,
with remainder over; and A. being in want, the court
gave him leave to cut down timber to the value of 500/;
though the debts and annuities were not paid; the true
trees having no power to fell the timber, they being like
to have a long continuance, and there being a great deal
of decaying timber on the eate. 2 Vern. 218. Affin-
ton v. Leigh & al.
If a tenant for life lease without imposition of waste takes
off all restraint from the tenant of doing it; and he may
in such cafe pull up, or cut down wood or timber, or
dig mines, &c. at his pleasure, and not be liable to any
action. Plaxad. 135.
But though the tenant may let the houses be out of re-
pair, and cut down trees, and convert them to his own
use, yet where a tenant in feeimple made a lease for
years without imposition of waste, it was adjudged that
the lessor had still such property, that if he cut and
carry away the trees, the lessee could only recover da-
mage in action for the trespass, and not for the trees:
Alfo it hath been held, that tenant for life, without im-
position of waste, if he cuts down trees, is only exempt
from an action of waste, &c. 11 Rep. 82. 1 Inst.
220. 2 Inst. 146. 6 Rep. 63. Dryr. 184.
And
Bishop of London. In Edward the fifth's time, made a long lease of some woods, which yearly rents he made, if the leafe cut them down, or bring trover for them. Wood's Litt. 574.

In many cases, likewise, the court of chancery will refrain waste though the lease, &r. be made without impeachment of waste. For the court will allow an impeachment of waste, never so intended to allow the destruction of the estate itself, but only to excuse for permissive waste, and therefore such a clause would not give leave to fell or cut down trees ornamental or sheltering of a houfe, much lefs to defroy or demolifh a houfe itself. Thus, a bill was brought by remainder-man to refrain tenant for life, without impeachment of waste, from cutting timber in Weftwood park improper to be felled; and Lord Chancellor granted the injunction to refrain the defendant from cutting timber, which ferved for shelter or ornament to the houfe, or which grew in lines, avenues, or rigging for ornament, and also any other timber in the park, which was not of proper growth to be felled. And his lordship in this cafe declared, that courts of equity in this respect established rules more re- tire than thofe of the Common law; which gave tenant for life, without impeachment of waste, as large a power over the timber, as tenant in fee-fipme, that timber should not be served. And Mr. Justice Chancel- ler was of opinion, that if the tenant for life, having a curiosity in the houfe, to fell and cut down timber, ferved for shelter or ornament to the houfe, and perhaps the only fruit that can rife from the land. They do not carry away the foil, for they dig off the turf, then take away the pet, and lay turf down again: And the tenant for life can no more dig pet to fell, than cut down timber to fell it; and if Lord Chancellor was of opinion, that if he was to give any relief, he must direct an iffee. But the caufe was of too frivolous a nature to maintain the ex- pence. 5 Bro. Abr. 496. MSS Rep. Wilton v. Bagg. 3d March 1742. A bill being brought to redeem a mortgage, on the hearing, an account was decreed, and 240l. reported due; to which report the plaintiff had taken exceptions. The caufe thus standing in court, the Lord Keeper, on a motion, and reading affidavits, that the defendant had burnt fome of the wainscot and committed waste, ordered the defendant to deliver up the property to the plaintiff, who was a pauper, giving security to abide the event of the action. 11 V. 345. 352. Hayton v. Derby. A. tenant for life, remainder to truftees to preserve, &r. remainder to C. the plaintiff in tail, remainder over, with power to A. with consent of truftees, to fell timber, and the money arising to be vefted in lands, &r. to the fame ufe, &r. A. felled timber to the value of 3000l. of which, who never intermedded; and A. had fuffered fome of the tenants hazard. C. by bill prayed an account and injunction. The matter of the rolls faid, that the timber might be confidered under two denominations, to wit, fuch as was thriving and not fit to be felled; and fuch as was unthriving, and what a prudent man and good husband would fell. G. and ordered the biller to take an account, &c. and the value of the former, which was waste, and therefore be- longs to the plaintiff, who is next in remainder of the inheritance, is to go to the plaintiff, and the value of the other is to be laid out according to the fettlement, &r. but as to repairs, the court never interposes in cafe of permissive waste, either to prohibit or give fatisfaction, as it does in cafe of willful waste; and where the court have jurisdiction of the principal, viz. the prohibiting, it does in confequence give relief for waste done, either by way of account, as for timber felled, or by obliging the party to rebuild, &c. as in cafe of houses, &c. and mention Lord Bernard's cafe as to Ruby Caffe. 2 Fern. But as to repairs, it was objectted, that the plaintiff here had no remedy at law by reafon of the mean effate for life to the truftees, between plaintiff's remainder in tail, and the defendant's effate for life, and that therefore equity ought to interpose, &r. and that it was a point of conficnece. 30th of Jan. 1726. 5 MSS. Rep. Mich. vac. 1733. Coventllen v. Lord Grenen. A lord of a manor may bring a bill for an account of our dag, or timber cut by the defendant's tenant. Thus, A customary tenant of lands, in which was a copper mine, that never had been opened, opened the fame, and dug out and sold great quantities of oar, and died; and his heir continued digging and disposing of great quantities out of the fame mine. The lord of the manor brought a bill 

Vol. II. No. 135.

5. What relief may be given in equity, in cases of waste. A bill was brought to refrain tenant in dower from getting peat; Lord Chancellor dismissed it with costs, as it appeared to be vexatious, the pet the fold not being above the value of 10d. But herein it was faid, that digging pet is in many places the ordinary bot, and perhaps the only fruit that can rife from the land. They do not carry away the foil, for they dig off the turf, then take away the pet, and lay turf down again: And the tenant for life can no more dig pet to fell, than cut down timber to fell it; and if Lord Chancellor was of opinion, that if he was to give any relief, he must direct an iffee. But the caufe was of too frivolous a nature to maintain the ex- pence. 5 Bro. Abr. 496. MSS Rep. Wilton v. Bagg. 3d March 1742. A bill being brought to redeem a mortgage, on the hearing, an account was decreed, and 240l. reported due; to which report the plaintiff had taken exceptions. The caufe thus standing in court, the Lord Keeper, on a motion, and reading affidavits, that the defendant had burnt fome of the wainscot and committed waste, ordered the defendant to deliver up the property to the plaintiff, who was a pauper, giving security to abide the event of the action. 11 V. 345. 352. Hayton v. Derby. A. tenant for life, remainder to truftees to preserve, &r. remainder to C. the plaintiff in tail, remainder over, with power to A. with consent of truftees, to fell timber, and the money arising to be vefted in lands, &r. to the fame ufe, &r. A. felled timber to the value of 3000l. of which, who never intermedded; and A. had fuffered fome of the tenants hazard. C. by bill prayed an account and injunction. The matter of the rolls faid, that the timber might be confidered under two denominations, to wit, fuch as was thriving and not fit to be felled; and fuch as was unthriving, and what a prudent man and good husband would fell. G. and ordered the biller to take an account, &c. and the value of the former, which was waste, and therefore be- longs to the plaintiff, who is next in remainder of the inheritance, is to go to the plaintiff, and the value of the other is to be laid out according to the fettlement, &r. but as to repairs, the court never interposes in cafe of permissive waste, either to prohibit or give fatisfaction, as it does in cafe of willful waste; and where the court have jurisdiction of the principal, viz. the prohibiting, it does in confequence give relief for waste done, either by way of account, as for timber felled, or by obliging the party to rebuild, &c. as in cafe of houses, &c. and mention Lord Bernard's cafe as to Ruby Caffe. 2 Fern. But as to repairs, it was objectted, that the plaintiff here had no remedy at law by reafon of the mean effate for life to the truftees, between plaintiff's remainder in tail, and the defendant's effate for life, and that therefore equity ought to interpose, &r. and that it was a point of conficnece. 30th of Jan. 1726. 5 MSS. Rep. Mich. vac. 1733. Coventllen v. Lord Grenen. A lord of a manor may bring a bill for an account of our dag, or timber cut by the defendant's tenant. Thus, A customary tenant of lands, in which was a copper mine, that never had been opened, opened the fame, and dug out and sold great quantities of oar, and died; and his heir continued digging and disposing of great quantities out of the fame mine. The lord of the manor brought a bill
bill in equity against the executor and heir, praying an account of the said oar; and alleged that their common

and that the freehold was in the plaintiff as lord of the manor and owner of the foil; and that the manner of pulling the premis-

es, was by surrender into the hands of the lord, to the use of the surrenderee. It was infifted for the defendants, that it did not appear, that the claim of title was to be held "domini fecondum communem focietatem", &c, without which words, it was infifted, that there could be no copious, as had been adjudged in Lord Ch. J. Hol's time. And Lord Chan. Cooper faid it would be a reproach to equity to fay, that where a man has tak

en another's property, as oar, or timber, and dispifed of it after his life-time, and dies, there should be no remedy for


Converting a boughwood into tenements of a greater value, is waft, notwithstanding the melhoration, by rea-

of the alteration of the nature of the thing and of the evidence; and fo refolved on a trial before Hale, Ch.

J. and the jury gave the verdict accordingly, and 100 marks fingle damages, which being trebled, amounted to

200l. which the Chancellor compelled Coke to take.


Leflie for 500 years, of land of about 200 l a year, built feverall houses, and thereby improved it to the value of 200l. a year, and quietly enjoyed the fame for 20 years and more, and then an action of waft

was brought for pulling down a brick wall, and cutting down fruit trees, and digging gravel for laying the foundation of the houses built on the faid ground. He brought a bill fettling out, that fuch building could not be accounted any waft, but rather a melhoration and improvement of the land. The defendant pleaded the ftrate by which provifion is made for bringing actions of waft. But the court over-ruled the plea, and or-

dered the defendant to anfwer and to fee the caufe.


An under-tenant of a jointreft commits waft, after carri

es, fo as at law the caufe was forfeited, but infifted that he had

been forfeited from the flate of 80 l to 60 l per annum, and offered to take a lease of it at that rent for 60 years,

and to anfwer the value of the timber on a quantum dan


One fettled in fea of lands in which there were mines, all which were approv'd, by a deed conveyed those lands, and all mines, waters, trees, &c, to trustees and their heirs, to the ufe of the grantor for life, (who foon after died) remainder to the ufe of A, for life, remainder to his firft, &c. that in tall male feuually, remainder to B. for life, remainder to his firft, &c, for 35 years, after his death, commence feuually, remainder to his two fitters C. and D. and the heirs of their bodies, remainder to the grantor in fee. A. and B. had no fons, and C. one of the fitters died with-

out issue, by which the heir of the grantor as to one moiety of the premis, had the firft etate of inheritance: A. having cut down timber and fold it, and threatened to open the mines, the heir of the grantor, being fecked of one moiety, right after the death of one of the fitters without issue, brought his bill for an account of the moiety of the timber, and to fay A.'s opening of any mine: And it was adjudged the right to this timber be-

longs to thojes, who at the time of its being fevered from the treehold, were fecked of the firft etate of inheritance, and the property becomes veckd in their a. P. Will. 249. pl. 124. Wild v. Benv.

A bill was brought againft the executors of a jointreft, to have a fatisfied out of fefts for permissive waft

upon the jointure of the fettaint, &c. But by Cooper J. the bill mall be dismissed, for here is no covenant that the jointreft shall keep off the waft, when they are not in their entrenchments, drank a health to one another, in the phrase of was-heal: And this waftel or washeal-bowl, was fet at the upper end of the table in religious houes for the ufe of the abbot, who began the health or poemen chartulari to strangers, or to his fraternity. Hence cakes and fine white bread, which they in their waftel-bowl, were called waftel-bread. Matt. Par. 141.

From this was the waftel-bowl, &c. It has been said in equity, that remainder-man for life

(hall), in waft, recover damages in proportion to the first

wrong done to the inheritance, and not in proportion only to his own eflate for life. 1 Vern. 138. Brown v. Brown.

A, being tenant for ninety-nine years, if he should fo long live, with trustees to preferve remainder to his firft

and other beneficaries, to A. and B, before be killed. The elec-

tion of A. afterwards brings his bill, for an account and fa-

tisfaction of the timber against B. Per Lord Chan. Plaintiff has no remedy to law either in his own name, or in the name of his trustees. A, if he had not confented to it, should have brought treffps; for tenant for years is confidered as a necessary tenant and remainder for life.

If A, had had an eflate for life, and no limitation to trustees, the plaintiff could have had no remedy; be-

cause tenant for life might have barred, or surrendered the whole eflate to the remainder-man: But here the freehold was in the trustees; and the poiffiffion of leiff for years is in law the poiffiffion of the owner of the free-

hold. The trustees however would not here have main-

tained waft, because the Common law gave no action of waft, but to the owner of the inheritance; and the

fature of Gloucefter gives the right to the fame persons; but the trustees are in no other condition than remainder-

man for life. Trustees may bring a bill in equity to fay waft, before the contingent remainder comes in. The caufe of waft, is brought in his bill; the caufe, as to trees actually cut, would have obliged them to have maffenfeit in money, to have been fecured to at-

tend the contingent ufe. Where there is tenant for life or years subject to waft, and timber is blown down, the owner of the firft remainder in tail walled, shall have it; for the Common law considers an eflate in contingence as no caufe: and when the tree is favored the property vefts in somebody. If there be tenant for life, remainder for life, remainder in fee, remainder-man can have no action for waft, because plaintiff must recover the place wafted, which would be in justice to the re-

minder over; but such a remainder-man of the inheri-

tance after the intervening eflate may have trover for the trees, and if remainder-man for life dies in the life of remainder-man in fee, he may bring waft. 5 Bac. Abr. 498. M.S.S. Rep. Gorib v. Swenn, 26 Geo. 2.

Tho' an injonction is a proper remedy, yet it has nev-

er been held that a bill for waft would give no action; it cannot be maintained afterwards: And tho' a recovery was foftered waft then, it was to the ufe of plaintiff and his heirs, which is no new ufe, and ought not to bar waft in equity. It is true,.action of waft in life dies with the per-

son, but the waft will not lie at law, as the perfon committed to the bar is dead, yet he may have recovery at the
court. It has been held in all eales of fraud, the sa-

me day never dies with the perfon, but relief may be had against the executor out of fefts; and this court will follow the fefts of the party liable to the demands; and collusion in this court is the fame as fraud. Decreed a fa-

tisfaction to be made to the plaintiff for the value of the timber, but no further remand to fee of the eftate; and

would not give any inferest, as that would be carrying it too far. 5 Bac. Abr. 499. For more learning on this subjett, fee 5 Bac. Abr. and 22 Vin. Abr. tit. Wafle.

Wafle-bowl. (from) the Six Wafle-heal, &c. i. health be to you) A large cup or bowl, wherein the Saxons, at their entertainments, drank a health to one another, in the phrase of was-heal: And this waftel or washeal-bowl, was set at the upper end of the table in religious houes for the ufe of the abbot, who began the health or poemen chartulari to strangers, or to his fraternity. Hence cakes and fine white bread, which they in their waftel-bowl, were called waftel-bread. Matt. Par. 141.
Persons aggrieved by affidavits for watch and ward may appeal to the Mayor, &c. 11 Geo. 1, c. 158, s. 12.

Watches, made by artificers, are to have the makers names, &c. under the penalty of 201. Stat. 3d & 4th W. 3, c. 28. See Clocks and Watches.

Watches, In which are included navigable rivers and streams; for the statutes relating thereto, see His Maj.

Water-bailiff. An officer in port-towns, for searching of ships. Alfo in London, there is a water-bailiff who hath the supervising and searching of fish brought thither; and the gathering of the toll arising from the Thames; and he attends on the Lord Mayor, having the principal inquiring the gullets at his table, and arraigns men for debt, or other breaches of criminal matters upon the river Thames. 28 H. 6, c. 5.

Water-courts. A water-courts does not begin by prefirmation, nor yet by affim, but begins ex jure naturæ having taken this course naturally, and cannot be arrested. Per Whitch. 3 B. Jefr. 340, in cafe of Sury v. Pigott.

If one had ancient ponds, which were replenished by channels out of a river, he cannot change the channels, if any prejudice accrue by it to another. Per Car. Hæ. 52. Mich. 3 Car. B. R. Duncom v. Randall. 33 Ed. 3, 467, that the 15th of May of W. 4, & M. he was poiffessed of a little from which a course of water per e grunt the garden of the defendant curvve deebt & debt, &c. The court gave judgment for the plaintiff; but an exception being taken because he does not say that the water ever ran from the house, or that he was poiffessed of it, but only that he was debited for it, the court ordered it to be put into the paper again; & after this being a poiffessory action it was held to be well enough. Slin. 316. Poil. 4 W. & M. in B. R. Jacobin v. Savage.

In cafe the plaintiff declared, that he was poiffessed of an ancient poiffessory in Com. 3, and that a certain water-course at D. courrue was suxue debt in jubinum tem, and as often as the well overflowed ran into the plaintiffs house for his necessary use, and that the defendant dug the ground so near the well and placed a cifer there, fo that the water was diverted and did not over-foem from such a day, whereby the plaintiff lost his necefary water. After verdict for the plaintiff it was moved, 1st. That there was no terminus a quo; 2dly. That that is not averred that it used to overflow. 3dly. Neither is there a sufficient diversion alleged; but refolved that it is not necessary to allege a terminus a quo, and that the other informalities are cured by verdict; and judgment for the defendant. Cline. 31. Mich. 3d & 4th W. & M. in B. R. Pickman v. Tripl. Slin. 380. 3d Ed. 3. C. accordingly; and as to the first objection of the want of a terminus a quo it is not necessary in this cafe, he having flown, that the stream was used to run to the well, and he having diverted it when it was at the well, this is a tort, and it is not material from whence it comes; to which it was said at the bar, that the terminus was neccessary, otherwise the jury could not know that there was such a current, if it be not flown; but per Car. This ought to have been in proof, but it is not material after a verdict. And as to the 2d it was held, that a terminus a quo is sufficient; and as to the 3d, that no act of diversion is alleged, for it is not sufficient to say that he had diverted the current, but he ought to have flown an act which was the caufe of the diversion, which the court might adjudge a sufficient caufe; fed non allocatus; and after it was adjudge for the plaintiff, and that the court might adjudge after a verdict, tho' it might have been in a better manner for it was not alleged that the water had used to run from the well to his house to certainly as it might have been; but all these things shall be intended to be proved upon evidence, and told by the verdict. Slin. 380. 3d Ed. 3. Mich. 4 W. & M. in B. R. Pickman v. Tripl.

In case for diverting a water-course which the plaintiff had to a mill, he counted that the defendant intending
to deprive him of the profit of the fald mill did divert the water ab antiquo curiu fis, per good he could not male pro
fis, &c. after verdit it was moved, that he dived the water from the mill, but from its ancient, as, for good, &c. and that male pro
fis; but the plaintiff had his judgment; and they held, that the word (mole) being inefible, no damages could
be given for it, and that the declaration had been good if that part had been left out. 5 Mal. 226, Puff. &b. 11. &c. 9.
B. R. Richards.
husband, a wedded bondslave, &c.) and Eddian to pray or defere, and rippa to repent or now. As if a covenant of the rentant to repay for the lord at the time of his bidding or commanding. Paroch. Antiq. 401. Covell, edd. 17.

Wedge, or Effex, (nidos) is a weight of cheese or wool, containing two hundred fifty-five pounds of avoirdupois. A weigb of barley or malt is forty six quarters or forty-eight bushels. A weight of cheese in Effex is three hundred pounds. Et dictam cafe ful de Herting, printer namem peperunt ad ecclesiam de A. Mon. Angl. 3 Par. f. 80 b. Where Pefo seems to be used for a weighth. Coke's 12 Rep. fol. 17. mentions eighty weights of bay-felt. Covell, edd. 1772.

Weights, pondera. There are two sorts of them in use with us; the one called Troy-weigh, having twelve ounces in the pound, by which all other things are weighed that pay by weight. Geo. Agricola in his learned treatise De Ponderibus & mensuris, p. 399. terms the pound of twelve ounces Libram medicum, and the ounce of sixier ounces Libram cortex, saying thus of them both, Medicis et civilibs habent numeric et praedictum unitatum different. The second seems to be termed, by reason of the more full weight of the penny-ferling, which ought to weigh thirty-two wheat corns of a middle foot; twenty of which pence make an ounce, and twelve such ounces a pound; but fifteen ounces make the merchant's pound. Fleta, lib. 2, cap. 1., 12. To which an ounce left should probably be all one in signification with averdupois, and the other pound called by Fleta trine-weigh, plainly appears to be the same with that we now call Troy weight. Covell, edd. 1757.

There shall be but one measure and weight throughout the realm, M. C. 9 H. 3. c. 35. 14 Ed. 3. f. 1. c. 12. 25 Ed. 3. f. 5. c. 10. 27 Ed. 3. f. 6. c. 10. 12 H. 2. b. 1. c. 15. R. 2. 4. 1. H. 5. c. 10. 8 H. 6. c. 5. 11 H. 7. c. 14. 16 Car. 1. c. 19. 22 Car. 2. c. 8.


Standards of measures shall be sent in bills to the counties, Ed. 14. Ed. 3. b. 1. c. 12. 34 Ed. 3. c. 6. 7 H. 7. c. 4.

A lack of wool to weigh twenty six bome, each bome 14 lb. 14 Ed. 3. b. 1. c. 21. 13 R. 2. b. 1. c. 9.

Commissions for effaying weights and measures prohibited, 18 Ed. 3. b. 2. c. 4. Anofo-wight put out, 25 Ed. 3. b. 5. c. 9. 27 Ed. 3. b. 2. c. 4. 34 Ed. 3. b. 5. 25 Ed. 3. b. 2. c. 12. which though an ounce left should probably be all one in signification with averdupois, and the other pound called by Fleta trine-weigh, plainly appears to be the same with that we now call Troy weight. Covell, edd. 1757.

Every town to have a common balance, 8 H. 6. c. 8. 11 H. 6. c. 8. And to have standards of weights and measures, 7 H. 7. c. 4. 11 H. 7. c. 4. 12 H. 7. c. 4. And weights and measures to be offerd, 11 H. 7. c. 4. Who shall feal measures, where there is no clerk of the market, 22 & 23 Car. 2. c. 12. f. 4. Weights and measures to be marked, 31 Geo. 2. c. 17. f. 6. See Measurif, and 22 Vin. Alr. 533.

Weights of Aunfel, mentioned in Stat. 14 Ed. 3. b. 12. f. See also Aunfel-weigh.

Aunfel. (W. & Th. le lacemander, from the Sax. wcotec) Signifies a certain quantity or circuit of ground, Rental. Regal. Mon. der Wy, pag. 31.
...
W I L

A civil suit is also in writing or by word, as a will or testament

The citizens have other divisions of wills and testaments, solemn and solemnly, privileged and unprivileged, whereas the Common law makes no mention, Id. ibid.,

1. Who are capable of making a will or testament?
2. What are the requisites, to constitute a good will?
3. Of wills to pass lands and tenements.
4. In what language a will may be written, and of the circumstances of signing, sealing, attestation and publication.
5. Of republishing of a will, what shall amount to a re-publication, and where a re-publication shall make a de
eef good.
6. What shall be a sufficient proof of a will, and in what cases devices, legates and creditors may be admitted to prove a will.
7. Of nuncupative wills.
8. Of the nature and effect of a will or testament and of a codicil; and how wills shall be confirmed.
9. Of recreating a will, and where a will shall be set aside for fraud.

1. Who are capable of making a will or testament.

An infant, until he be of the age of 21 years, can make no will of his lands by virtue of 32 & 33 H. 8. But by special custom in some places, where land is devis
able by custom, he may devite it sooner; and of his goods and chattels, if he be a boy, he may make a will at fourteen years of age, and not before; and if a maid, at twelve years of age, and not before: And then they may do it without and against the consent of their tutor, father, or guardian. 32 H. 8. c. 1. 34 H. 8. c. 5. Swink, part 11, sect. 2.

If he or she hath attained to the last day of 14 or 12 years, the testament by him or her in the very last day of their several ages asforesaid, is as good and lawful, as if the same day were already then expired. Ibid.

Likewise, if after they have accomplished these years of 14 or 12, he or she do expressly approve the testament made in their minority, the same by the new will and declaration is made strong and effectual. Swink, part 11, sect. 2.

And yet some say an infant cannot make a will of his goods and chattels until he be of 18 years age. 1 Inst. 89. 6.

It has however been agreed in equity, that a female may make a will at 12 years of age of a personal estate, and a male at 17 years of age or 15, if he be a person of discretion. 2 Vern. 469.

A feme covert cannot make a will of her lands and goods, except it be in some special cases: For of her lands she can make no will with or without her husband's consent, flat 32 & 33 H. 8. C. 4 Rep. 51. Br. Testa
ment, 13. But of the goods and chattels she has, as ex
cutrix to any other, the may make an executor without her husband's consent; for if she do not so, the administration of them must be granted to the next a-kin to the deceased testatrix, and shall not go to the husband. 12 H. 7. c. 24. Perk. sect. 592. Fitz. Exc. 40.

But even of them she can make no devise with or without her husband's leave, for they are not deviseable; and if she devises them, the devise is void. Plowd. 526.

Various things due to the wife, whereas she was not partecipate during the marriage, as things in action, and the like, she may make her will, at least the may make her husband executor of her paraphernalia, viz, her necessary wearing apparel, being that which is fit for one of her rank. Some say, she may make a will without her husband's leave, others doubt of this; however all agree, that she, and not his executor, shall have this after her husband's death; and that the husband cannot give it away from her, and of the goods and chattels her hus
band has either by her or otherwise, she may not make a will without the licence and consent of her husband first had and thereupon made, and is for her own, to make a will of his goods, and make him her executor if she will. And it is said also, that if she does make a will of his goods in truth without his leave and consent, and after her death he suffers the will to be proved, and de
livers the goods accordingly, in this case the testament is good; and yet if the husband gives the wife leave to make a will of his goods, and the does so, he may revoke the same at any time in her lifetime, or after her death, before the will is proved. But a woman after a contract with any man, before the marriage, may make a will as well as any other, and is not at all disabled hereby. 12 Ed. 4. 41. Perk. sect. 501. Fitz. Exc. 26. 109. Bras. Tyte. 11.

Likewise, a wife, whose husband is banished by act of parliament for life, may make a will as a feme fol. 2 Vern. 104.

A mad or lunatick person, during the time of his in
fancy, may not make a will of lands or goods; but such a one as hath his lucida intervalla, clear or calm intermiffion, may, during the time of such quietness and freedom of mind, make his will, and it will be good; Swink. 11. p. 3.

So also, an idiot, i.e. such as can or cannot number twenty, or tell what age he is, or the like, cannot make a will or dispose of his lands or goods; and altho' he make a wife, reasonable, and fenible will, yet it is void; But such a one as is of a mean understanding only, that has graffum cogniz, and is of the middle sort, between a wise man and a fool, is not prohibited to make a will. Id. part 11. p. 5.

An old man likewise, who, by reason of his great age, is childish again, or so forgetful that he forgets his own name, cannot make a will, for a will made by such an one is void. Id. Bid. part. 11. sect. 1. 6 Rep. 23. Mar
quis of Winchester's cafe.

So also it for a drunken man, who is so excessively drunk that he is deprived of the use of his reason and under
standing, during that time may not make a will, for it is requisite that when the testator makes his will, that he be of sound and perfect memory, i.e. that he have a competent memory and understanding to dispose of his estate with reason. Swink, part 11. p. 1. and fet. 6.

A person of both sexes and both nature, cannot make a will; but a man who is so by accident, may by writing or signs make a will; and so may a man who is deaf or dumb by nature or accident. Id. part 11. sect. 1. & 10.

And so also may a man that is blind. Id. part 1 sect 1. & 11.

But an alien enemy, persons convicted and attainted, and recusants convicted, cannot make a testament of lands or goods. Wood's 335.

Neither may the head, or any of the members of a corporation, make a will of the lands or goods they have in common, for they shall go in feoffment. Fitz. Adv. Tyte. 1. Perk. 458.

A traitor attainted, from the time of the treason com
mitted, can make no will of his lands or goods, for they are forfeited to the King: But after the time he has a pardon from the King for his offence, he may make a will of his lands and goods to another man. Swink. part 11. sect. 12. 5 & Ed. 6. c. 11. sect. 6.

A man who is attainted or convicted of felony cannot make a testament of his lands or goods, for they are forfeited to the King; but if a man be only indicted, and dies before the attainted, his will is good for his lands and goods both of his own and his wife's, to the extent he is indicted, and will not ascend upon his arraignment, but stands mute, &c. in this case his lands are not forfeited, and therefore he may make a will of them. Swink. part 11. sect. 13. 11. B.

If a man kill himself, his will as to his goods and chattels is void, but as to his lands is good. Plowd. 161. Hal. v. Petit. A man
A man likewise, who is outlawed in a personal action, cannot make a will of his goods and chattels, so long as the outlawry continues in force, but of lands he may make a will. *Swinb. part 11. s. 21.*

But note, that however the wills of traitors, aliens, felons, and outlawed persons are void as to the King or Lord that has right to the lands or goods by forfeiture or otherwise, yet their wills are good against the testator himself, and all others but such persons only, *Wood, vol. 791.* *Sib. Adm. part 4. sec. Testament.*

And note also, By the civil law the wills of divers others, as excommunicate persons, heretics, usurers, ince cushions, felons, sodomites, libellers, and the like, are void, as to all the heir or devisees of such persons, at least as to their lands, are good by the statute that enable men to devise their lands. *Id. ibid.*

In short, all persons whatsoever, male or female, old or young, lay or spiritual, at any time before their death, whilst they are able to speak to distinctly, or write so plainly, that another may understand them, and receive that they understand themselves, may make wills of their lands, goods and chattels, and that altho' they have sworn to the contrary; and none are restrained of this liberty, but such as are before named. *Id. ibid.*

2. What are the requital to constitute a good will.

To constitute a good will it is necessary,

1. That the testator be a person legally capable of making a will.

2. The second thing required to the making of a good testament, is, that there be a person to take, and one that is competent for all gifts by devise, or otherwise, that are good, there must be a donee in ess, and not fife only, and one that shall have capacity to take the thing given, when it is to felf, or the gift shall be void. *Sib. Adm. part 4. s. 13. sec. Testa.*

And hence it is, that where the devisee of lands or goods, or an executor of a will, doth die before the devilor, or him that makes the will, the devise and will is void, and that neither the heir or executor shall have the thing devised. *Id. ibid. Plowd. 345. Brett v. Rigden.*

A devisee to the wife for life, and after to the children unpreferred, is good. 1 *And. 60. Anmer v. Luddington.*

But a devise by a man to his heir and his voife, is void. 2 *And. 11. Carvyn v. Ayrste.*

One devised his leaves of lands to B, his elefont, except the fum of 140 l. to be paid out for portions for his daughters, and made B his executor; and held a good devise to them after this manner, and that the daughters might fee for it in the ecclesiastical court, or court of equity. *Sib. Adm. part 4. s. 13. sec. Testa.*

If one devise to the fone in tail, and if he die without fife, to the next of his name; the daughter after married cannot have it, for he is not of his name. *Cro. Eliz. 532. Ben v. Smith.*

One fied of a manor and lands, devisefh the fame to his fon, and after, by another part of his will, deviseft part of the fame to another of his fons; these devisefs are good, and they shall be jointants. 3 *Lev. 11.*

3. That the testator, at the time of making his will, have animum testandi i.e. a mind or serious intention to make such a will.

For the testator's mind, not the words of the testator that give life to the will: Since if a man rashly, unadvisedly, incidently, jeftingly or boastingly, and not seriously, writes or says, that such a one shall be his executor, or have all his goods, or that he will give to such a one a such a thing; this is no will, nor to be regarded. And the mind of the testator herein is to be discovered by circumstances, what the testator himself, or others, either visibly or by speech, or self seriously to make his will, or requires witnesses to bear witness of it, shall be deemed in earnest; but if it be by way of discourse only, or somewhat he will do hereafter, or the like, it shall be taken for nothing. *Sib. Adm. part 11. s. 3.*

That the mind of the testator in making his will be free, and not moved by fear, fraud, or flattery.

For when the testator is moved to make his testament by fear, or circumvented by fraud, or overcome by some immoderate flattery, the fame is void, or at least voidable by exception: and therefore, if a man, by occasion of some present fear or violence, or threatening of future evil, does at the same time, or afterwards by the same motive, make a will, it is void, not only as to him that puts him in fear, but as to all others. Altho' the testator may move his will with an oath; but if the cause of fear be some vain matter, or, being weighty, is removed, and the testator afterwards, when the fear is past, confirms the testament, in this case, perhaps, the will may be good. And if a man, by occasion of some fraud or deceit, be moved to make a will, if the deceit be such as may move the mind of a man or woman, and if the end be evil also, the will is void, or voidable at the least; but if the deceit be light and small, or if it be to a good, as where a man is about to give all his estate to some lewd person, from his wife and children, and they persuade the testator that the lewd fellow is dead, or the like, and thereby procure him to give his estate to them, this is a good will. And one may, by honest intercessions, and modest persuasions, procure another, to make himself or a stranger executor to him, or the like, and this will not hurt the will; also a man may use fair and flattering speeches to move the testator to make his will, and to give the estate of his children to some friendly or some friend or other, and if it be in case where the flatterer flirt threats him, or puts him in fear, or to his flatterer joins fraud and deceit; or where the testator is a person of weak judgment, or under the government of the flatterer, or in danger from him; as when the physician shall persuade his patient under his hand to make his will, and give his estate to himself; or the wife attending on her husband in his sickness shall neglect him, and in the mean time flatter him to give her all: or where the persuader is importunate, and will have no denial: or where there is another testament made before; for in all these cases, the will will be in danger to be avoided. If I be much privy to another man's mind, and he tells me often in his health how he intends to settle his estate, and he being sick, if of my own head, draw a will according to his mind, before declared to me, and bring it to him, and ask him whether this be his will or not; and he considers of it, and then delivers it back to me, and says, yes; this is my will: if I have not a mind so far off, as to be persuaded, or if such a friend, or some friends of a sick man, of his own heads shall make a will, and bring it to a man in extremity of sickness, and read it to him, and ask him, whether this shall be his will, and he says, yes; or if a man be in great extremity, and his friends protect him much, and so write words from him; especially if they think this be not sufficient for them, or for some friends or theirs; in these cases the wills are very fugacious. *Id. ibid. part 11. s. 25 and part 7. sect. 2, 3, 4.*

5. That the will be made in the form prescribed by law.

3. Of wills to pass lands and tenements.

By the Common law, no lands or tenements (except by particular custom) were devisable by any will or testament, neither could they be transferred from one to another, but by solemn livery of seisin, matter of record or sufficient writing. Because it was prefixed, that the interest of the half tenant, and the extrinsic interest, they would not do in his health; that it proceeded from the diltemper of his mind by the anguish of his disease, or by finer persuasion to which in his sickness he was more subject. *1 Inf. 111. b. 1. Roll. Abr. 608.*

The true reason seems to be from the nature of the feudal tenure, and the rule relation that was established between landlord and his tenant. For the duration of after length of time were made to the tenant and his heirs, or the heirs males or females of his body, under certain duties and services, expressly referred, or which the law created; and tho' the word heirs, &c. be words of limitation, and appropriated to measure out the length or continuance of the estate: yet they were always

understood
That the same shall be written, and thereupon the name
is written accordingly in the life-time of the testator;
and if read or read to him afterwards, it makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
Wills 35. A will must be written, and if read or read to him afterwards, it
makes no difference.
and Roll. Salk. Yes Baron yet

5. Of re-publishing a will; and what shall amount to a re-publication, and where a re-publication shall make a devise good.

If a man devises certain lands, and after aliens the land to a stranger, and re-purchases; and after he has his devise, that the said devise shall be his will. This is a new publication, and the land shall pass by the devise. 2 Vern. 330. Hall v. Dunch.

So if a man saying his will was in a box in his study, amounting to a new publication. 2 Vern. 209. Cotton v. Cotton.

If a man sealed of lands, devises all the lands to I. S., and afterwards purchases the manor of D., and afterwards writes his will that D. shall be his executor: yet this is not a new publication, to make the land pass. 2 Roll. 415.

But if after the purchase of the manor of D. he delivers the first will as his will, and says, that it shall be his will, without putting any words thereto: yet this is a new publication to make the lands newly purchased pass. Id., ibid. 344. 377.

So if the devise of lands in D. devises to another, by his will, in writing, all his lands in D. and after purchases other lands in D., and after, one I. S., comes to him, and requests him to give him the buying of the lands last purchased: And he answers him, that he will not, but that his intent was, that those lands should go to the executor (the devise being made executor by the will) as his other lands should: And after his devise causes a codicil to be writ, in which there is a devise of several personal things, as corn and implements of household, and annexes it to his first will: And after dies without other publication; yet this shall be a sufficient publication to make the lands newly purchased pass by the will, for there need no other words in the will than these before; and his intent appears, that it should be his will, by the annexing the codicil. 1 Roll. 618.

But if a man has issue two daughters A. and B., and he devises lands to A. and to the heirs of her body; and A. is married; and afterwards dies, and A. marries, and dies in the life-time of the testator, leaving issue; and after the testator annexes a codicil to his will, and thereby disposes of some part of his personal estate; yet this will not amount to a republication of the will, nor give any title to the issue of A. the testator had declared in his will, that B. had married against his consent, and that what he had given her, was in full of her portion, and in bar of any further part of his real estate. 1 Abr. Ep. Cof. 407. 2 Vern. 722. Hutton v. Simpon.

It has been doubted whether one if devises a lease to his daughter, and afterwards renews the lease, and afterwards adds his codicil to his will, without taking any notice of the lease, whether the renewal of the lease is a revocation, and whether the adding a codicil to his will is a re-publication. 2 Vern. 209.

It has been said, however, that if a codicil be executed after making a will and purchasing lands, it will amount to a republication, and thus pass the land purchased after making the will, and it was so determined by all the Judges in the case of Ackerly and Vernon; which see infra, sed 2. Unless it appears, he had his real estate under consideration. 5 Bac. Abr. 516. MSS. R.P. Gilfyn v. Rogers, in Chanc. Trin. 23 Geo. 2.

A. having given a legacy inter alia to his son Josiph; Josiph had afterwards had another Josiph, and then by a codicil to his will, confirming his will, he took notice, that since the last, he had pleased God to give him another son, and gave him a smaller legacy. Determined, that this was a re-publication of his will, and amounted to a substituting Josiph in the place of the child;
It was determined upon the opinion of all the judges, that if a will be made, and afterwards another will without cancelling the former; and then by an act subsequent to both, the first will be confirmed, the limitations in that will so confirmed, will take place: And also that if there be an order made by the court of chancery, the order appealed from, which was a disaffirmation of the plaintiff's bill in the court of Exchequer in Ireland, was confirmed in favour of lord Anglsey, by the house of lords. 5 Bac. Abr. 517. MS. rep. Phipps v. Anglesea in Dom. prov. June 1751. See the printed copy.

6. What shall be a sufficient proof of a will; and in what cases deponents, legatees and creditors may be admitted to prove a will.

A written will, where it is written with the testator's own hand, proves irrefutable, and therefore needs not the help of witneffes to prove it; and for this cause, if a man's will be found written fair and perfect, with his own hand, after his death, although it be not subscribed with his name, sealed with his seal, or have any witneffes to it, if it be known or can be proved to be his hand, it is sufficient. A will, however, is before the will should have been done; yet the grandifon shall not have the lands, for lands cannot pass by will in writing; and his fon Robert cannot import his grandifon Robert, especially when, by the fame will, he has made a diffi-
fition between fon and grandifon. The judgment to the contrary, given by three Judges, in the case of the ot-her manor of Seventon Piers, is faid by the reporter to have been reversed in B. R. (as he heard) tho' it was argued, that the words of the will were proper enough to pass the lands to the grandifon; for that the addi-
tion of grant, only imported a diffition between father and fon while living; but that the father being dead, the lands, and the goods, which were not his own, as if, after his own death, might properly be defribed by the name of fon. 1 Lev. 243. Stroud v. Berger. 1 Pent. 344. 2 Jones 135. Raym. 408.

J. S. By a will dated 17 Jan. 1711, devised to M. his wife 1000 l. per annum for her life, to issue out of his real estate, his capital mortgage at 8l. per cent., to his father of 200 l. per annum for her life; and 1000 l. to L her daughter, for her portion; and after other legacies, he devises the residue of his real and personal estate to A. B. C. D. and their heirs, executors, and administrators, on fult to retain the residue of his perfonal estate in lands of inheritance, and that his truftees should band their, and paid off his real and personal estate to the uses of his will, during his wife's life; and after her decease, if he should die without issue, to the intent that his free-
hold and leafhold estate, and the lands to be purchased should be fent to the use of the defendant C. for ninety-
nine years, then to his and other sons in tail male.

L. S. Purchased several fee-farm rents, affart rents, and other lands and tenements, and then by a codicil, 20 February 1720, being two days before his death, he recites that he made a will, dated 17th Jan. 1711, and then says, 'I hereby ratify and confirm the said will, except in the alterations herein mentioned. The por-
tion to my niece L. shall be made up 6000 l. and what I have given to my fifer and niece, shall be accepted by them in fatisfaction of all they may claim out of my real and personal estate, and on condition they release all, C, to his executors and truftees in my will named; and thus having provided more than 800 l. to my father, all the lands by me purchased since my will, to my truftees and executors in my will named, to the fame ufe, and subject to the fame trusts to which I have mentioned to devife the manor of H. and the bulk of my estate; and I revoke that part of my will, whereby I appoint A. B. and C. three of my truftees, in my will, and before K. and N. to be two of my truftees, and devide my fale estate to them accordingly,' Lord Mansfield, 20th Nov. 1723. decreed, that the will was confirmed by the codicil; that L. S. signing and publishing his codicil in the presence of three witneffes was a re-publication of his will, which he had proved. The testator, having made the said will and codicil, his fee-farm rents, affart rents, and lands, contracted to be purchased, and all his real and personal estate (except the copthold purchased before his will) did well pass. On appeal to the lords, the de-
cree was affirmed. Conroy's rep. 383. Ardery v. Fre-
nell.

VOL. II. NO. 136.
bear affection, as kindred, tenants, servants, and the like. A legatee is reputed a competent witness to prove any other part of the will but his own legacy, or to prove any thing against himself touching his own legacy, but not inchoate; and therefore, where there are two witnesses of a will, wherein either of them have somewhat bequeathed unto himself, this will cannot be sufficiently proved for those legates, but for the rest of the will it may be sufficiently proved. Suinb. part 4. sect. 24. But see Pace.

Where the testator by his will devised lands, and gave to the wife of John Hailes an annuity of 20l. a year to her sole and separate use; and to J. Hailes and his wife each of them a legacy of 10l. and charged his whole real and personal estate with the payment of all his legacies and annuity. J. Hailes was one of the subscribing witnesses to this will, and purporting to the tenant in fee within the lands, tendered and refused; and the question now was on a special verdict, whether this will was good and well attested within the stature of frauds and perjuries? The court were of opinion, that the will was not properly attested, as Hailes was interested, and therefore not a competent witness to prove it. 2 B.R. 152. 3. Lord Limer. Where the testator, by his will, gave in evidence for the plaintiff, the testator's heir at law. 3 B. & Ad. 510. MSS. Reg. Auyt v. Downie, Mich. 1746. B. R.

Witnesses have been examined to prove the testator's intent. 2 Ld. Raym. 1726. Criege & al. v. Gibson & al.

A probate of a will cannot be controverted at Common law. Ld. Raym. 262. Sir Richard Rathe's cafe.

' A recital of a will in a copyhold admission is evidence against any but the heir. 1. 733.

If the probate or registry of a will is evidence to prove a pedigree, 1 Ld. Raym. 365. 2 Ld. Raym. 404. Hite Cl. 1. the register's book is good evidence to prove a will concerning lands. 1 Ed. Raym. 731. 3. St. Leger v. Adams.

One of the subscribing witnesses to the attestation of a will, having an annuity devoted to his wife, was held not to be a credible witness within the statute. 2 Br. 152, 153. Hildyard v. de Lewis & Lewis v. Downie.

Parol evidence is not admitted to contradict the words of a will. 1 Ed. 1261. Linfield v. Stoneham, and Cof Temp. Talbot, Brown v. Sielbe, 240.

A proof of a will cannot be contradicted by a man by confession of his own witnesses. 1 Ld. Raym. 730. Pyle v. Hoare.

Executive may be sued for a legacy where he proves the will, tho' he does not live in that diocese. Id. 847. Edgeworth v. Snailbridge.

But devises, legates, and creditors, are now made competent witnesses to wills, for the act of the 25 Geo. 3. c. 29, which makes devises of any estate in fee or heritable interests, to certain debts and obligations, relating to the attestation of wills and codicils, concerning real estates, in that part of Great Britain called England, and in his Majesty's colonies and plantations in America, it is enacted, That any person shall attest the execution of any will or codicil, which shall be made after the 1st of June 1753, to whom any such devise, legacy, estate, interest, gift or appointment of, or affecting any real or personal estate, other than except charges on lands, tenements, or hereditaments, for payment of any debt or debts, shall be thereby given or made, such devise, &c. or appointment, shall, so far only as concerned such person attending the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil, within the intent of the said 29 Car. 2. notwithstanding such devise, &c. But such person shall not be admitted as a witness to the execution of any will or codicil made or to be made, any lands, tenements, or hereditaments are or shall be charged with debts; and any creditor whose debt is so charged, hath attested, or shall attest, the execution of such will or codicil, such creditor shall be admitted as a witness to the execution of such will or codicil, within the intent of the said 29th. That if any person hath attested the execution of any will already made, or shall attest the execution of any will,
or for the avoiding of doubts upon the said acts of assembly, and laws of the said colonies, as the same ought to have in the construction of, or for the avoiding doubts, upon the said act in England. Provided always, that as to the causes arising in any of the said colonies, no such devise, legacy, or bequest aforesaid, shall be made null and void by virtue of this act, unless the will or codicil whereby by such devise, legacy, or bequest aforesaid shall be, shall be made after March 1, 1753.

A special verdict upon a will of land, dated the 14th of May 1750; and a codicil of the same date, made by Walter Chetwynd late of Grendon, Esq.;

[...]

[...]
then much agitated, "Whether a benefit given to a sub-
scribing witness by the will, either under a general or a
particular description, should annul his attestation, as at
the time of his subscribings; and make the will wholly and
abolutely void, for want of form, as much as if he had
never attested at all? This is, though quite a refolv-
able question, not to be disinterested, and competent to be
examined in support of the will.

This general point is the basis of the objection to these
subscribing witnesses. Unless the defendant can support
it, he has no ground to stand upon: But though he should
succeed in the general position, the application to this
case, from time to time, will be made from the particular circumstances, and the kind of benefit objected.

The question does not depend upon the construction of
any words of the statute. The statute is silent as to the
capacity of the witnesses: it declares no incapacity; it
requires no qualification.

The epithet "creditable" has a clear precise meaning.
It is not a term of art appropriated only to legal notions;
but has a signification universally received. It is never
used as synonymous to competent. When applied to
attestation; it presupposes the evidence given.

After the competence of a witness is decided, the con-
clusion as to his credibility is: And not before. Per-
sons undoubtedly credible cannot be witnesses, under par-
ticular circumstances: Persons manifestly incredible may,
and often are witnesses.

In acts of parliament which direct convictions upon the
oaths of witnesses, the epithet "creditable" is asked for; but
by no means intended to signify "competent": That is
implied in the term "witness." But it is intended, (from
abundant caution,) to declare, that though competent
witnesses swear positively, their credibility is to be weigh-
ed: And if the magistrate thinks the evidence not credible,
he ought not to convict.

In law, it is very unnecessary to add the epith-
eter, here, to subscribing witnesses. And yet, to make
the essential felonility of the will depend upon the credi-
bility of the subscribing witnesses, is so absurd; that their
credibility has always been held to make no part of the
necessary form.

If they all swear that the testator did not execute; if
they had, at the time, the worst characters, and had com-
mitted the most infamous actions; yet their attestation
answers the necessary form: because the testator meant to
comply with the law, and might not know them to be
bad men.

The third rule or caution in making wills, given at
the statute of Butler and Baker's case, 3 Ca. 36 b. is:

"At the time of the will, call credible witnesses to sub-
scribe their names to it." Lord Coke certainly meant
"persons of credit and character."

From hence, and from the usage in penal acts direc-
ting convictions, I am persuaded that the epithet was
inferred here, as a word of course, and misapplied. Had
the operation or effect of the word, in this particular
case, been attended to, it never could have been inferred
because, in the natural and obvious sense, the meaning
must be rejected, from the conseqences it would have;
And in any other, it has no meaning at all; for, suppose
it to signify "competent," competence is implied in the
term "witnesses."

This whole clause, which introduces a positive solen-
imity, to be observed, not by the learned only, but by the
unlearned; at a time when they are supposed to be with-
out legal advice; in a matter which greatly interests ev-
evy proprietor, the lands where direction should be placed;
the meanest capacity; is so loose, that there is not a single branch of the solemnity defined or described with sufficient certainty to convey the same idea to the
greatest capacities.

There have been litigations, and contradicory opinions,
upon this very point, at all times, though at or after the
refolv, by the. When they are to see the

whether they ought to know that he signifi-

as his will? Whether he ought to publish it as his will?

A very little precision, and a very few words, might
have prevented all these questions.

In a clause not the most accurate, I can safely believe
that the usual epitom "credibal" slipped in, as of course,
without attention to the importance of using it on this
occasion.

It has been said "That this act of 29 Car. 2. cap. 3.
drawn by Lord Chief Justice Hale," but this is
scarcely possible, since it was not passed till after his death:
and it was brought in, in the common way; and not
under this reference to the foreign judges.

But what fener foe is put upon this word "cred-
ible," the statute leaves the question just as it was: For
it does not declare who are, or are not credible; or, (if it
is supposed to mean competent,) who are competent,
or who are incompetent.

Their competence could not be referred to any law
then established: Because there was, there could be, some
applicable throughout to this new case. The necessity of
subscribing witnesses to any instrument, never had existed
before, in this country. There never could have arised,
in the law of England, a question, "concerning the
competence of a witness, at the time of his testifying,
whether he was competent at the time of his examination."

The time of his examination could not possibly be the
question upon which the validity of the will was to de-
pend. The witnesses might not live to be examined;
their incompetence to be examined, might arise long after
their wills had been made.

"What objection therefore to the subscribing witnesses,
should be sufficient to avoid a will, as informal?" was
left to be judged of as toats shoidd arise; by general prin-
ciples, by analogy to the law of witnesses in other in-
stances, and by arguments drawn from the nature and fin-
ness of the thing, with regard to justice, convenience, and
the intent of the statute.

When solemn determinations, acquiesced under, had
settled precise cafes, and became a rule of property; they
ought, for the sake of certainty, to be observed, as if they
had originally made a part of the next of the statute.

I will therefore consider the general question, in two
views: first, supposing there had been no judicial deter-
mination relating to the capacity of subscribing witnesses
since the statute; secondly, upon the foot of the judicial
determinations that have been since the statute. And
thirdly, in the last place, I will consider the particular
cafe now in judgment, under all its own circumstances.
I will suppose, (in the last view,) that I can observe that the power of deviating ought to be favoured. It is
a natural consequence of property, and the right a man
has over his estate. It was a right of the law of the land,
before the conquest, and down to about the time of Henry
the second. It ceased, consequentially only, by the in-
roduction of feudal tenures; because, originally, every
species of alienation was contrary to that system. So
soon as the power of alienation inter vives was indulged,
testaments followed, indirectly, as declarations of ues.
The statute of uses accidentally checked this form of deviating.
Therefore the statute of wills was made. The 29 Car.
2. cap. 3. (to which I have referred to the present question,) did
not mean to reframe testamental dispositions of land:
The reasons to encourage that power were increased.
The policy of tenures, from whence arose the impediment to
wills, was abolished; but had left many confequences re-
maining, which made testamental dispositions of land
more reasonable than they were among the Greeks and
Romans, or here before the conquest. The eldest son only is heir, ab intestate. Among collaterals, not all
the next of kin, but one often is heir; to the exclusion of
many in the same, and many in a nearer degree. Sim-
ple contract creditors had no right to be paid their debts.
Most indebted in land could not be traced. Much land
was in trust: Where the widow had no right to dower.
In personal estates, the succession ab intestate is subject to
deaths, and governed by natural family equity. In real
estates, the succession is governed by political confi-
dences of a positive system; Which make the testamen-

tary power often necessary, to enable a man to do justice to his family and his creditors.

The legislature meant only to guard against fraud, by a solemn attestation; which they thought would soon be universally known, and might very easily be compiled with. In theory, this attestation might seem a strong guard, but practice has proved it in practice, but I have swayed many more false wills have been overturned for want of the form, than fraudulent have been prevented by introducing it. I have had a good deal of experience at the delegates; and hardly recollect a case of a forged or fraudulent will, where it has not been solemnly attested.

There should be for the protection of civil rights who are the dead, and some now living, make the same observations.

Suppose the subtering witnessesses honest; how little need they know; they do not know the contents; they need not be together; they need not see the testator sign; (if he acknowledges his hand, it is sufficient;) they need not swear; (if he delivers it as a deed it is sufficient.) For these and many more reasons, it is clear that judges should lean against objections to the formal.

They have always done so, in every construction upon the words of the statute: a fortiori ought they to do so, in raising a confessional system, not prescribed in words. An objection to do so, if that evidence would not, spread a snare, in which many honest wills must unavoidably be intangled; and be no presumptive against a fraud.

At the time this act was made, the law rejected no witness to prove a will; unless, at the time of his examination, his testimony tended to support his own title, and was not suitable to hold it over an interest under it.

In the ecclesiastical court, the probate is conclusive to every body as to every part. If a legatee come to prove it, he intitled himself to his legacy. But if the legacy be contingent, and at the testator's death could not take effect; if he had the fame or a greater interest, though those who may be for a fraud in a will; A relafe, payment, or tender, made him a witness.

In the courts of Common law, where the witness had a charge upon land devized to another, he was jull in the cafe of a personal legatee. If he had as great an interest the other way; if his interest at the testator's death could never take effect; if there was a relafe, (of which several authorities were cited;) and I will add, as by necessary consequence, if there was payment or tender; he was a witness.

Nice objections, of a remote interest, which could not be paid or relased, though they held in other cafes, were not allowed to disqualify a witnes in the cafe of a will: As they are no evidence of the validity of a will; and are a violation of a statute the poor of the parish ever. "Vide 2 Sid. 109. M. 1658. Townsend v. Raw."

Before the statute, no man could, in a court of justice, intitle himself by his own examination, to a devise. So, after the statute, no man should intitle himself, in a court of justice, to a devise, by virtue of his own subscription; which at the time of subscribing, he could not have proved by his examination.

The disability of a witness from interest, is very different from a positive incapacity. If a deed must be acknowledged before a judge or notary public; every other person may be considered a disqualified witness as to it. But objections of interest, are deductions from natural reason, and proceed upon a presumption of too great a bias in the mind of the witness, and the publick utility of rejecting partial testimony.

Premptions stand no longer than till the contrary is proved. The preemption of a bias may be taken off, by shewing the witness has as great, or a greater interest the other way; or that he has given it up. The preemption of publick utility, may be answered, by shewing that it would be very inconvenient, under the particular circumstances, not to receive such testimony. Therefore, great necessity, the course of bungling, and other reasons of expediency, numberless exceptions are allowed to the general rule. The preemption of bias arises as the time of subscribing. But it may be answered,—If part is deviled to a subscribing Witness, the presumption is answered, by shewing he was heir at law; or that the devise is void; or that he has renounced it.

Is there the reason to say that a witness who does not know the contents of a will during the testator's life, and at his death takes no benefit, was biased at the time he subscribed, or can be biased at the time of his examination? During the life of the testator, devices are more preposterous, and there is a greater bias; but still it is a presumption of bias from the partiality, is answered by the fact, when it becomes an interest. His swearing when he is totally disinterested, is conclusive, that the possibility is not to be presumed the corrupt cause of his subscribing.

For the sake of three persons, it is wise and just, to allow a bias from things that are purged; otherwise, many settlements by will must be overthrown to the prejudice of families. It is natural and usual to give legacies to servants, and tokens to friends.—Persons under these descriptions are most likely to be witnesses. Ought such trists to overturn unavoidably the whole deliberate dispositions of the greatest agents? which may be attended often with this family diftrusts, that a man may have given his money to one part of his family, and his land to another: In which case, the will would be good as to the money; and void, as to the land.

If the legislature had said it, that would have been a positive rule. But it is considered for my confirmation, and to guard against fraud. It is not a ground for a legal security, in the case of legates: Because, they may, in another shape, attest the devise which charges the land with their legacies.

It is settled, "That where the land is once charged, (and it is always an auxiliary hand;) with the payment of legacies, by a solemn devise, the legacies may be given, altered, or revoked by a subsequent will unattested." The fraudulent legatee might attest the charge, and get his legacy in a codicil unattested. Let a will be ever so fair, a flip in form is fatal: which is a certain milchfield. But, it is a very great fraud; though it is allowed to be formal, it may be set aside upon evidence and circumstances.

Neither reason, nor policy requires the objection to be carried farther than I have laid it down: agreeable to the law before the statute, and the universal maxim, "Teftis in privatae causa non est adhibendus." But if judicial determinations, acquiesced under, and become a rule of property, since the statute, have extended the incapacity further, they must be adhered to: Which brings me

Secondly, to consider the judicial determinations since the statute.

All determinations agree exactly with these principles. In many instances, the preemption of bias from a legacy, at the time of subscribing, has been allowed to be taken off by a relafe. Authorities in print have been cited, to shew "this was considered as a settled point:" And I verily believe it was so, from the authority of the oldest and most eminent practitioners in H. Finchamer Hall; and therefore I give credit to the didum of Peake in Finer, (See Finer’s Abr. tit. Evidences, page 14. N° 53.) "That it had been solemnly agreed by the judges, that where a person had a legacy given, and did relase it, he was a good witness to prove the validity of the same."

I know that before the case of Myly v. Deynag, a will of a very great ease was liable to the objection; and the heir at law would have contested it: But as it was certain the witneses would be paid, or relase, no opinion that he took, encouraged him to think it worth his while.

Mr. Puzackerly and Sir Thomas Bostle have told me, they took it to be settled; and indeed the number of wills where the objection lay and never was taken, dismiffed it.

There is not a single determination which carries the incapacity further than the rule I have laid down: viz. "That a person who, not for the sake of himself, to a devise, by virtue of his own subscription, which at the time of subscribing he could not have proved by his examination," 9 N. 77 That
That is the case of Hilliard and Jenning. That is the resolution and judgment of the case of Amy v. Dingley. Where the defendant was devisee, subject to an annuity of 20 l. a year to Eliz. the wife of John Hales, for her life, for her separate use: And there did not appear to be any personal estate. Her interest was a charge, in the nature of a legacy, to be paid by the defendant, out of the estate devised to him; and before the value was a truf, and the defendant was her trustee. Upon the validity of the devise to the defendant, her annuity depended. If he succeed-
ed, her title followed of course; for he must take the land, as the testator gave it, subject to the charge and trust: And upon the devise to the defendant being found good, a court of equity must of course, have decreed the trust. So that the was the es glad que traft of the party to the cause; and either way, the judgment would immediately affect her interest.

In matter of evidence, husband and wife are consider-
ed as one; and cannot be witneses, the one for the other. The husband cannot be witnesse for his wife, in a question touching her separate estate.

There was no release. There could be no payment or tender, without the interposition of a court of justice; because the value depended upon uncertain fattimation: But no attempt had been there made towards paying, or tendering, whatever was the interest in the annuity. This brought it precifely to the case of Hilliard v. Jenning, because the court of justice, was to support a devise to himself, by virtue of his own subscription; for the cause is the fame, as if the wife had been the witnesse, or the husband the devisee of the annuity.

It is true, that Lord Ch. J. Lee, in delivering his opinion, (which was April 22 1746, Pof. 19 Gen. 2.) argued as if the objection of benefit from the will to the witnesse, at the time of subscribing, could not be an-answered or taken off by any subsequent fact; which he grounded upon the authority of the Law, that no testamentary estate can be transferred by a court of equity, but by decree. This is said "Conditionem testamentum tune infinfore dehenum, cum signari, non mortis tamen." But the sense of this passage was not enough con-
dered.

"Conditionem testamentum" here means the positive capacity of the witnesse, their rank, or quality, as free men, citizens, and senators; there never was a time, in the Roman law, when interest under the will was any objection to subscribing witnesse. To explain this a little farther: The essence of the Roman testament was the appointment of an heir, to re-
perience the testator. Before the 12 tables, the testamentary heir might be made two ways; in principatu, as Plutarch describes at the siege of Corioli; or in the form of a legislative act, in testamenti colatis.

The 12 tables gave an absolute power to every man, to make the law of his own suffecution; but prescribed no form. As a testament was an alienation of the testator's property and family after his death, the form of manumission per leges et Libram, used in other transfers of property of family, was followed in this: The heir was surpofed to buy, and the testator to sell his succession, and for, and as reparation, to their families. The execu-
tion was transferred with all the symbols of a sale, in the preference of the officer who held the balance and of five freemen, citizens of Rome, 14 years of age at least, solemnly required to bear witness.

These ceremonies and symbols were invented before instruments in writing. And this imaginary sale per leges et Libram, was used in alienations, adoptions, and almost every species of change of dominion, or property strictly so called, ("Proprium est quid quis liber mercatur et eiree," and in many other contrats.)

Subsequent laws and usages, especially after testaments came to be in writing, took away the ceremony of the fable, added two witneses more, and preferi-
bed forms of attestation; but left the condition of the wit-
esse, the fame; they must be freemen, Roman citi-
gen, adult and liberales. Yet by an equitable construc-
tion, general reputation was sufficient: As where the witnesse, whom every body considered as a freeman, really was a slave.

This was the conditio testamenti, and must exist at the time of subscribing; as much as where there is a cufion to surrender into the hands of two copyholds out of country, without a copyhold and its documen-

Though in other cases, the objection of interest, to a witnesse was allowed; it did not incapacitate witnesse to a will.

While the testament per leges et Libram continued, nei-
ther the testator, nor heir, or any of the families of either, could be witnesse; because they were supplied the par-
ties to the contract.

When the symbolical fable ceased, and testaments were fubstituted, the the heir himself was a sufficient subscribing witnes. Afterwards, the will was o-
pened, and he knew the contents, he was a suffec-"supporting witnesse: As appears from Cicero for Milvus, speaking of Cyrus (fei. 48.) "Una fui i testamentum fe-
m obligavi cum Clodio; testamentum autem palam fa-
erat, & ilium haereditem & me scripsit." 

"Juffinian. Lib. 2. tit. 10. fei. 10. recite, the heir therefore having been allowed to be a witnesse; but forbids it, (to prevent there is being interested, but) "ad

In 1746, Juffinian: The Duke was compiled before the Institutes; but published a month before, in the seventh year of Juffinian.

The proposition "That any kind of interest, at the time of subscribing, could not afterwards be taken off;" and the application of this passage in support of it, was much agitated in Welfington Hall and the whole king-

A gentleman at the bar, purfuing the proposition through all its consequences, hit upon this point.—

"That a charge upon land for payment of debts, would defeat the will, if a firmwriting witnes," was a creditor at the time of subscribing. As soon as it occurred, it was mentioned it had been many such devises: but the question, "Whether the witnesse was a creditor," never had been asked at law; nor by interrogatories in chancery, framed to eflablish or impeach a will.

If the general rule was right, the deduction seemed very plausible. He put this point in issue, in chancery; and examined to it, in behalf of the heir, in several cases. Lord Herfor's will was one of the firft: Tobi was an-
other.

A cafe soon happen which brought the general pro-
position founng by Lord Ch. J. Lee, under judicial ex-
amination. This was the Feb 1746, the cafc of little barry died; having made a will, 15th May 1746, of his whole effate real and personal, charged with debts and legacies; the three subscribing witnesse, as being in his service at his death, had legacies; one, 30 l. a year for life; the other two, peculiar legacies. All three re-
served the 12 February 1746.

He had made a former will, on the 20th of December 1744, attested by three disinterested persons; under which, the three subscribing witnesse to the last will would have had the fame legacies.

A bill was brought in chancery, to have the latter will altogether overruled, because the latter will was made and flaking the whole matter. Notwithstanding the will of 1744, which the testator had revoked, (as he thought, effectual-
ly,) and might probably have cancelled it, it was a benefit
benefit to the witnesses, at the time of subscribing, to have a
zealcy under the said will.

Last will and testament, the 5th of Nov. 1748.
And I was of counsel in it.
I had taken the liberty to ask Mr. Justice Dennison,
"Whether the judgment of the court, in the case of
Asby v. Dowsing went upon the general proposition." He
told me it did not; but upon the particular circumstances.
to him he was not of opinion that an
objection of benefit, at the time of subscribing, might
not be taken off, by being disinterested, at or after the
death.
I mentioned this to the Lord Chancellor, who had got
from Lord Ch. J. Lee, a copy of the opinion he delivered
afterwards, viz: But, for this, no authority is cited. In
the case of Hillard v. Jenning, a devise and devisee
was decided to William Hillard. And I am satisfied that Lord Ch. J. Holt took the
determination, "That the will might be only void, under
the devise to the witnesses. Because Carthew, [p. 514.]
who was counsel in the case, and has reported it the
most correctly, hints an expression of that kind, viz.
That it was void under the devise of the land to
the plaintiff;" and Lord Raymound, in the case of Baugh v.
Holloway, (1 P. Williams 557, 558) says expressly,
"That Lord Ch. J. Holt so determined.
The validity of the will, as to the personal estate, was
not before the court, and never could come before the
court because that question belonged to another juridi-
cation. The case in judgment was of a devise to the
witnesses only. Lord Ch. J. Holt might, very properly,
throw out something to guard against inferences from
their present determination to the case of a devise to a
third person.
I looked into the Register book, for that case of Baugh and
Holloway; and find the state of it to be this.—
Richard Baugh died leaving Eliza, his wife, and two sons,
named John and George; having first made his will, dated 11th June 1707, whereby he devolved certain pre-
misies to his eldest son George, his heirs and assigns,
children or other persons, as was due on bond to
Launcelot Baugh, the tesorier's younger brother. And
the said tesorier also devolved certain other lands to
the said George, with a proviso, that on the said George's
attaining 21 and having 1000l. paid him, then all
the said premisses should return to his eldest son John. And
in case both his said sons should die under 21 unmarried,
then the said tesorier devolved the said first mentioned pre-
mises to his wife Eliza, her heirs and assigns, charged
with the payment of the said 200l. to the said
Launcelot Baugh, and also with the payment of 150l. to the said
Launcelot Baugh's children, and devolved the whole
payment to his brother Edward Baugh his heirs and assigns. But the tesorier's said sons died without
issue, under age: And Elizabeth Baugh possessed and
enjoyed the said premisses under the said will, and afterwards
died, 20th October 1715, having first made her will,
and devolved the said first mentioned premisses to Catherine
Rawlin and Elizabeth Baugh's children, and devolved the
payment of her debts, and also subject to the said charge made by her husband's will. Catherine Rawlin entered, and enjoyed the said premisses, and died; having made her will dated 26
May 1716, and devolved the said premisses to Ann Oxen-
don and Elizabeth Holloway as trustees in common.
It is of the opinion of the court of Chancery, that the payment of the debts and legacies ap-
pointed to be paid thereout by the said Richard Baugh,
and also of the debts, &c. of the said Elizabeth unfa-
tished by the said Catherine Rawlin. The said Ann Ox-
don and Elizabeth Holloway claimed the said premisses,
and as trustees, and also as coheirs at law of the said Eliza.
Baugh and Catherine Rawlin. Launcelot Baugh filed his bill, and claimed as
uncle and heir at law of John Baugh the surviving son
of his brother Richard Baugh; thereby impeaching his
said brother's will.
The order is staled right in 1 P. Will. 558: And
on searching the Register book, it could not be found
to have come on again. Therefore it is reasonable to think
the heir must have been advised to drop it.
Devises of lands differ extremely from wills. They
are no appointment of an heir; they create no represen-
tation; the devisee does not stand in the place of the
defor, as to simple contract debts; and till the statute
3 & 4 W. & M. the devisee was not liable to specially
debts, (because he was considered as an allience, and not
as the heir); they are conveyances or dispositions mortis
causa; and that is the reason why a man cannot devise
lands which he shall afterwards acquire.
One devise may be void, (as in the case of this very will;) and the devisee of another good. There is no probate of the
whole instrument: Every several devisee must make out
his title, in a distinct cause, and de novo, against every
new party.
Under legal principles, there is great weight in the dif-
tribution said to have been made by Lord Ch. J. Holt;
and the authors referred to by Swinburne are strong,
upon the reason and fitness of the thing.
The danger of fraud, from the imagination "That
four witnesses might divide the estate amongst them, (viz.
by contriving to attest each for the other,) as to the
land devolved to those others; though none of them could
be a good witnesses as to the devise to himself;) seems very
chimerical. That very contrivance would overturn the
will; if it would not, they might as well execute their
scheme, by four devises, in four paragraphs, severally
attested.
Thirdly,—In the third and last place, I proposed to con-
side the present case under its own circumstances.
These wills are in the nature of legates; not fe-
veral devises. The presumption of "Interest at the
time of subscription" is taken off, at the death, by the
principal funds being more than sufficient; It is taken
off, before the trial, by the debts being paid.
But the benefit at the time of subscribing was nothing.
It does not appear the principal funds then were deficient,
the legacy is a bare possibillity, upon a contingency which
contingency never happened.
But further, I think a charge "to pay debts" ought not to incapacitate subscribing witnesses; altho' they wanted and claimed the benefit of it. Every
honest man should make that charge in his will: he who
omits it, is said to find in his grave.
Fraud cannot be premised, from inferring a clause
which would be iniquitous not to put in.
No man would resort to wicked and fraudulent prac-
tices, to get his debt charged upon land by the will of
his debtor: if he suspected the debtor's circumstances,
he would not stay till his death, or trust a revocable fe-
curitie.
The presumption of fraud in this case would be a
against justice and truth; and the publick inconvenience
so great, that hardly a will could stand.
This charge ought to be in every will. The persons
attendant upon a dying tesorier, and therefore most
commonly renewable, are generally in some degree credi-
tors of the deceased, such as servants, apprentices, &c.
and the disallowing such persons to be witnesses cannot
answer any ends of publick utility.
Upon the whole we are of opinion that this will is
Nov. 25, 1757. Windam v. Chetwood.
Ejectment for lands in Cambridgehire on the demise of Christopher Asgby, D. D., and Mary his wife. And upon a trial at bar the jury found this special verdict.

That James Thompson, Esq; being feized in fee of the premises in question, and of found mind, signed, sealed and published a paper writing, purporting to be his last will, and was of the service of Parliament which is found in bars works: by this he declares, that he devolves to the defendant the lands in question for life, remainder to his first and every other son and son in tail male, remainder to his daughters as tenants in common, with a reversion in fee in the right heirs of the defiver: Then he charges all his real and personal estate with particular annuities, and joins thereto, as well as claims an annuity of 20l. per Annum to Elizabeth the wife of John Hales for her life, and to her separate use; and he also gives a legacy of 10l. each to John Hales and his wife for mourning.

To this will there are three persons who subscribe their names as witnesses, whereas John Hales is one; and that in their presence, and of no body else, he signed, sealed and published the paper writing as and for his last will; and they three attested the same in his presence, and are all three living. They find the identity of John Hales the legatee and subscriber, and that Elizabeth his wife is still living. To this the defiver died the 28th of August, 1742, was proved, and sealed as aforesaid, and that Miss Asgby (one of the leflefs) is his aunt and heir at law. They find that before and at the time of the trial the defendant made a tender to John Hales of 20l. for his and his wife’s legacies, which he refused to accept, and that those legacies are not discharged. Then they find the entry and demise by the leflefs, &c. fed et unam, &c.

This case was tried three times argued at the bar, and this term the Chief Justice delivered the resolution of the court.

The question upon this special verdict is, Whether in the light Hales and according to the will, he is to be considered as a credible witness within the intent of the statute of frauds? And we are all of opinion he is not.

The right to devise in this case is not a Common law right, it being inconsistent with the notion of a feudal tenure, Wright’s Tenures 174. But it depends upon powers given by statutes, which must all be considered together with the true and substantial rule. The particulars of which are, that it must be in writing, signed, and an attestation of three credible witnesses in the presence of the defiver. These were checks introduced to prevent men from being imposed upon; and certainly meant, that the witnesses (who are to be such as are credibly) should not be such as claim a benefit by the will. Though a will may be read, on proof of all the circumstances by one witness; yet that is upon a supposition, there are two others, who could be allowed to give the same testimony.

Carth. 35. Shaw. 18. 3 Mad. 262. Comb. 174.

The tender would be equal to the payment of the two money legacies, (as it is not) yet the annuity charged upon the estate devised would still suffice; and though it is charged both upon the real and personal estate, and the personal (which is not found to be sufficient) would be the first fund, yet it is for Hales’s advantage to enlarge the fund by taking in the real estate; and we must at law consider the husband as benefited by the annuity, though given to her separate use; for it is his money the moment it is paid into her hands, or if not, it eals him in point of maintenance.

It was objected, that nothing velter till the death of the defiver, and the moment he was possessed of the estate he had no interest. But the answer is, that he was then under the temptation to commit a fraud, and that is what the parliament intended to guard against.

Another way by which it was attempted to be supported, is that it may be void as to the annuity, but good as to the devise to the defendant; which is grounded upon an expression in Carew’s report of the case of Hilliard v. Jennings 514, that the will was void good the devise of lands to the plaintiff. But whoever reads that will from the record will see, that there were no other lands devised, and therefore it is equal to saying it was void as to any devising of lands; and it was proper to confine the invalidity of it to lands, because as to personal estate it was certainly a good will.

Consider what a door this would open to fraud: A man has four estates, and is betot by four, who fraudulently devise, and therefore thereby it is as fair as devising to any of them. And if one is allowed to be a witness for the other three, they thereby establish it for the whole. In 1 St. Rom. 730. it is held, that there must be an ability as to the whole will, and not as to a particular legacy. In the case of a will confuting of several fequests of paper, as 3 Mdd. 260. there cannot be in one fleet, cannot be set up to prove every other fleet.

It was agreed, this man could not be examined; how then is he that credible witness that the statute requires? The true time for his credibility is, the time of his attestation; otherwise a subsequeft infantry, which the tefter knows nothing of, would void his will.

And as to what is said in Swan, 296, it relates only to wills of personal estates, and cannot affect the construction of the statute.

The Digbt, lib. 28. tit. 1. l. 22. De testibus, signatures, et signis, is express: Conditionem testamenti non impune canantur, vel armis tempore, et de libri, &c. De libri, 6. tit. 23. l. 1.

We therefore hold this not to be a good atteftation of a will of lands, and there the title of Mrs. Anthony the leflefs of the plaintiff as heir at law is not defeated by what is set up as a will: And consequently the plaintiff must have judgment.

The following is another report of the said case of Asgby and Dowling, from a N.S.

Lee Chief Justice. This funds for the opinion of the court on the following case.

In an ejectment, in which the plaintiff declares upo the demise of Dr. Asgby and his wife, of lands lying in the county of Cambridge, at a trial at bar in this court, a special verdict was found to the effect following. That James Thompson of Trumpington in that county Esq being feized in fee, by a paper writing, purporting to be his last will and testament, dated the 18th of February 1742, gave all his goods and estate, &c. to the defendant James.

For his life, the remainder to his and every other son in tail, the remainder to his own right heirs; he likewise bequeathed to the same person all his personal estate, and then follow these words. ‘‘ Nevertheless it is my will and testament: I give and bequeath to Johnny and Mary, the party benefited in one fleet, and the estate, as well as personal, with theunities and legacies herein after mentioned.” And amongst others is an annuity or yearly rent-charge to Elizabeth the wife of John Hales, for her own separate use, exclusive of her husband, not to be subject to his debt, and her receipt to be a sufficient discharge.

And afterwards he gives to the said John Hales and his wife, for mourning, ten pounds a-piece. The jury further find, that the said James Thompson signed, sealed and published the said paper writing, as and for his last will and testament in the presence of three persons only, one of whom was the said John Hales, mentioned in the said paper writing, and handwriting of the said Elizabeth. That the said James Thompson died the 28th of May 1743. That the said John Hales and Elizabeth his wife are both alive, and that the defendant Derby, before as well as at the trial, tender’d to the said Hales the two legacies of 10l. and 10l. which he refused to accept, and they find that the last is subject to be voided or discharged.

That Mary Asgby one of the leflefs of the plaintiff is the aunt, and heir at law to the said James Thompson. And whether upon the whole, the defendant is guilty, the jury pray the advice of the court.

From this verdict it appears, that the title to the lands mentioned in the declaration, depends upon this question.
And in is yet but appiclid is would good a w.is legacy, as being for opinion dal attefded the for infamous an the niuft the law evidence perfons was the will, of was not releved, his was left by the will, and the evidenice by the testamentary power over lands, and that power was laided under certain refrictions by the 29 Car. 2. And these statutes are now to be taken together, as containing all the parliamentary rules concerning the manner of disproving of lands by will. The necessary requirements are, that the will be in writing, signed by the party devising, or some person authorized by him, and attested and subscribed by three credible witnesses, in the presence of the testator. In the case of Lee and Libs, 1 Shawe 88, and Cattell 35, there were two witnesses to the will, and two to the codicil, by which the will was not altered, but yet it was not held to be valid as to the lands. I mention this case, because my Lord C. J. Hill there lays, that the three witnesses are to prove all the things required by the statute, and this I apprehend is an answer to an objection that was drawn from the common practice of calling only one witness to prove the will, who proves at the same time the hands of all the three.

This is done where it is not further contested; but the heir at law has a right to examine the other witnesses; for the law is, that he is not to be disillusioned but by the oaths of three credible witnesses at least, which might mean legal, and also judicial, as that might be taken for an oath. But it is here laid that this cannot always be had; for suppose a man, some exceptions major, attests a will, and afterwards he is convicted of perjury, and becomes infamous; yet this will may be proved. No authority is cited for this, but supposing it to be so, the devisees comply with the statute, and the will is valid. But the law is, evidence at could be had, and the perjury at all was then all unexceptionable. If by the intervention of subsequent accidents, the nature of the evidence or condition of the witnesses is altered, we must receive the bill that can be procured. As where an old age makes one inconsiderable, it is laid that his bills by himself or his friends might not be used, to prove the hands of the other witnesses. 2 Term. 700.

But here Holis was under an inducement and bias at the time of attestation, as being then interested; in like manner, if one of the witnesses will not swear to the execution, or discharge his will, he shall nevertheless be admitted to prove the hands of the other witnesses. 2 Term. 700.

W I L

whether this will of James Thynne was duly executed, pursuant to the flat, 23 Car. 2.

There are three persons who have subscribed as witnesses to the executing of this will; but one of the three has a legacy left him by the will, and there is before a legacy, and also legacies, and therefore the one of the three has will subjoined his lands to the payment of all his legacies and annuities. I t, therefore, objected, that Holis is not such a credible witness, as that statute requires. It has been answered to this, that though the personal estate must in the full place be applied towards payment of his legacies, and therefore he is not interested in the will, yet in the second place, next that this annuity being to the separate wife of the will, cannot be considered as any interest in the husband.

But if these answers had been sufficient, Holis ought to have been admitted as a witness upon the trial; but we are not then, nor with the other two, yet that he would then be admitted to increase the funis, which is a necessity for his own legacy; And fasti perfomint done, &c.

The annuity to the wife, tho' for her separate use, is for the benefit and advantage of the husband, and not withstanding it is not in any actual possession of his to whose use it will be, yet it may rate him of what it is necessary for him to provide for a proper maintenance and support of his wife.

Neither can the tender and refusal of the legacies make any difference in the case, as it does not at all affect the annuities.

The question therefore is, whether Holis is, notwithstanding this objection, to be considered as a credible witness within the flat, 29 Car. 2. And we are all of opinion that he is not.

Legals were not devisable by the ancient common law except by custom. At this time was founded upon the feudal law. Helgie gave the parliamentary power over lands, and that power was laid under certain restrictions by the 29 Car. 2. And these statutes are now to be taken together, as containing all the parliamentary rules concerning the manner of disproving of lands by will. The necessary requirements are, that the will be in writing, signed by the party devising, or some person authorized by him, and attested and subscribed by three credible witnesses, in the presence of the testator. In the case of Lee and Libs, 1 Shawe 88, and Cattell 35, there were two witnesses to the will, and two to the codicil, by which the will was not altered, but yet it was held to be valid as to the lands. I mention this case, because my Lord C. J. Hill there lays, that the three witnesses are to prove all the things required by the statute, and this I apprehend is an answer to an objection that was drawn from the common practice of calling only one witness to prove the will, who proves at the same time the hands of all the three.

This is done where it is not further contested; but the heir at law has a right to examine the other witnesses; for the law is, that he is not to be disillusioned but by the oaths of three credible witnesses at least, which might mean legal, and also judicial, as that might be taken for an oath. But it is here laid that this cannot always be had; for suppose a man, some exceptions major, attests a will, and afterwards he is convicted of perjury, and becomes infamous; yet this will may be proved. No authority is cited for this, but supposing it to be so, the devisees comply with the statute, and the will is valid. But the law is, evidence at could be had, and the perjury at all was then all unexceptionable. If by the intervention of subsequent accidents, the nature of the evidence or condition of the witnesses is altered, we must receive the bill that can be procured. As where an old age makes one inconsiderable, it is laid that his bills by himself or his friends might not be used, to prove the hands of the other witnesses. 2 Term. 700.

But here Holis was under an inducement and bias at the time of attestation, as being then interested; in like manner, if one of the witnesses will not swear to the execution, or discharge his will, he shall nevertheless be admitted to prove the hands of the other witnesses. 2 Term. 700.
Add all to this the case of Hilliard and Jennings, as reported by Lord Raymond 505, and by my Ld. Ch. B. Cymus 90, and Cafes in the King's Bench in the time of K. William 277, and it is visible that all the reasons upon which the court determined in that case, are applicable to the present.

The argument to which the court agreed was, that a person who could not be a witness was certainly not a credible witness, and that the intention of the act was to prevent frauds as well as perjuries; which intent would be evaded, if a party inter红色, who might probably be induced to use fraud, were to be allowed to be a witness; and if persons, who would not make the execution something more formal than it was before: That the statute being deprived of the word credible, the other word witnesses was to be expounded by Common Law analogy. From whence this rule is taken; that as at Common Law no man was allowed to be a witness to prove an interest for himself; so the statute shall banish the objection by his own subscription take an interest, which he could not prove at that time by his own examination: That the case of Hilliard and Jennings goes no further.

The rule thus framed, his Lordship is pleased to conclude not only that a release or payment will re-establish the witness, if his incompetency really stands in the way; but that further this a witness who is disqualifie may be competent enough to prove the will for every person except himself.

In opposition to this reasoning I propose to maintain first, that this credibility, (which I shall prove to be competency) is a necessary and substantial qualification of the character of a witness, as it is required by the statute: Secondly, that if a witness is incompetent at that time, he cannot purge himself afterwards either by release or payment, as to set up the will. Thirdly, that he cannot be a witness in that case to establish any part of the will; but that the whole is void for ever.—As my brothers differ with one another in their reasoning, I beg leave to take either of those questions as far as the witnesses are competent by the rule of law, I might, if I thought it fitle, leave all the other points undecided, as not absolutely necessary to the decision of this case; and I should have been glad for several reasons to have done it, if other reasons more weighty with me had not determined me the other way. One is, that as the whole argument is connected by a chain, those points to which I am bound to speak could not be so clearly illustrated, nor would they, as I apprehend, be expressed with half the force, if the others are omitted; for they all throw light upon each other, and the point is sufficient material introductions to the latter. Another reason is, that the matter at issue is one which may yet come before another court, and likewise as no case of the like kind, in my opinion, are cured by the late act; but that future suits, as well as those that are passed under such like attestations, must call up the same question, when they happen, I think myself bound in duty to declare my different from the left opinion of Lord Mansfield, and do my best endeavours to restore Lord Chief Justice Lee's, which has been so comfortably shaken, I may say overturned; because the left opinion, if it is acquiesced under, almost always governs, and becomes the leading case. So that if I should now decline this argument, this opinion would not be injured, Lord Mansfield's doctrine, which I am clearly satisfied is erroneous. These reasons do not prevail upon his Lordship to declare himself against Lord Chief Justice Lee, in a case where, according to his own opinion, he might have avoided the question, and yet have pronounced the same judgment; but he thought it more material to declare so, in order to avoid what he thought wrong, than to give further strength to that error by avoiding the contest. I have hitherto treated the argument I am answering, and I am obliged to treat it throughout as Lord Mansfield's argument, and not the argument of the court; because his lordship has told us it is his opinion, under all circumstances, and in the discharge of his duties.

For the opinion of the court, he only tells us in general, they held the will duly executed according to the statute; but he has not informed us upon what grounds that resolution was framed; so that I am not able
able to say whether the puine judges agree with his lordship in all his three grounds, or if not in all, in which of these three; nor do I think it right now to enquire, because the practice of explaining a public resolution in private by parol might be attended with some bad consequences. It is, however, for this, that I am afraid I shall be very tedious; if I should, it must be imputed to the high respect I bear to that great person with whom I differ, as it would be an unpardonable negligence to pass over or disregard even a single word, that he has thought material. I am very sensible that I am destroying an honest wish upon a criminal objection; for in the interest here, which I must treat as a serious incapacity, is too flight even to dispose the witness's credit, if he could be sworn; and yet I must adjudge him upon this objection to be a person to defile of all credit, that he is not fit even to be examined. But as it is not my business to differ with me have enabled me to give this advice, of the proper means of disposing of the suit. Before I proceed, I define it may be understood, that I do by no means deny the authority of the judgment in Chitty and Wyndham; for that case was determined not only upon the general principles, which I am forced in this argument to deny, but upon its own general principles. I also wish to introduce a definition, which can be applied to the case of a mere legatee witness. The first general question then, or rather enquiry, being this, who are these witness, which are described in the act by the word credible. I answer in one word they are competent witnesses, and no other. When it is further as- said, at what time must it be ended, when this qualification, I say that he must be clothed with it at the time of attestation. This then is the proposition that I intend to maintain, That the witness's credibility (which I shall prove to be competency) is a necessary and substantial qualification at the time of attesting. To prove this, it will be incumbent on me to prove, that the legislature set up these witnesses as a guard to protect the testator from fraud in that critical minute when he was about to execute his will, which I will do from the spirit as well as the words of the act, and shall then confirm my construction by the authority of Hilliard and Jennings, which is a case in point upon this question. In the first place, I mean to show that this question, I define may be attended to, because it should be carefully kept in view throughout the whole argument, and it is this: That there is a great difference between the method of proving a fact in a court of justice, and the attestation of that fact at the time it happens; these two things I suppose have been confounded, whereas it ought always to be remembered, that the great enquiry upon this question is, how the will ought to be attested, and not how it ought to be proved. The new thing introduced by this act is the attestation; the method of proving this attestation, stands as it did upon the old Common law principles. I would object against it, if I had sufficient opinion, what all the three have attested; and though those witnesses must be a subscriber, yet that is owing to the general Common law rule, that when a witness has subscribed an instrument, he must be always produced, because it is the legal evidence. We have in common experience; for after the fifth witnesses have been examined, the will is always read, and in the case of Hilliard and Jennings you will find that the objection was not to the want of due proof in court, but whether the device was a credible witness within the meaning of the statute. This I am afraid has not always been attended to, but some persons have been led to think that the law wished all the witnesses had directed the will be proved by three credible witnesses, forgetting the difference between the subscription, and the proof of that subscription. I proceed now to show that the witness's must be credible at the time of attestation within the true intent and meaning of the act. This clause has introduced a new ceremony to be observed in the publication of wills. This act of publication is to be done before three credible witnesses; this I call the sufficiency, because the other act is to be done by the parties, when this is done by the testator, and has been seen and heard by the witnesses. Then, the testator is to sign, and the witnesses are to subscribe in the presence of the testator. This is the form; but the difference is apparent, for signing and subscribing in the presence of the testator is only the mode of recording the act, by committing it to writing at that time; and though the formal as well as the substantial part are equally essential to the perfection of the will, the form may be made more liberal with the law, than they can be with the honesty. Now the question be asked, whether the quality of credibility is requisite in the witnesses at the time of attestation, I answer, nothing can be more clear upon the words, if credibility means anything. For what is the clause but a description of those who must attend the execution, among which the possession of credible witnesses is made necessary. It is admitted, that if any other description had been added to the witnesses, that must have belonged to them at the time; as three Englishmen or three full aged persons had been required; these adjoints would have increased the bar upon the execution. If so, I see not by what rule of construction one of these must not be disdained from another. Nay if the word credible be expounded, and the word witnesses, as it is admitted, does ex vi termini include competent, full competency must be essential to the wills at the time of execution; fo, as an interested witness cannot be the witnesses which the law intends to be a guard of the execution. But this, it may be said, is cavilling upon words, and an artifice to evade the true question which turns upon the spirit or intention of the law. For if the solemnity was not really intended to protect the testator from fraud, but only to add a little more form to will-making, the one hundredth is no more important than a word. But that is the natural question, and the law can only be satisfied, if it are made credible at the trial. Now although this construction will be manifest violence upon the words, yet I will meet the argument fairly, and maintain my opinion upon the very spirit and intention of the act. I say then that the legislature ordained and meant to ordain the three witnesses to be a guard to the testator against fraud at the time of executing the will, and that the witnesses are called in not only to attest but to protect. This is the true flate of the question between us. The word credible, say the other side, signifies nothing to a third person, and I can introduce no act of writing or will to do with this point, that the question is not a question of construction upon any words of it. I must on the contrary maintain it to be a question of construction. To say the truth, the point must either way turn upon the construction of the statute. If the statute determines the question, it is simply a question of construction, and if it is to be laid aside, you must still continue the statute to get rid of it. But to proceed. Before the statute of frauds any scrap of writing, though it was neither signed, sealed, nor written by the testator, might have been established by the testator's name or the name of any person was a legatee, if he released he was a good wit- nes. This did in fact happen in a very remarkable case, that of Sir Francis Wrefley's will; this case is reported in Sid. 345. and in 2 Keb. 138, Stephen's lefepe of Gerard against Lord Manchefer 18 Car. 2. One Benham of Gray's Inn wrote a will for Sir Francis Wrefley, which will was in loofe fleets dicated, as Benham said, by Sir Francis who had neither signed, nor sealed the same, though the writing itself purported both; but Sir Francis, who in- tended to write the will over again himself, said, that in the mean time that should be his wish. Benham was the only person who had the will at the time, the testator thereupon pretended he had an imperfect copy, a legatee and an annuitant under the same will. Objection was taken to Benham's testimony as a legatee, whereupon they threw a reale, and proved that he had received the money, and yet says Keb. the court con- ceived this a sufficient will, and the jury found it so, and verdict for the defendant lesepe of his baifard against the
true heir at law, leisir of the plaintiff. "This determination was clearly legal at that time; yet the reporter thought, as every other person that reads it must, that it was a case of great hardship to disfranchise the heir by a will so made and fo attested, and fo confirmed, after the long usage of a common law. The two great and alarming considerations upon this case, were, that such an unfinished paper should be deemed a will, and that one person so interred, should be the only witnesses. All the world must see, as soon as this case was determined, that testamentary frauds would be as much as ever before, and probably more, the object of the lawyers, and the delinquents, and the degenerating men, if such wills and such witnesses were not to prevail any longer. — Whether this case was in truth the occasion of the will clause in the statute of frauds, as some have thought, I don't know; but when you reflect that this case happened in the 18 Car. 2, and the law made but eleven years after, all you'll gained by the length of time, is that the mischief this noble law, which deserves to be called a Code rather than a single act of parliament, and that when it is found by the provision of this new law, that for the future the will is to be a perfect instrument signed by the testator, and that three credible witnesses at least are to be introduced to be present at the signing of the will, there are the two grievances in Sir Francis Wayler's case, and going no further, the provision is so remarkably adapted, to meet with the case, that I cannot be brought to believe it was either neglected or forgotten. However that may be, I am at least sure, that this was a most material case to throw the necessary light upon the point. The will was a will signed and sealed by the testator, and the witnesses were the following words. "All devises and bequests of any lands, tenements or hereditaments, &c. shall be in writing, and signed by the party so devising the same, or some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the said devisee by three or more credible witnesses, or else the same shall be void and of none effect." Now that the statute had a main view to the quality of the witnesses will appear from this consideration, viz. that a will is the only instrument in this act required to be attested by subscribing witnesses at the time of the execution. It was enough for leaves and all other conveyances for mortgage agreements, for declarations and assignments of truths to be in writing: these were all transactions in health, and protected by valuable considerations and antecedent treaties; so that the power of a court of equity was sufficiently meet with to effect every fraud that could be practised in these cases after the contract was reduced into execution and fruition. If there was any material object of the arbitrary capricious pleasure of the testator executed suddenly in the last sickness, almost in articulo mortis. If the man is sure his will will be established, cruelty, iniquity, unnatural preference or exclusions are no objection to such a will. Stat pro ratione voluntatis. Was the testator to sign his will with one made it is the only question that can be asked, and consequently the time of the execution is the critical minute that requires guard and protection. Here you see the reason why witnesses are called in so emphatically. What fraud are they to prevent? even the fraud so commonly practised upon dying men, whose hands have not, could not, have been strong enough to write a name or make a mark, though the capacity of disposing is dead. What is the condition of such an object, in the power of a few, who are suffered to attend him, wheedled or teated into a submission for the sake of a little ease, to put to the labourious task of collecting the full fettle of all his affairs, and to watch the jilt merits and dementias of those that belong to him by remembering all and forgetting none. Such an act to be done at such a time is so pregnant with sufutation, that a formal declaration of the testator's found and disposing mind and memory, though he is weak in body, is grown to be a common introductory clause to almost every will. So much effect and importance was attached to the testator in this important moment from impostion? Who shall protect the heir at law, and give the world satisfactory evidence that the testator was false? The statute lays three credible witnesses. What is their employment? I say to inspect and judge of the testator's fancy, before before they attest. If he is not capable, the witnesses ought to renounce and refuse his attestation: he is infamous if he does not; in all other cases the witnesses is positive; here he is active, and is in truth one of the principal parties to the contract, and the testator is en- trusted to their care. Sanity is the great fact the whole is to speak to, when he comes to prove his attestation: And that is the true reason, why a will can never be proved as an exhibit in open court in chancellor, though a deed may; for there must be liberty to cross-examine to the utmost degree, for this is the occasion when the greater part of the witnesses are at hand to be examined, and when they become the invariable practice of that court never to es- flablish a will unless all the witnesses are examined, because the heir has a right to the proof of sanity from every one of the witnesses that the act has placed about his ancestor. This practice which is coeval with the act is a strong argu- ment, why the law was so rigorously strict in this case, and why there is now the necessity of being in the witnesses to prevent false dispositions, as the will now is, and which the law makes it therefore not barely to attest, but to try, judge and determine, whether the testator is compe- tent to sign and publish; and yet this duty of the witnesses, this solemn trial of the testator's fancy has been called a mat- ter of form and of no use to prevent frauds. I am of a very contrary opinion. That many fraudulent wills have been made since the statute, and are formally exe- cuted, I have no doubt; and I am afraid these frauds will continue to the end of time; for what law can totally extinguish wickedness, and reform mankind? But if a law is to be lighted, because it does not entirely eradicate the mischief, much more powerful to prevent this is to make it impossible to escape censure; and many bad wills have been made, but who can tell me how many have been prevented? I have no doubt (for this affront cannot be proved) but that a thousand efforts have been faved by this excellent provision. It is called a guard in theory only, whereas almost every delivery practised, that is suffused to dye infante is preferred by this law, and gives testimony of its utility. But if you once treat this part of the solemn- nity as a form, and call the devives and legates into the sick man's chamber, the whole ceremony will then I ad- mit become a mere form; nay it will be worse, it will be a farce to the testator, and instead of being a preventa- tion, it will be a protection of fraud. I will clofe this reasoning with the words of the court in Lea and Libb, as reported in Carth. 37. "It is true, the intent of the statute was to prevent fraud, but though no sufputation of fraud appears in this case, yet the statute has preferred a certain method which every one ought to observe, in the construction of the statute of frauds, the consequence is undeniable, that the incompetency can never be purged, and that the whole will is void for ever. This consequence is so plain, that the argument on the other side, in order to call off the attention from this idea of fraud, hath laboured to disprove and engrave the whole clause. Whereas now it is urged, that the word credible (which I consider as the key of the clause) deferves no notice, but ought to be expunged, being, as it is contended, either improper or at least nugatory; nor does the argument stop there, but proceeds to pronounce the whole clause to be futile and void. "For this will (every line whereof according to Lord North's opinion was worth a subsidy) turns out to be careless and ill- penal, nothing more than a fruitless and ineffectual solemnity.—But to proceed. First, The word credible, it is said, either means too much and is misapplied, or else it is included in the word subject, and means nothing. That the epithet credible has a precise meaning universally allowed, and is never used as synonymous to compe- tent; that when it is applied to testimony, it presupposes evidence to have been given; and that after the compe- tency of the witnesses is allowed, the objection to his cre- dibility is founded, and therefore that it is allowed to add a quality to the witnesses at the time of attestation which can never belong to him till his testimony is examined in court. As the argument here turns altogether upon the meaning of this word, I wish the argument had given us that precise meaning, which, it seems, is universally allowed; that it is not done by any definition it was thought
W I L

thought to plain and obvious that there was no occasion for it, and therefore instead of telling you what the word does mean, the argument only affers what it does not mean, i.e. it is never used as synonymous to competent.

In answer to which I beg leave to say, that it may ever in common speech be so used, and further in the act of parliament it must have that meaning, and no other sense, otherwise the greatest absurdity would arise from the case of Hilary and Jennings, wherein the court of King’s Bench not only declared the two words credible and competent to mean the same thing; but refiled their main argument, upon that very meaning of the word credible. But of this more hereafter; in the mean time I shall only write one sentence that is worth observing as I understand it, and I hope to shew that the act has used it properly, and that it is not misapplied. —

I understand the word credible to mean worthy of credit; when applied to the person of a witnesse, it bespeaks him to be a person of capacity to deferce credit; I say of capacity to deferce credit; I go no further, because no man can be false of obtaining credit, let him be ever so credible; and therefore I suspect that the word credible has been used improperly in the last passage for credit, which means a great deal more.

Now a witnesse is credible in two senses. 1st. When there is nothing against him, or denied to him in the abstract without referring to the testimony of any particular fact. 2dly, He is credible or not, in another sense, when the matter of his testimony in a particular case comes to be disfufed and tried. A man therefore may be credible in the first sense, tho’ not credible in the second, and yet the word properly used in both. When you apply this epithet to legal witnesse, that law where it is applied must determine the meaning. Now if I ask this general question, who are credible witnesse by the law of England, i.e. persons worthy to obtain credit? if the question is not absurd, I can give but one answer, that all such persons are entitled to give testimony in the courts of Justice: Who are credible? Those who are not so permitted.

The very admittance of the person to be examined proves him in the estimation of law to be worthy of credit while he stands unimpeached, by calling him competent.

But when a witnesse’s testimony is under trial, and I am asked whether such a deponent is a credible witnesse to those facts, I must take in a thousand circumstances in order to judge fairly of his credibility good or bad.

In this case I admit that you presuppose the evidence given, because his credibility then depends not only upon his personal character, but likewise upon the evidence given with respect to him in those circumstances. This general character of credibility in the abstract is so inseparable to the person of a disinterested witnesse, that nothing but an infamous judgment can ever deprive him of it; he is disbelieved in one case, he is notwithstanding a credible witnesse in the next; he fails there, yet in a third he may obtain credit.

Let his conduct or general character be what they may, he is a credible witnesse to every fact where he has no interest.

When I say that all indifferent witnesse are credible, I do not mean to say equally credible; for credibility may have its degrees; his personal character may make him more or less credible, but it is sufficient for my purpose if the word is intituled to any degree of credibility.

Now where a man’s testimony is impeached, this general character of credibility is no longer considered otherwise than as a circumstance, and the enquiry is changed into a scrutiny of his credibility to that particular case, and that this man not guilty of the character of witnesse, and fortunes are equally liable to the same enquiry, it is by no means a consequence that the best man should turn out the most credible witnesse; every day’s experience proves the contrary, and a bad man is not only allowed to be a good witnesse, but sometimes his character as witnesse, and that place is it proper to observe that the good character of the man has been confounded with the credibility of the witnesse; which are two different things; for the stature was never to sim.

Vol. II. No. 137.

W I L

able as to require the attestation of honest men, a matter important either to be known or tried, but called only for indifferent testimony, as well as witnesses, as the plain and plainly triable. To say the truth, every man living is honest enough to tell the truth for a third perfon, if he has no motive to do otherwise; nor is it strange that a bad man in some cases should be a credible witnesse, and a good man be incredible; for credit is not in the power of the witnesse, but is lodged in the third person, and is a matter of the nicest and most delicate discussion. The flighted circumstances may turn the balance; probability in the tale, collateral confirmations, or impeachment by other evidence, contrary declarations, tamperings, the character of the party or the modest demeanor of the witnesse, hesitation, conflict, partial accusations, difference, compared with the contrary behaviour, these and many other considerations conpire to work up or destroy belief; and therefore the general character of the man is of no great moment in weighing the credibility of his testimony; I call to appeal to experience, whether general character is ever called in to impeach a perfon’s evidence till some strong attack from another quarter is made on his credit; and therefore every man without exception, who is free from all interest in the fact, he comes to attell, is a credible witnesse i.e. he deserves credit in the strict sense of it, unless some other objection besides character, is add to the list. Thus much being premised, give me leave to apply this reasoning to the act before us. — Who are those credible witnesse who are called upon to attest the new fact? the answer is plain, those who are intituled to the general character of credibility; they who are free from infamy and disinterested; they can neither get nor lose by the will; it is in this sense, and in this only can the word possibly be understood; and therefore it is so far from being true, that credible is never used as synonymous to competent, that on the contrary, wherefoever it is confidered in the abstract and applied to the idea of legal witnesse, it is not synonymous, but is worth observing here, that credibility is so inseparable to all men who have their fenes, that the epithet incredible is never applied in common language to the person, as it is to his testimony: you say a fact is incredible as well as credible; but you never say a witnesse is an incredible person; for there is not any man breathing, who is not capable tho’ perhaps not worthy to obtain credit, if you hear his testimony; and indeed the true reason why infamous and interested witnesse are rejected is, for fear they should be believed; and therefore such persons are properly called incompetent, and not incredible; which mode of expression is equally opposite as the former.

When the act then requires three credible witnesse (for it does not say three reputable persons) to subscribe, it requires three disinterested persons, who are not infamous, and no more.

All such are credible to that fact wherein they have no interest; this can be pronounced of theword men; and you can say no more of the best; for they are both credible as they stand upon the will, tho’ perhaps not in the same degree.

The acts, which direct convivialions to be made upon the oath of three witnesse mean competent, as I conceive; and if the witnesse have not been put to an oath to convict, if he is not contradicted; this cannot be denied; and I am sure the reason given why the informer cannot be a witnesse, is because he is not credible; which proves pretty clearly, that if he had no interest, he would be admitted.

And Lord Coke, when he advises the tellor to call in credible witnesse to attest his will, may mean to recommend the most credible, such as are reputable persons as well as competent witnesse; yet there is no ground to infer from that expreッション, that any competent witnesse in his opinion was totally non-credible. — But if this be the true meaning of the word, it is contradicted, for it is an idle nugatory word, as being included in the word witnesse. Admit it for a moment; must the clause be condemned or lose any of its weight because an epistle might have
It was said, that the poor here described, must be understood to be a class of poor not above the reception of relief, and that this charity may be applied by the trustees to the use of such persons exclusive of the poor of this parish.

The donors of this charity could not stipulate that the poor in this will, are those who labour under the extreme wretchedness of helpless poverty; for when it is considered that the day-labourer, who only lives from hand to mouth, is deemed by the testator to be a person above the want of this charity, which is confined to the impotent only; it would have been thought that the labourer with a family, &c. could not be excluded.

In the poor in this will are denoted by the same description as the parochial poor are by the 43 of Eliz. And if this be so, this charity cannot, by the terms of it, be distributed to a set of men who are excluded by the will; it will be a breach of trust to do it; and if it be found that the charity is awarded to such men, it will have to be applied to a superior order of poor, I desire a cafe to be produced where that court ever made such a decree.

If a legacy has been given to poor housekeepers, and poor not receiving alms, or to poor in general, there might perhaps be some ground for that disposition; but I can never believe that court could make such a decree in this case; the benefic of that court being to expend wills, and not make them. And whereas it is said, that these legacies when they reduce the rate, come to be in their operation legacies to the rich and not to the poor; I answer, that it is impossible to be otherwise, and that this is always supposed, that if a man living from whence the pauper is supplied, if he has wherewithal to subsist, without the charity, he must be discharged, because the relief in such a case is not necessary: And the necessity of the object is the rule by which the relief is to be proportioned; and it must be more or less according to the pauper's condition and circumstances.

If a labourer, who gets seven shillings a week by his industry, is incumbered with a large impotent family, the parish adds so much to his weekly gains, and no more than will be just enough to keep the family alive; if he falls sick, the allowance is increased; if his children dye or become useless, the charity ceases. If a man receiving seven shillings a year, his flipend will be less than his neighbours who has but twenty shillings a year, and he again will be less confined than a man who has nothing. This is the true reason why the rate is directed to be paid weekly, or otherwise, because the rate of the poor is always fluctuating. An estate or legacy is given to the testator; and if the estate is to be vested in the testator, it is certain that no one after the death of the testator can have any title in the estate, unless by a will, or through the executor. The estate is vested in the testator, and he has full power to dispose of it. The estate vests in the testator. The estate vests in the testator. This is a very abstract point which is not much referred to in the case. The trustees are sufficiently provided for, but the parishes are not. The poor have a right to expect relief. The poor have a right to expect relief. This right is not confined to the poor who have nothing to expect relief, but to all who have a right to expect relief. The right to expect relief is not confined to the poor who have nothing to expect relief, but to all who have a right to expect relief. It is a right which is enjoyed by the poor, and which is enjoyed by the poor. The poor have a right to expect relief. This right is not confined to the poor who have nothing to expect relief, but to all who have a right to expect relief. The right to expect relief is not confined to the poor who have nothing to expect relief, but to all who have a right to expect relief. It is a right which is enjoyed by the poor, and which is enjoyed by the poor. The poor have a right to expect relief. This right is not confined to the poor who have nothing to expect relief, but to all who have a right to expect relief. The right to expect relief is not confined to the poor who have nothing to expect relief, but to all who have a right to expect relief. It is a right which is enjoyed by the poor, and which is enjoyed by the poor.
remain so as long as the flat of 43 Eliz. stands unreal-paragraph 2

—As to the objection that the interest is too minute, and that a small interest as in Tawney's cafe, ought not to disqualify witnieses, I do conceive that however that point might have been litigated formerly; yet that now the situation is quite another, and the ruled law is not rejected, if he has any interest, he is to be small.—The point was disputed for above 20 years in the cafe of tol, a eumon claimed by the city of London upon importation, called by the name of water-baillage.—The question was, whether freemen might be witnieses.—Nothing can be made to press for this objection, I have interpreted; and yet after many opinions pros and cons, it was finally settled that they were not witnieses.—Any person who has a mind to trace the history of this question may find it in 2 Keb. 295. 3 Keb. 2 Leon. 231. King and City of London. 2 Shaw. 47. 2 Shaw. 146. 1 Holt. 351. Cafe of the City of London concerning water-baillage. This cafe (and it is the last I can find upon the subject) happened in 32 Car. 2. and is distinctly reported in two books; for one states, that three judges allowed the witnieses, and one disallowed; upon which the counsel for defendants tendered a bill of exceptions, but the plaintiff gave it up and called in the witnieses. Clarke, 2 of the double fays, that the freemen were denied to be witnieses, and that the plaintiff tendered the bill. I cannot reconcile the books, but both agree the witnieses were not examin-paragraph 5

ed, and the verdict went for defendant.—What became of the exceptions does not appear.—I should guess it was denied and settled feemingly, that freemen could not be witnieses, because it is said by two Chancellors in Verne.

Lord Keeper North in 1684, two years after this trial, Vern. 254. says, it was said in the cafe of the water-baille, that no freeman of London could be a witnefle, that it was not fit or proper to con-paragraph 6

tain. In 2 Vern. 318. 1684 Lord Somers fays, in a suit for money given to parifhioners, none of the inhabitants ought to be witnieses; for in a cafe where a party is concerned in inter-paragraph 7

est, though never fo small, the objection has always pre-paragraph 8

valled; and so resolved on great debate in the cafe of the City of London concerning water-baillage.—11 Edw. 255. Cafes in queen Anne's time, Brawen against the Corporation of London, upon issue joined upon prepetition for a toll, the defendants produced a witnefe, the plaintiff obj-paragraph 9

ected, that he was a freeman and interfeled, upon which the defendant produced a judgment in the Mayor's court, wherupon ex fite factis was awarded, and two miles re-paragraph 10

tumed. What with the judgment and judgment a new def.ment; therefore the proceedings being irregular, Holt would not admit the man to be an evidence, because the judgment in the Mayor's court may be avoided.—The flat. 1 Ann. cap. 10. is material for this purpose; for the act of parliament lets in the evidence of the inhabi-paragraph 11

tants of counties in all informations and indigments for not repairing highways and bridges; so again by another act the parifhioner is admitted for suit to recover money mispent by parifh officers. Which act all fays, that the rule to reject the witnefe for minute interefte could not be broken in upon by left authority than an act of parlia-paragraph 12

mont; and that this was not a matter of importance. Clarke, 2 of the book 1737, where it is said, that in cafe of an information at the relation of the town of Warwich, for certain char-paragraph 13

ties, an inhabitant receiving alms is no witnefe, for every inhabitant either pays or is under a poibility of paying to the church and poor, though he pays nothing at preteat. —If the rule be fair, it must pertain an objection, to all witnieses without objection, and there can be no difference between witnieses to a will and any other. I fay this, because I fee practice had prevailed to admit will witnieses where the legacy was small.—In the argument of the water-baillage cafe in Vern. 357. and Shaw. 46. it is faid, the question was discussed and defended; and that it had been usual, and in 1 Vern. 254. Lord North is made to fay, that where a man is a legatee, if it is an infcrutable legacy as 51. or 5 f. to a man of quality, he fhould be a witnefe to prove the will.—It is plain there had been fuch a practice, and I take it to be upon that ground, that the parifhioner allowed to be a witnefe in Tawney's cafe; but that practice ceased, I believe, upon the flature of frauds. But I take it most clearly, that this notion is now exploded, and therefore if it fhould be once admitted, that the parifhioners in Tawney's cafe had an interefte under the will, the cafe neither is nor can be right. But after all, I conceived that a legatee of a small fum may at this day be a witnefe.

True it is, that the interefte of the witnieses in some cafes is drawn fo fine, that it is scarce percepitable; and yet that glimmering, that feinilla shall be as powerful to exclude the witnefe, as the moft fubfiantial profit; and I fay, if the cafe be good law where the court fed aside the witnefe, because he had this himself bound in honour to pay the cofls of the fuit. The true ground whereof is this, which is fit to be attended to in evry part of this branch of the argument, that as no poitive law is able to define the quantity of interefte that can be laid upon the minds of men, it is better to leave the rule inflexible, than permit it to be bent by the defcretion of the judge.—The defcretion of a judge is the law of tyrants; it is always unknown; it is different in different men: it is caufal and depends upon conftitution, temper and paflion: In the frft it is ofte-paragraph 15

nously the voice of every fiece, folly and paflion to which human nature is liable.—I am done with this part of the cafe, and return again to the flature of frauds, and the next point; which is, whether a witnefe, not credible at the time, can become fo by matter ex poft factis, fo as to re-eftablifh the will.—If my con-paragraph 16

siderations concerning the will are to be accepted, the attestation is no factis voided by the very words of the flature.

The teftator has been betrayed; the fraud is committed; and you may as soon recall time as make that tranf-paragraph 17

action hooft, which was originally fraudulent; no pur-paragraph 18

gation can cleave the witnefe. I fay, if I have confrmed the act right, every fuch attestation is a conclusive mark of fraud upon the act; against which no evidence can be given; and though it has been faid, that a legacy is no preicient interefte, and that the legatee does not know the contents of the will; I anfwer, that if it fhould be once held, that this act may be eftablifhed by the legatee's releafe, every legatee who intends a fraud will always fore the future be cure of the contents before he attests. But still it is urged, that if you pay or releafe the legatee, he is a good witnefe; his bias is gone; the will fhall be eftablifked. It is hard to fay whether this doctrine is more pregnant with mischief or absurdity.—It furnifhes the will-makers with bribes to the witnieses out of the tefta-paragraph 19

tor's poft, and furnifhes the latter with a power to demand; for it is poiffible to give the witnefe a fecurity for his legacy than by making him a witnefe, because by this means his release being necessary, he gains a power over the whole will; Thus the law co-operates with the fraud in requiring the defive to pay the witnefe his hire before, under the penalty of fettling the will, the defive refues.—But the mischief will not stop here; the lega-paragraph 20

tee will naturally proportion his demand to the value of the effate bequeathed, and will frequently exact more than his legacy.—Nay will he think it worth while to hold himfelf out to the heir, and keep the will in fuff-paragraph 21

fice, if the legatee is not to be paid, and it his own advantage; and thus the teftator's land after his deceafe will be sold by the witnefe to the beft bidder.—To day the will is bad; for the legatee will not releafe; to morrow the legatee is fatisfied, and the will is good;—the heir at law recovers in one term, and is difinftructed in the next.

In this flate of uncertainty the will must remain till the legatee pleads to pronounce its fate. But fuppofe the witnefe fhould die before he has releafe;—may put the cafe, that he dies before the teftator; is the will good or bad? if good, he is a credible witnefe and needs no pur-paragraph 22

gation; if bad, he is not credible and incapable of purging. Again, let us fuppofe the witnefe convicted of fpme infamous crimse; can the crown reforge the will by a par-paragraph 23

don?—In that cafe, it depends upon a caufality, and the King dipoles of the effate. Among all these difficulties, one should have expected some rule fhould have been laid down to fix a certain period for the eftablifhing or annul-paragraph 24

ing of
of the will by telling us how long the witness's incompetency shall continue to vitiate the instrument; for it is impossible to conceive that it can remain in this state of fluctuation.

I have endeavoured to find out this point of time from the argument on the other side without success. It is said indeed, that the time of examination could not possibly be the criterion, on which the will was to depend, because the witnesses might not live to be examined, and their incompetency might arise long after the signing. I do most clearly conceive, that this cannot be the criterion, the only period remaining is the time of attestation, but the whole argument on the other side is brought to prove that that point of time cannot be the criterion; so that both these periods being excluded, it does behove the counsel for the defendants to point out some other; but the argument is silent and the will is left at last after so much pains to float upon that sea of fallacies I have been describing.

The common received usage with the opinion of eminent practitioners has been called in aid, and they have been named, Mr. Fawkeley and Sir Thomas Bevan.——

They are great names, and I have a high regard for their opinions; but the general allusion to the whole of their argument, and should never be felt.——I do not find that this practice, as it is called, ever went beyond the cafes of money legacies, which sprung up, as I guess, from the practice in the spiritual court, where a release to this day will make the wills good; but it is not pretended that this practice ever produced the same effect.——I am afraid you will prefer to relieve the witnesses where he was a real devise; so far from it, that Hilliard and Jennings passed always for law without a murmur; and it was not till after the true principle of the flat, of frauds came to be thoroughly diffused and settled in the case of Jofly and Denting, that those practices came to be allowed. Then indeed their eyes were opened, and they began to fear, that if the court of King's Bench was right, the practice and their opinions were erroneous; but as the principle was flubborn, and would not yield to any exceptions, the legislature very properly took it in hand, and we have with great wisdom cured the evil, without weakening the flat of frauds; which no court of justice was able to do.

But if these points fail, the defendant's counsel refer to another point, which will at once solace all difficulties; and this is, that the witnesses notwithstanding the objection may still remain a good witness to every other devise in his own right.

If this can be done, it will be a method of setting up the will by annulling the legacy; for a legacy that cannot be proved is the same as no legacy at all; it is a nullity; it does not exist: De non apparentibus, et non exspectatis, cadem est Live et Rotis.

This I do admit will solace all difficulties at once, and will render the legacy as safe, and disinterested a witness as if he had no legacy.——And if this had been law, it would have saved the legislature the trouble of a new act; for it is the very method which the parliament has now taken, who by making the devise void in this cafe have disabled the witnesses from being a devise; and this is the same principle virtually that attended every mischief. It remains then to be considered, whether the attestation of a legatee before the act made his legacy absolutely void; for I must insist upon it that he can never be a credible witness to any part upon any other ground than the original nullity of his own legacy. If the legacy is not void by this method, the whole principle of the flatt, and vitatate the whole will for ever, unless the fact be purged afterwards by release. Now that the gift or legacy is void, I do beg leave, with great deference to other opinions, to deny, in all those cases if I am not mistaken, the only reason why the witnesses is rejected, is, because the legacy is void.——Con fer ve to the fact which will before of the flat, if accepted by the legatee; not void in its creation; it was only held back from operating by defect of proof; and therefore the moment the proof was opened either by payment or release, or if the will could have been proved by other witnesses, tho' the devisee was one, the will came forth a valid instrument to all intents and purposes. Thus if the common law rule could be adapted to the construction of this flat. A will with a devise void by payment, allowing it to be good; and indeed this analogy did prevail so strongly, that it grew to be a common opinion, that where a legacy only was given to a witness, tho' charged upon the land, a release would do the business.——Again, that the legacy was not void by the act of state, nor performed by the death of the testator; the remainder, which does not confirm any former will liable to the objection till the legacy is either paid or tendered.

Whereas the fame act declares that in all such wills for the future the legacy shall be void.——It is from hence observable, that the legislature avoided giving any opinion upon this light-advised upon the flat of frauds; yet they declare in the strongest manner that the legacies so given to the witnesses were not void, and that it required a new law, to make them void for the future.——

Let me add to this, the common opinion of the bar, so much relied upon in the former part of the argument, that the legacy was so effectual to disable the witnesses that nothing less would have effectuated the will, for any body's benefit.——I wonder a little why so much pains is taken in this argument to establish the practice of releasing, if the legacy was a nullity and wanted no release; for if this law was, that method was not only nugatory but unjust, and the parliament would not think it fit to establish a scheme of so many void legacies, to be paid.——But if I have expounded the flat, right, where a devise is a witness, the whole will is fraudulent ab initio, and it cannot be otherwise, The publication is one entire transgression; the will is one disposition of the testator's estate to several persons; the bequests are settled and apportioned, by a comparison with each other; and if you make the will by the taking out particular bequests, you vary the testator's intention in the remainder, and his whole will is maimed.——In case of fraud (for the argument must always remember that there were the cafes which the act intended to prevent) the witnesses gets his legacy by the merit of attesting the other bequests (for the grand devisee will hardly ever be a wit- nes), and it is by the other part of the will that the heir is generally undone; so that the remainder of the will, which the legatee is to escheat, is ten times worse than that part which is to be annulled.——Let us now see how this point stands upon the case of Hilliard and Jennings fail to be an authority, and so proved in Baugh and Hol- lroyd.

This requires some examination. In Baugh and Hollroyd, where Sir Robert Reynold does say very confidently, if that reporter is not mistaken, that Lord Ch. J. Holt had declared his opinion in Hilliard and Jennings for, and there is an expression in Carlow's report of that cafe, which serves to some for to favour, the doctrine. I have in the former part of my argument examined that cafe, so fully, that it will be sufficient here to observe that this point was never resolved, nor argued, nor hinted at in Hilliard and Jennings; and it was impossible, that the point could arise upon that will which contained only one devise, and no alternate devise.——But if it was, it would have been a most extraordinary thing, if the court had spontaneously taken upon themselves to settle this important point, tending to no less consequence than a virtual repeal of the flat, of frauds; it would have been strange, I say, to have done this without a cae that can be so from proof; it was therefore no less collateral to the question before them, and neither touched by the counsel, nor argued by themselves: I do not wonder Sir Robert Reynold should argue as it is pretended, for his fee; the bar is apt to argue in that manner; nor do I wonder the court should in so faint a bufofhef end the point; no law being charged upon the land, by no means because the case never came before them, and that the heir at law gave up the point; why might it not end by compromise? I could make 20 anecdotes that should all account for the discontinuance of the cause more probably than that: But it is not worth while because
because, if the heir at law had really given up the point, his concession would not weigh a hair in the argument. I have now gone thro' the argument, and will close with declaring that I will take no notice of any part of the law to which learning has been brought into this argument. Lord Ch. J. Lee did not ground his opinion upon that law; he did not argue from it, he did not rely upon its authority.—I am favoured with a very correct note of his opinion from my brother Adams, where, when he had fully argued the case without taking any other notice of the civil law, than to declare that Southamer's law upon legacies cannot be applied to land devices, and to observe in the same place that both laws concur in rejecting interested witnesses, he concluded in these words. Upon the whole, conditionem testatun cum figurant infinita deleant, and that as it is to be considered as intended to prevent any fraud being used at a time when testators are most of all liable to be imposed on, and as all people have it in their power to get disinterested witnesses, we think this ill is not well executed according to the statute; but is void as far as it concerns lands. This is enough to shew that Lord Ch. J. Lee never meant to introduce the learning of the civil law into the question. The rule is mentioned by way of ornament, not argument, because it happened to express his own Common law opinion in a matter where he conceived both laws concurred. —I am not wise enough to determine, which of the two laws is most perfect, the Roman or English. In my judgment (which is my own) that altho' almost every country in Europe have received that body of laws, yet they have been with a most stubborn constancy at all times disclaimed and rejected by England. For which reason, and not thro' any disrespect to the argument I have been endeavouring to answer, I choose to lay aside all that learning as not being relevant in Westminster Hall.

7. Of nuncupative wills.

By the st. 29 Car. 2. c. 2. f. 19. For the preventing fraudulent practices, it is enacted, 1. That no nuncupative will shall be good where the estate thereby bequested shall exceed the value of 50 pounds, that is not proved by the oaths of three witnesses, at the least, that were present at the making thereof, and bid by the testator to bear witness that such was his will, or to that effect. And by the st. 4 dig. c. 19. f. 14. it is declared, 1. That all such wills, witnessed, as are ought to be allowed to be good witnesses upon trial at law by the laws and customs of this realm, shall be deemed good witnesses to prove any nuncupative will, or any thing relating thereunto.

2. Nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of her or their habitation or dwelling, where or he she has been resident for ten days, or more, next before the making of such will, except where such perfon was furprised or taken sick, being from his own home, and died before he returned to the place of his or her dwelling.

Sec. 11. That six months passed after the speaking of the testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the will within.

Sec. 21. 2. That no letters testamentary, or probate of any nuncupative will, shall pass the seal of any court, till fourteen days, at the least, after the decease of the testator be fully expired, nor shall any nuncupative will be at any time received to be proved, unless proceed from their own wills, or the next of kin to the deceased, so as to the end they maycontrol the same, if they please.

Sec. 22. 3. That no will in writing concerning any goods or chattels, or personal estate, shall be repealed; nor shall any clause, devise, or bequest therein, be altered or changed by any words, or will by word of mouth, only, except the fame be in the life of the testator committed to writing, and after the writing thereof read to the testator, and allowed by him, and proved to be so done by three witnesses at the leaft.

Sec. 23. Provided that any foledier in actual military service, or any person employed in building houses at sea, may dispole of his moveables, wages, and personal effects, as before the making of this act.

A. being ill, desired B. to make her will, who wrote down only names and initial letters to this effect, viz. to The Wife 200 l. to St. Cro. 200 l. to the Daughter 100 l. to the Son 50 l. more over several relatives in like manner, to above 400 l. which being more than her estate, B. made an alteration in the second column, by subfradbling part of the sums of the legateses, as set down in the second column, and then told A. the fene of the proposed devises: There were two perfons in the room that did not see the alteration, nor the alteration of A. and B., but only heard the testatrix at last pronounce, that all was well. B. went to a scrievener to have the devises drawn out at length and in form, and before she returned the testatrix died: The judge below pronounced for this will; but upon appeal to the delegates, it was reversed, and the writing was agreed, that if the will had been written in words at length, so as the caried a fene and meaning in themselves, it had been a good will; for that there was one witness that wrote it, and two that heard the testatrix pronounce, that it was her will; Which would have been intended to have been the will, and was signed by the testatrix, in regard it appeared on all hands, by several witneses, that the will was then seriously dispole herself to make her will, and for that was quoted the case of one Pepper, where a person dispole herself to make her will, and dictated it to a person who wrote it down; and another, not called in as witneses, lay behind the hanging, out of caret; and yet such will was allowed to be good, being proved by the two witnenses: But they distinguisd the case because the will was not subfultative, but was to take its fene from the interpretation of the witnenses; and there would be innuendo upon innuendo, which made purely a nuncupative will: And as such, not being attched by the number of witnenses appointed by the statute of frauds and perjuries, the will and legacies were void. 2 Att. Eq. Caf. 403.

Dr. Shalmer, by will in writing, gave 200 l. to the parish of St. Clement's Danes, and after, Prew the reader coming to pray with him, his wife put him in mind to give 250 l. more over to the churches building their church, at which, tho' Dr. Shalmer was at first diffuifed, yet, after, he said he would give it, and bid Prew take notice of it: And the next day he bid Prew remember of what he had to him the day before, and die that day. Within three or four days after, the doctor's wife put down a memorandum in writing of the said 250 l. and of her wife, and so did her maid. Prew died about a month after, and amongst his papers was found a memorandum of his own writing, dated three weeks after the doctor's death, of what the doctor said to him about the 200 l. and purporting that he had put it in writing the same day it was given. But the writing was authenticated to be made the same day it was spoken but did not appear, and the three memorandums did not expressly agree. A year and a half after, on application by the parish to the commissioner of charitable uses, and producing these memorandums and proof by Mrs. Shalmer and her maid, they declared the 200 l. but on the exceptions taken by the executors, the decree was discharged of this 200 l. and Lord Chancellor held it not good, because it was not proved by the oath of three witnesses; for tho' Mrs. Shalmer and her maid had made proof, yet Prew was dead; and the statute in that branch requires not only three to be present, but that the proof shall be by the oath of three witnesses. 3 Att. Eq. Caf. 404.

A daughter deposes 180 l. in the hands of her mother [the defendant], and afterwards makes her will in writing, and thereby devises several legacies, and makes her
WILL

But when a testament is perfect by the death of the party, it is effectually gives and transfers estates, and
of alters of lands and tenements, executed by deeds in the life-time of the parties: For hereby
feents of lands are prevented. And a man may make
ested in fee-simple, or fee-tail, for life or years, of lands, tenements, rents, reversions or services, as effectually as
by deed; and these estates also will be good without any
livery or delivery of the estate, but so that rents and power
to disfrain for them, may be reserved, conditions
created and annexed to estates or things devised.
Shew.

And therefore they that take by devises of land, are
faid to take in the nature of purchasers.

And the same reason [as much as] makes a feoffee to
the use of himself in fee, and after devises the fame to
his wife in fee, and dies, the fon is not remitted though
the father dies feoffed, for the deviseant deferves the

It is to be observed, that where the words of a will
have a plain fenfe, and no doubt is in any matter within
or without the words, touching the matter of the devise,
there the words of the will shall always be taken to be
the intent of the deviseur, and his intent to be what the
words say. 2 Am. 17. Leven v. Bidd.

That all the words of a will are to be carried to anwer
the intent of the deviseur; but this is to be understood in
cases where the intent of the party may be known by the
words, though not expressed in the words of the will.

That if there are inconsistent and contradictory words
in a will, some words must be rejected to make it fene.
Thus where a tefator gave the intereft of a fum of 6000l.
to Mary Conforfle, his daughter, for her life, and after
her deceafe gave the money beantween Charles Conforfle
her husband, and their children: And in another part of
the will he faid, and in cafe there be no fuch child or
children, I give it to Charles Conforfle and fuch children.

—Lord Chancellor rejected these latter words, as they
were fubftrad and contradictory. 5 Bac. Abr. 525.

A. having a wife and children, made his will, and faid, left it should pleafe God that he should not return
he gave and devised a real and personal effate, or to that
effect. He returns, and has children and dies, without alter-
ing his will: The plaintiff being a legatee, and there be
ning a direotion in the will, for the fale of the real eflate
to pay his legacy; Lord Chancellor was of opinion, that
the direction was merely contingent, and that the part of
the will was to take effect but on the contingency of his
return; and fo avoided determining the principal
quifition, how far the alteration of the tefator's circumstances
would be a prejudifive recoration as to the real
and personal eflate, but as to the perfonality, deemed to
religiously according to the rule v. Lord v. Lord, he
faid, that the tefator's funds and perfonal matters made a
material difference between that and the personal effate.

5 Bac. Abr. 525. Mor. Rep. Parsons v. Lenox, Hill,
22 Gen. 2. in Chan.

That a will muff have a fatisfory interpretation, and
as near to the mind and intention of the tefator as may be,
and yet fo wtials as his intent may fland by the rules
of law, and not be repugnant thereto; it being a rule
or maxim of law, Quad ultima voluntas tefatoris perinn-
fienda est, fecundum quorum intendens: and that, sed le-
gum fervanda fides, jubera voluntas quaedam firique
jubera parere neciffa ejf. In deeds the rule of conftruction
is, that the intention mutt be directed by the words,
but in wills, the words mutt follow the intent of the devifor;
and such a construction is to be made of them, as to
make ufe of all the words, and not of part, and fo as
they may ftand together, and have no contrariety in

Such a fenfe fhall be made of a devise, that it may be
for the profit of the deviseur, and not to his prejudice.

That general and doublous words in a will, shall not
alter an express devise before, nor carry any thing con-
trary to the apparent intent. Id. 119d.
That the claus and sentences of a will shall be severally transposed to serve the meaning of it. And construction shall be made of the words to satisfy the intent, and they shall be put in such order as the intent may be farthest carried out.

That no fence may be framed upon the words of a will, wherein the testator's meaning cannot be found. *Id. ibid.*

That to give a thing to such a person to whom the law gives it, as if it had not been given; and so a devise of man's land to his heirs is void. *Stype 148, 149.*

That a construction of a will must be gathered out of the words of the will, and not by any averment. *Stype. Abr. part 11. p. 11. Vo. Thy.*

That though a parol averment shall not be admitted to explain a will, so as to expound it contrary to the import of the words; and wherein the words will bear it, a parol averment may be admitted. *As, for instance, to ascertain a person, but in no case to alter the effet.* 1 Feem. 292. *Stute v. Berrier. 5 Rep. 68. Lord Cheynor's Cafe.*

That one part of a will shall be expounded by another: As where a man leaves an estate to another and his heirs, and afterwards mentions to have given him an estate tail, heirs shall be taken to mean heirs of the body, and the devise shall take only an effet tail. 2 Feem. 267. *Banyfield v. Popham.*


This was a writ of error, brought up on a judgment given by the court of King's Bench in Ireland, for the plaintiff in ejectment.

The ejectment was brought for lands in the county of Tyrone: And upon the trial, a special verdict was found.

The special verdict first states a long pedigree of the family of the Meryons; and also several deeds, not necessary to be here taken notice of, (as no question at all arises upon them.)

Then it finds that Audley Meryon, Esq; and Henry his son, on the marriage of the said Henry with Mrs. Tichborne, executed deeds of lease and refeate dated the 21st and 22d of December 1711; and that, in pursuance thereof, a fine was levied, and a recovery suffered, whereby the manor of Artylemum in Tyrone, (of which the premises in question are part,) was settled, in strictlettement on the said Audley (the father) for life; then on the death of Henry (this son) for life; then on the death of Henry, and other sons of Henry, and the issue of that marriage (in common form,) with several terms, powers, and provisions; with the revocion in fee to the said Audley, the father, which marriage took effect: But there was no issue of any of them.

That Audley Meryon had issue, beside the said Henry (his eldest son,) three other sons, viz. Audley, James, and Theophilus; and four daughters, viz. Lucy, (who, in her father's lifetime, married with Westwurt Harman, Eleanor, (one of the lessors of the plaintiff,) and who afterwards married Christopher Irvine, who has been many years dead,) Anne, (one of the lessors of the plaintiff,) who married James Meryon, otherwise Richardfs, long since dead,) and Jane.

And the said Audley the elder, being feald as the law requires, of the said lands and tenements, on the 15th of June 1715, duly made and published his will and testament, whereby, after reciting "that he was desirous to make the best provision in his power, for the support of his children and the peace and settlement of his family," he devised as follows: *Viz.* And as to the worldly estate wherewith he hath pleased God to blest me, I give and bequeath the same, in manner following: To my said wife, Olivia, to her proper use and benefit, all my plate and household goods and furniture of what kind soever, and also my coach and horses and their harnesses, and three saddles, and one horse, and the mantles and other apparel unto her all the rest and residue of my peronale, of what kind soever. And I do hereby will and require my said executrix, as soon as the Vol. II. No 137.
Hugh Mervyn, son of Audley Mervyn, died in 1727; leaving the said Arthur Mervyn, one of the executors of the plaintiff, his eldest son and heir.

This cause was argued on the part of the plaintiff, viz. that the executors of the plaintiff, before making the leases in the declaration mentioned, entered and were sealed, and then made the several demises in the declaration, &c. &c.

But whether, upon the whole matter aforesaid, the defendant James Strong be guilty of the trespass, &c. the jury doth know nothing.

The court of King’s Bench in Ireland gave judgment for the plaintiff in ejectment.

The whole estate, which depended upon the title set up by the executors of the plaintiff, was of very great value. The cause had depended a great many years, and had been argued a great many times in Ireland.

The plaintiff had "that the revolution in fee of the lands comprised in the settlement of 1711, passed by the will," and that the uses were legal estates executed, subject to a charge for the payment of the tenant's debts (if any there were), and to a power in Olivia to fell for that purpose; and were good at law, tho' devised after an indefinite payment of the tenant's debts as should not be discharged by his personal estate.

This case was first argued in Michælmas term last, by Mr. Perrot for the plaintiff in error, and Mr. Witen for the defendant in error; but more fully a second time, on Tuesday last, the 25th of January 1760, by Mr. Kneeler for the plaintiff in error, and Mr. Morrison for the defendants in error; the court having refused repeated applications to put off the arguments till the next term.

It was argued very elaborately upon the question "whether the executors of the plaintiff in the ejectment had any legal estate," the counsel for the defendants in the ejectment insisting "that Olivia Mervyn, the legal fee, which defeided (they said) to Henry the eldest son and heir, and was by him conveyed to the father of the defendant in ejectment: Or if she did not, "that the devisee thereof after payment of debts generally, were executory and too remote."

This point concluded to a nonsuit at law only; and to turn the plaintiffs round to try another kind of remedy.

The final merits and question of right depended upon the construction of the will.

It was adjourned upon the last argument, (for want of time to go through with it,) to the Friday next following,

"and was argued by Mr. Knowler for the plaintiff in ejectment, beginning to make his reply: But Lord Mansfield said, they need not give him the trouble of a reply.

The question is two; viz. (1st) Whether the reversion be within the devise; and if it be (2dly) Whether it is a good devise to the executors of the plaintiff.

The plaintiffs argument is, that the particular devise to the plaintiffs, the second is immaterial. Upon the first we are quite clear, that the judgment is wrong: And therefore it is not necessary to give any opinion upon the other.

The points of law having been argued with a great deal of skill and learning; and much has been said upon the part of the defense, we will now mention: But as in the case stands, it is not necessary for us to enter into them; and I give no fort of opinion upon them: However, thus much I will mention, for the sake of those who heard the argument; viz. that this case is not like cases that had been cited; and particularly not like that of Bagshaw v. Sargood. That was not to the trustees and their heirs; "to the use of them and their heirs" (as Mr. Nersea cited) but to them and their heirs and assigns, "upon trust that they and the survivors and survivor of them should, out of the rents and profits, or by sale or mortgage, raise enough to pay all the tenant's debts, &c. and after those debts, &c. should be paid, then to the use of the said trustees for 99 years, then to the use of his nephew Thomas Bagshaw (as to one moiety) for life without impeachment of waste; remainders to trustees (by name) to enjoy contingent remainders; remainder to the heirs of the body of Thomas Bagshaw for life; then to trustees to enjoy contingent remainders;
And Benjamin Bagshaw died without issue: And Benjamin entered and fuppofted himself tenant in tail in poiiflion; and being fo in poiiflion, the fai'd Benjamin Bagshaw fuffered a common recovery; and then defived it to his wife.

A bill was brought by the wife (claiming under the recovery), to carry the trufts into execution; and for a conveyance in fee: and there was a decree at the Rull to carry them into execution accordingly.

The litigation was between the remainder man and the devisee of Benjamin: And the question was, "Whether Benjamin Bagshaw was tenant for life, or in tail," and the Master of the Rull took it to be an effate tail in Benjamin Bagshaw. The plaintiff claimed under the common recovery suffered by Benjamin: The defendants under the will of Benjamin Afton, the original devixor. Neither party doubted of its being a truft; the difpute was about the effate defived to Benjamin Bagshaw: Whether it was for life, or in tail.

But my Lord Chancellor flarted a doubt, "Whether the devife to Benjamin Bagshaw was a truft; or whether it was a ufe executed." And if it had come out to have been a ufe executed, then the authority in the cafe of Coufion v. Coufion, and the certificate given by this court in that cafe, &c. and the plaintiff had it in the way; and he would have had it fought it back to be confidered by this court.

But if it was a truft, then it fell under different confiderations.

There the trufts and their heirs and the survivor of them were directed to do three things: And what they were to do, was of fuch a nature, that they muft nec-essarily have a defidable effate in them, to anfwer the ends of the truft. But there were a defpective dilemma; which put an end to its being a qucftion. The plaintiff claimed under the common recovery. But the teftator's debts were not paid at the time of suffering it. It was urged on behalf of the plaintiff, "That Benjamin Bagshaw took by executrix defive after the debts should be paid; and that there was no danger of a perpetuity." But it was allowed that there was a legal effate in the trufts, till the debts were paid.

Now, if the legal effate had not taken effect in poi- feffion in Benjamin Bagshaw, then there was no good te-nant there; for it was not until then an equitable tenant to the principle would have done. Therefore they were obliged to maintain it to be a truft: For if they had infifted on the authority of Coufion v. Coufion, there the common recovery was a bad one.

So that that cafe of Bagshaw and Spencer was not aplicable to the prefent cafe now before us.

I thought it not improper to fay thus much, as to the cafe that have been cited: But I give no fort of opinion upon the prefent cafe as to this point. It might be worth confidering too, "Whether this be not a double conten- digency, viz. If there fhoult be debts, then, my wife to carry the effate defived to her, and in fee at the same time: If no debts, then, thofe in remainder to take." However, here it does not appear that there were any debts.

As to the nice points of law, and the form of the remedy.—It is not neceffary to give any opinion, if the plaintiff has no fundamental right to recover.

Now, as to the fundamental right of the plaintiff, the cafe is shortly this:—

His lordship then fuMMARILY flated the facts found by the special veridick, and particularly the settlement in December 171; the circumstances of the family; the will; and the general clause on which the qucftion arifes: And then recited the cafe in the following words:—

The qucftion is, "Whether by this sweepings refidu- ary clause, the teftator intended to devife the reversion of the effate fettled on the marriage of his eldelf fon Henry with Mary Titchburn, by the settlement of December 171;"—

The generality of the expression, "And also all other the lands, tenements and hereditaments in the faid coun-

tries of Tyver and Month or either of them, whereof I am fatisfied in fect simple, or of which any other perfon is fatisfied in trufe for me; together with their, and ever of their appurtenances," if unreftrained and unqualified by other words, would carry all the teftator's effate in poi- feffion, or in tail, to his wife.

But thofe general words may, by other words and ex- plications in the will, be reftrained to any or either of thefe: And if it is the fame thing, whether it be di- reftly expreffed, or clearly and plainly to be collected from the will.

Now here are plain explications in this will, which are fufficiently to fhew, that the teftator did not intend to devife the reversion of this fettled effate. One in- stance is, the clause "That if Henry and Audley fhoult both of them die without issue male in the life-time of James, then James fhoult not take any interefl or effate in the lands, in tenements therein before defived to him; but that the fame fhoult remain and go over to Theophilus." Every part of this clause is inconftient with any fuppofition, that he meant to devife the reversion of the lands in fettlement. And there is another clause which may make it more plain, viz. "That if either or any of his lands fhould by virtue of his will remain to his fon Henry, then that his executrix fhould have power and authority to charge and incumber the fame with any fum not exceeding the fum of 5000 l." So that he fup- poited every thing mentioned in, and defived by his will touching the reversion of the fettled effate after the death of Henry, never could devide to Henry, From whence it follows, that the teftator did not intend this reversion to be included in his will.

And there are powers given by this will, "Which ever of his fons fhould be defived of an effate or ufe for life in the faid lands, to defive out of the will, to a lawful wife, to fic tions, and to make lefser;" Which powers are, in their nature, applicable to poifeflion, and not to reversions, and are referved, by the expref words of the will, (viz. "in the faid lands,) to lands only, as what he meant to de- vine. And they could never take effect at all in Henry (who was one of the fons) for he never defived them, and did not want any authority to execute them.

If Henry had had no issue male by his firft wife Mary Titchburn; and had had issue male by a fepond wife; the fon by the fcond wife could never have taken any thing; tho' he would have been grandfon of the teftator and heir of the family; fo that the heir of the family would have been the fons which Henry had. And yet the reafon why Henry and his issue by this will poifioned to the younger brothers, appears plainly to be, "because they were much better provided for." And the teftator underwrought and fuppofted that the younger brothers, who were the lefs entitled, tho' all the fons fhe male of Henry should have the effate in their turns.

Suppose Henry and Audley the younger both dead with- out issue male; then James muft, upon the conftru- ction of the reversion's paffing by the will, forfeit ever ything; not only the lands fettled, but alfo the lands defived; and fo would not have a fatisfactory estate in the whole effate go over, and pass by him; for the reversion of the fettled lands being in fuch cafe fallen in, by the death of Henry without issue of his firft marriage, the whole fett- ed effate muft go over to Theophilus under fuch a conftru- ction of the will, and by the expref words of it, he could take interest in any of the reversion.

If the qucftion had arifes between the issue male of Henry, which he might have happened to have by a fec- ond wife; could it possibly be imaginf to have been intended by the teftator, that in fuch a cafe, Henry's sons by a fcond wife fhould be totally difinherited? And even this would be a ftrange fuppoftion, if the reversion of the fettled effate paffed by this devife.

If Audley had died without issue male, whilft there were fons or male defendants of Henry by a fcond marriage, in being; can it be imagined that the teftator ever intended that Henry's fons and his issue male fhould take the fettled effate without defidence of the older branch of the family? And yet he would have done so, after Henry's death.
WILL

death without issue of his first marriage, if the revocation of it pafled by the will.

Or if there had been no issue at all of either Henry or Audrey, he can be imagined that he intended to disinherit

It is plain that the testator did not intend to devife the revocation of the lands comprifed in the settlement made upon the marriage of Henry. Probably, he himfelf, or the perfon who drew his will, did not imagine that he had any intereft in the property over the ftetted lands. But if it is plain, as before, that he meant, and had then in contemplation, only the lands whereof he was feized in fcc in pofteflion.

He defcribed several lands nominatim; and others, as well as he then could: But as he could not be minute and particular in fuch defcription, it was thought proper to add an appendix.

The lands he meant to devife, were either in the county of Tyrone or of Meath; but, it being then uncertain to him, in which county they lay, he fays, "in them or in either of them." But, ftil, the whole defcription is local; and a locality is tied up to lands: The former part of the defcription specifies them particularly by name; and the general sweeping words are only definitive of lands; "All other the lands tenements and hereditaments in the faid counties &c." If it had been intended to have carried effates, the drawer of the will would have added, "And all his effates wheresoever or by any perfon in trust for him were feized in fee, in pofteflion, without or by revifion," that is, he would have thrown in a sweeping clause to carry effates in the lands, as well as the lands themfelves. An annuity is given to Olivia, payable out of the faid lands devifed; And there are powers given to whatever of his fans fhould be feized of an effate or life for life in the faid lands, to commit waifs, fettle jointures, and make leaflets, which powers (as I before obferved) are applicable to pofteflion only.

But these minute and critical obfervations ferve only to weaken the argument: Since there are, in this will, fufficient general words, which exprrefs and clearly fhew that the testator had no intention to include the revocation of the ftetted effate in his will, as much as if he had used particular words and exprifions to declare it directly and explicitly.

In the cafe of Ceryton v. Hefliet, the teftator omitted to add the words "if he fhall fo long live," to the effate which he left for 99 years. And yet the Lord Hardwicke confirmed it, that it muft mean not an abolute term of 99 years, but an effate for 99 years qualified by that reftriction, "if he fhould fo long live" because it fo appeared upon the face of the will confider'd in all its parts and taken all together.

Mr. Juftice Denman, having been abfent during the argument, declined giving any opinion; but seemed fatisfied with what Lord Mansfield had faid.

Mr. Juftice Faulter faid he had made fome obfervations upon the will; but Lord Mansfield had gone through it fo fully, that he needed only to declare his intire concurrence in the fame opinion.

Mr. Juftice Wilmot also entirely concurred; and wondered how any one could entertain any doubt about it, it being as clear, he faid, upon the whole tenor and compofition of the will, as the strongest exprrefs negative clause could have made it. Per Cur. Juftice reverfed.

A writ of error was brought in the houfe of Lords: And their Lordhips confined the counfel, to speak to the conftitution of the will, atift: After hearing that queftion argued, their Lordhips afked the opinion of the Judges; who were all unanimous, "That the revocation was not intended to pafs." And thereupon, their Lord-

WILLS, on the 7th of May 1756, unanimously affirmed the judgment of the reverfe.

As neither the court of King's Bench, nor the House of Lords, had at any time annexed the points of law, upon which the letters of the plaintiff "having or not having a good legal effate" depended, it would have been to no purpose to report the reafonings used at the bar, upon thofe points.

Note. In the court's having refufed to adjourn the arguments of this reverfe, the final judgment of the House of Lords was obtained fo soon: And a caufe which held a great many years in Ireland, went through the court of King's Bench and the House of Lords here, within the fame of about fix months.


This was a fpecial caufe which arose upon an effate brought upon gavel-kind lands in Kent, tried before Lord Mansfield at New prius.

The efefate was brought by the heir at law of one Martin Long, for an undivided fourth part of one meafure, &c. in the parifh of St. John Bapifhip, in the ifle of Thanet, in Kent.

Special caufe fiated for the opinion of the court.

Martin Long, being feized in fcc, &c. made his will, &c. and thereby devifed thus—"I give and devife one equal undivided fourth part, &c. unto my nephew Martin Read, and to the heirs of his body lawfully to be gotten, as well females as males, and to their heirs and afllgns for ever, to be divided equally, fhare and fharke a-like, as tenants in common, and not as joint-tenants. Alto I give and devife one equal undivided fourth part, &c. unto my niece Ann, now wife of William Carniff, and the heirs of her body lawfully gotten, or to be gotten, as well males as females, and to their heirs and afllgns for ever, to be divided equally and fharke and fharke alike, as tenants in common, and not as joint-tenants. Alto I give and devife one other equal undivided fourth part, &c. unto my niece Sarah, now wife of S. Hooper, and to the heirs males and females of her body lawfully gotten, or to be gotten, to be divided (as before,) and to their heirs and afllgns for ever.

There were likewife in the will, other defigns of other effates.

"If I die and devife unto my nephew J. Tickner, his heirs and afllgns for ever, all that, &c. &c."

"I give and devife my farm, &c. unto my fifter Catharina, wife of William Abat, and to her afllgns, for and during the term of her natural life; and from and after her deceafe, I give the fame to my nephew the hon William Abat, and the heirs of his body lawfully gotten for ever: and for want of fuch issue, I give and devife the fame to the right heirs of me, for ever."

"And as concerning my meafuges, &c. I give and devife the fame to Elizabeth Long, her heirs and afllgns for ever."

"Allo I give and bequeath to my niece Sarah, now wife of William Long, and to the heirs of her body, the sum of 450l. of like money to be divided between them equally."

The teftator lived two years after making this will: He died in May 1751.

At the time of making the faid will, the teftator's faid niece Ann Carniff, wife of Thomas Carniff, had two daughters.
daughters (by her said husband) then living; viz. Eliza-
abeth and Anne.

Anne Cornish, the testator’s niece, died after the time of
making the will; but in the lifetime of the testator:
And two daughters, Elizabeth and Anne, survived both
their said mother and also the testator Martin Long.

The question submitted to the court is "Whether by the
death of Ann Cornish (the mother) in the lifetime of
the testator, the devise, as to her own part, was void or
lapsed: Or whether the said four fourth part devised as
above, or any, or what part thereof, on the testator’s
death, devolves to the lefser of the plaintiff, as heir at
law to the testator.

Lord Mansfield—The words are—"To my niece A.
C. and to the heirs of her body lawfully begotten, or
begotten, as well females as males, and to their heirs
and assigns for ever; to be divided equally, share
and share alike, as tenants in common, and not as joint-
tenants.

The question is, "Whether it be contrary to the
rules of law, to understand, in this case, heirs of the
body of A. C. as a description of children: For that such
was the intention of the testator, there can be little
doubt in this point.

It is to be lamented, that questions of this kind have
occasionally forfeit much litigation and expense. The
best way to settle them is, to reduce the matter, if possible,
to some certain rules.

It is clear, that where an estate is given to the
ancestor, and his heirs, (whether general or special,) the term
denotes the quantity of the estate which the ancestor takes;
viz. either fee-simple, or fee-tail.

It is clear too, that a person to take as a purchaser,
may be deemed from every course of descent; as heir
at law, heir in Beleng Engith, heir or heir male of t. e
body.

By an ancient maxim of law, altho’ the estate be li-
mites to the ancestor, expressly "for life, and after his
death to his heirs, (general or special,) the heir shall take
by descent, and the fee tail vest in the ancestor.

This maxim was originally introduced in favour of the
Lord, to prevent his being deprived of the fruits of the te-
nuary; and likewise for the sake of specialty-creditors.
The ancestor, had the limitation been construed a con-
tingent remainder, might have destroyed it for his own
benefit. If he did not destroy it, the Lord would have
lost the fruits of the tenure; and the specialty-credi-
tors, their debts. Therefore the law said, Be the in-
terest, as it may, where an estate is given to the an-
cessor and his heirs, the fee tail vest in him.

The reason of this maxim has long ceased; because
tenures are now abolished, and contingent remainders
may be preferred from being defeated before they come in
effect. Yet, having become a rule of property, it is ad-
thored to in all cases literally within it, altho’ the rea-
son has ceased. But where there are circumstances
which take the case out of the letter of this rule, it is
departed from, in favour of intention; because the rea-
son of the rule has ceased.

In the case of King v. Mellling (1 Pet. 237.) A case
was stated to this effect: "Richard Hall, where a man devis-
ed "to his eldest son for life, et non alter," and after his
decease, to the fons of his body." It was held to be
but an estate for life, by reason of the words "et non
alter." Yet the "et non alter" was implied, if it had not
been expressed; but it followed the clear intention of the
testator; and the construction was made to as to effectu-
te that intention.

And in a later case of Backhouse v. Wills (M. and
H. 12 Ann,) where the devise was "to L. B. for his
life only, without interference of waftes; and from and after
his death, then to the issue male of his body lawfully to
be begotten; and in case no issue male of the body of
that issue male, the whole court were of opinion, that the
device was, by that devise, made tenant for life, with
remainder to the issue in tail. They held, that the
words "for life only," clearly and expressly shewed the
intention of the testator; and thereby took out the caus
of the general rule, and turned the words, commonly used
as words of limitation, into words of purchase.

Indeed such construction as this, cannot be made, but,
in cases where it is agreeable to the clear intention of
the testator, that this should be the construction. For tho
the devise be "for life only," yet if the intention of the
testator, for a deed, the whole male line of the body of
the testator, were, by the necessary construction arising from the
context, turned into words of purchase.

In the case of Algold v. Withers, (in Chau. on 4 Jul-
y 1735,) where one Isaac Algold had by deed conveyed
his freehold land to trustees and their heirs, and his
lease-hold premises and their executors, upon trust that they
should apply the rents and the benefits of redemption, to
the plaintiff Hannah Withers for life; and after her death
to the heirs of the body of the said Hannah Withers, and
Isaac Algold (since deceased) and of Hannah Giff and
Mary Algold, their heirs, executors and assigns, during
the continuance of the estate in the premises; the ques-
tion was, Whether Hannah Withers took for life, or in
tail: And Lord T allot held "That the took an estate for
life; and that the heirs took as purchasers.

In the case of Bagshaw v. Spencer, all the cases upon
that subject were ranckled and thoroughly considered:
Lord Hardwicke held, "That heirs of the body,
(after an estate for life to the father,) should be construed
words of purchase.

To take off the authority of decisions in Chancery, it
was contended at the bar, "That as to this point, there
was a distinction between a trust and a legal estate; and
that even in Chancery, there was a distinction upon
this point; and that what they call a trust executed, and
a trust executory.

It is true, these distinctions are to be met with, and
have often been mentioned: But there don’t seem to be much solidity in either.

All trusts are executory: They are to be executed by
a conveyance. And the parties have a right to apply to
a court of equity, for such a conveyance.

In Bagshaw and Spencer, the trust was executed in the
fense of the distinction, and as contrasted with a trust
executory.

There seems to be as little ground, in respect of this
point, for the other distinction between a trust and a legal
estate.

A court of equity is as much bound by positive rules
and general maximis concerning property (tho’ the reason
of them may now have ceased,) as a court of law is.

Whatever is sufficient, upon a devise, to make an
exception out of the rule, holds in the case of a legal estate,
as well as in the case of a trust. If the intention of
the testator be contrary to the rules of law, it can no more
take place in a court of equity, than in a court of law:
if the intention be illegal, it is equally void in both.
A court of equity cannot support an intention in the testa-
tor, to be perpetuity, or to limit a fee upon a
tail, or to make a chattel depend to heirs, or land to execu-
tors. On the other hand, if the intention be not con-
trary to law, a court of common law is as much bound
to construe and effectuate the will according to that
intention of the testator, as a court of equity can be.
Upon the very point now in question, the determinations
have been agreeable to this reasoning. Therefore where
the trust of a real estate was devised " to A. for life, and
after his death to the heirs of his body,” Lord Hardwicke
decreed a conveyance to A. in tail; although the estate
devised to A. expressly " for life,” left room to doubt
of any estate in tail. Afterwards, by the rule of law void,
the heir of the body should take by default, and not as a
pur-
chase;” and he thought, the rule bound a trust, as well as
a legal estate. Garth against Baldwin, in Chan. 18
July 1732.
Where there are circumstances which take a cause out of the rule, the exception holds upon a legal estate, as much as upon a trust.

The case of *Lyle v. Gray* was a legal estate, upon a deed; and the judgment was affirmed, (tho' by mislaid, it is fuld in *Sir Thomas Jones* to have been reversed.

*Sir Joseph* *Jekyll's* decree in *Papillon* and *Voyce*, was upon a legal estate; and *Lord King*, after considering, did not differ from him; but reversed the decree, expressly upon a new point, upon the discovery of articles in 1697.

Some of the other cases I have mentioned, were likewise upon legal estates.

It is true, *Lord Hardwicke*, in *Bagshaw* and *Sponer*, laid hold of this distinction, to avoid expressly over-ruling the certificate in *Coulson* and *Coulson*. But he certainly did not agree in opinion with that certificate. In speaking of it, when he delivered his judgment in *Bagshaw* and *Sponer*, he expressed himself thus—"If that case be law", and one of the last things he did in the court of Chancery, was, to lend a like cafe to that court for their opinion; and he told me "he did it, to have *Coulson* and *Coulson* reconsidered."

It appears therefore from all that I have been saying, that there is no such fixed and invulnerable rule as has been supposed, "That words of limitation shall never in any case be construed as words of purchase."

And the prefer cafe is the strongest that I can form any imagination of, to justify a construction, "That the heirs of the body of *Anne Cornish* shall here take as purchasers." The devise cannot take effect at all, but must be absolutely void, unless the heirs of her body take as purchasers.

It must be observed, that the lands devised by this will are gavel-kind; the testator had nephews and nieces, and great nephews and great nieces; and he provides for them, by 4 distinct clauses in his will according to the 4 distinct flocks.

It is agreed, that where words of limitation are grafted upon the word "heir" in the singular number, such heir shall take by purchase. This is settled in *Arbor's* cafe, (1 Co. Rep. 66.) and was admitted in the cafe of *Dubber*, on the demie of *Trellevoe* and *Trellevoe*, F. & Geo. 2. B. R. (tho' that cafe was distinguished from *Arbor's* cafe, as "of special fpecies") the words of limitation superadded to the words "heir" are "of heir male." The distinction is, that where it appears to be the intention of the testator, that there should be a fuccesion in tail, it would totally defeat that intention, if all were to velt in the fift fen. But where it does not appear that the testator intended a fuccesion in tail, there indeed the using the word "heir" in the singular number, may be a circumstance of great weight.

Now the term "heirs," (in the plural,) in the cafe of gavel-kind lands, answers to the term "heir" (in the singular) in the common cafe of lands which are not gavel-kind; for the word "heir" (in the singular) would not serve for gavel-kind lands; but must be "heirs" (in the plural).

Therefore all the arguments and reafonings that are applicable to the word "heir" (in the singular,) in the common cafe of lands not being gavel-kind, hold with equal ftrength and propriety, when applied to the plural termination "heirs," when the lands are gavel-kind.

And it is manifest that the testator does not here mean, that this one fourth should go in a coufe of defcent in gavel-kind; for he gives it to the heirs of her body, as well females as males; and mentions females, not only expressly and particularly, but even prior to males. Therefore he cannot take them otherwise than as purchasers. It would be a void devise, if the words were to be construed as words of limitation. For he breaks the gavel-kind defcent, by giving it to females as well as males. It cannot defend to females as well as males, by the rules of gavel-kind. And yet he seems to lay the fame ftreets upon the word "females." He adds likewise, and to their heirs and assigns for ever, to be divided equally share and share alike," may he go further—"As ten- nants in common, and not as joint tenants."

But this could not be, if they were to take in the coufe of ge- vel-kind defcent; for in such cafe, they must take as co- possessors.

The defendant's defpofition of one of the prepoitions of his effate threws his intention as to the reft: I mean the devise of the one fourth to the widow of his deceased nephew Edward Read, and to the heirs of his body, Ge, which can receive no other conftitution, but that those heirs of the body must take as purchasers. For tho' this nephew and his wife fays the very fame words in this devise as in the reft: But he could not mean that his nephew's widow should take an effate-tail in that whole one fourth, or a joint-fee with her children in any part of it. Therefore the neceffary conftruction of that de- vice is a strong argument of his intention and meaning as to the reft.

As to *Anne Cornish*'s taking a fea jointly with her two dyughters, in thirds, as tenants in common; there can be no ground for such a conftruction. For it is clearly the defendant's intention, that the heirs of *Anne Cornish*'s body should not take till after her death: And as the devise to her has no words of limitation added to it, it is of no importance to her life, and what the words would have taken, if she had Survived the desfaor, would have been an effate for life.

Upon the whole, as no man can doubt of this deff- toar's intention; and as this is the only method of ef- fequiting it; and as there is no rule of law that pre- vents heirs taking as purchasers, where the intenfion of the testator requires that they should do fo; I am of opinion that judgment ought to be given for the defend- ant.

Mr. Justice *Dennis* concurred with his Lordship in opinion, "That courts of law (as well as courts of equity) will always construe wills agreeable to the intenfion of the testator, if that intention be not contrary to law, and inconsistent with the rules of law." And he showed, that the intention of the testator, in the present cafe, must have been, "That the heirs of the body of his nifece *Anne Cornish* should take as purchasers;" making the like observations as his Lordship had done, upon the lands being gavel-kind, and their being devifed to heirs female as well as male.

And he held, that it is not disagreeable to, or incon- sistent with the rules of law, that "heirs of the body" should, in some cafes, be construed as *dejignata prinse:*

A (position, not to be difpated, at this time, after so many concurring revolutions.) And this cafe now before the court is one of the cafes where they muft be con- strued. Therefore the heirs of the body of *A. C.* must here take by purchase; they can take no other way.

And there is no foundation for supposing that *Anne Cornish,* if she had survived her uncle, could have taken any effect jointly with her daughters, as tenants in common.

Mr. Justice *Payler* was abfent.

Mr. Justice *Wilson* premifed, that the court were obliged to the gentlemen who had argued this cafe at the bar, for declining to go into that long ftring of cafes usually cited upon this subjéct. For the principle that muft govern all cafes of this kind, is the intenfion of the testator, provided it be not inconsistent with the rules of law. And all cafes which depend upon the intenfion of the testator (which is the pole-star for the direction of devises) are bef determined upon comparing all the parts of the devise itself, without looking into a multitude of other cafes: For each fands pretty much upon its own circumstances; and one is no rule for another, or very feldomer.

Here the testator intended, beyond all doubt, that the children of his nephews and nieces should take the in- heritance in fee-fimplc, both males and females, per *Capita,* as tenants in common. And this is a legal in- tenfion.

But this intention cannot take ef- fe by giving an effate in tail or in fee to the fift faker: for the intenfion of the testator muft be fubfervient to the law; and not the law to the intenfion of the testator. Now a fellar, be
his intention what it will, cannot make an estate fe
deed to males and females all together, nor gavel-kind
lands to descend to them as tenants in common. The
teffator's intention cannot, therefore, take place by giv-
ing Anne Cornell an estate-tail.

What is to be done? Why (as my Lord
Cake says) you are to mould the barbarous words and ex-
pressions of the teffator, so as to effeetuate his intention;
if you can do fo, without going contrary to the rules of
law: But you cannot do this, contrary to the rules of
law.

The question therefore, in the prefent cafe, comes to
this; "Whether it be absolutely necefsary, that the
words heirs, or heirs male, or heirs of the body, muft
be, in all cafes, and under all circumstances, words of
limitation."

Now it is certain, that in fome cafes and under fome
circumstances, they may be confidered words of purfuits;
either upon a will, or upon a deed. The cafe of Light
v. Gray was upon a deed. And there is a cafe in Palmer.

359. Walker v. Snows, which was likewise upon a deed:
Edward Egerton conveyed lands by fine, to the use of
himself for life, remainder to his first fon and the heirs
male; and thereunto he added, subject to his fix fon-fams;
remainder to the right heir male of the faid Edward
Egerton to be befotted after the faid fixth fon, and of
his heirs male. This was holden a contingent estate,
and not an estate-tail in Edward Egerton; becaufe it was
limited to particular perffons. They are not to be con-
fidered words of limitation, either upon a will or upon a
deed, where the manifest intention of the teffator or of
the parties declared is to be, or clearly appears to be,
"that they shall not be fo conftrued."

Now it is plain, in the prefent cafe, that the teffator
did not mean to ufe the words "heirs of the body," as
words of limitation: It is as clear as if he had expreely
faid, "I do not intend my heirs during that time." 

And as to Anne Cornell's taking an equal share in fee-
simple, in common with her daughters.—That conftruc-
tion can never hold: For it is most certain, that the
teffator did not intend the division into equal fhares to
be made till after Anne Cornell's death.

This fume conftruction is further confirmed by the
clafe which devifes one fourth to his niefe in law Grace
Red, the widow of his deceffed nephew, and to the
heirs of her body, in the fame fame of exprffion. For
it can never be imagined, that it was his intention to give
her, (who was only the widow of his nephew,) an equal
share of the fee-simple and inheritance with his natural
relations. Per Cur. Unanimous judgment for the defendant.

The following is Lord Hardwicke's argument in the fam-
ous cafe of Bagshaw and Spencer, fo mentioned in the
two preceding cafes.

Catherine Bagshaw by bill of Revivor, —— Plaintiff;
William Spencer, Cavendish Neville, Esq.
William Higftong, Thomas Charlesworth,
Rachel Fizlerbert, John Spencer, and
Benjamin and William Spencer, infant
fons of William Spencer, ————

Benjamin Afton by will dated the 7th of Sept. 1725,
devised all his manors and lands to Edward Downton, Ed-
ward Downes the fon, William Spencer, Baptifh Pratt and
Robert Charlesworth, their heirs and affigns; in truth,
that they and their heirs fhould, in the first place, levy
and raife by, with and out of the faid preceffies by the
rents, ifuues and profits, or by fale or by mortgage there-
of, or fo much thereof as fhould be necffary for the pay-
ment of his just debts and funeral expences, and pay the
fame and interefl to the time of payment. And after
payment the fon, then he gave and devifed the faid pre-
cifles, to Edward Downton, Edward Downes the fon
and Robert Charlesworth, and the survivors of them
and the executors and administrators of fuch survivor for
the term of 500 years, without impecfament of wafe; on truftr
And then he gives and bequeaths all his goods, chattels and personal estate to be and come in aid of his real estate, and to be by his executors applied, in the first place towards paying his debts, funeral expenses, and legal consequences.

After the death of the testator, Thomas Bagshaw the devisee of the money in question died without issue in January 1730. And thereupon Benjamin Bagshaw, the second devisee, brought his bill against the trustees to have a performance of the trusts of the will; that the personal estate, as far as it was vested in the executors in consideration of the real estate; and that such part of the real estate may be set apart and sold, as would be sufficient to pay the residue of the debts.

This cause being at issue, a decree was made at the Rolls 21 November 1732, that the proper accounts should be taken of the estate of the said testator's real estate, as together with the rents and profits received, should be necessary to pay his debts and legacies, and the arrears of the annuity, as well as the whole of the said trust estate, in case the devisee should find the same was for the advantage of the parties interested therein, should be paid, and the debts, legacies and arrears of the said annuity be paid out of the money arising by such sale: And in case no more of the said trust estate should be sold, than would raise the same, then a commissin of partition was directed to issue to divide the remainder of the said trust estate into moieties. But in case the whole trust estate should be sold, then the first moiety remaining after the trust performed should be revertible in the purchase of lands. And the court reserved the consideration how the remainder of the trust estate, in case only part thereof should be sold, or in case the whole should be sold, how the lands to be purchased with such overplus surplus money should be limited till after the commissin should be executed and returned, or until such new purchase should be made as aforesaid.

In Michell's term 1732 (the same term with this decree) Benjamin Bagshaw suffered a common recovery of his moiety of the estate.

May 26th 1737, the matter made his report upon the account and certified, that it was for the benefit of the parties interested, that all the testator's trust estate, subject to the said annuity, should be sold for satisfying the several incumbrances mentioned. This report was confirmed by the court.

5th Jan. 1737, Benjamin Bagshaw made his will and devised this moiety to his wife Catherine Bagshaw in fee, and made her executrix.

27th June 1743, Benjamin Bagshaw died. Catherine Bagshaw, his devisee and executrix, brought a supplemental bill in nature of a bill of revivor, to have the former decree carried into execution, and to have the benefit of that moiety of the trust estate which Benjamin Bagshaw was intitled unto.

The cause was heard at the Rolls on this supplemental bill, when the court made this decree. His honour declared, that Benjamin Bagshaw took an estate-tail by the will of Benjamin Abson, and decreed, that the estate in question, or such part thereof as should be necessary, be sold according to the former decree; and that such part of the surplus of the purchase-money be paid, and applied according to the will of the testator Benjamin Bagshaw.

From this decree the defendants John Spencer, Benjamin Spencer and William Spencer have appealed.

The merits of the cause depend on the will of Benjamin Abson, the first testator. Now it is to be observed that has increased subsequent can materially vary that but the right of the parties must be taken as it stood at his death.

Therefore first, Nothing that has been done by the first decree, and the master's report directing the estate to be sold, as most convenient and beneficial for the parties, must be reversed without some discretion. But although it may happen, that a surplus of the money may come to be laid out in a new purchase of lands, the constitution must be exactly the same, and these new purchased lands be settled to the very same uses, if the real estate of the devised lands unfid had been now to be settled.

Secondly, Neither can the recovery and the will of Benjamin Bagshaw the devisee make any alteration; for though the first decree and devise were to carry this moiety to the plaintiff in the supplemental bill, that will make a settlement to the particular uses directed by the will of Benjamin Abson the first testator, unrevealingly and indeed impollible, as things now stand; yet the rights of the parties must be taken to be the same, and the determination of the estate must be the same as to all legal and equitable consequences, as if Benjamin Bagshaw had been living, and now prayed of the court a conveyance of this moiety to himself, according to the uses directed and required by the true construction of Benjamin Abson's will.

These things being premised reduce the cause to two general questions, arising on Benjamin Abson's will.

First, Whether the estate devised to Benjamin Bagshaw in this moiety is a legal estate, that is an use executed by the statute of uses, or a mere trust in equity?

Secondly, Supposing it to be a mere trust in equity, whether it was an estate-tail, or an estate for his life only, with compounding on the devisee's remainder over all the issue of his body respectively.

As to the first question, I am of opinion, That it is a trust in equity, 15. The ftrst devise is to the five trustees and their heirs. This carries the whole fee in law.

Part of their trust is to fill the whole, or a sufficient part thereof, with the payment of debts and funeral expenses. This would have carried a fee by construction, if the word heirs had been omitted out of the devise; because the trust is to continue for ever, and to fell and convey a fee. This was the opinion of the whole court of B. R. in the case of Shaw and Wright, and not disputed upon the whole error in the house of Lords.

If they may fill the inheritance in the whole or any part of the lands, not by force of a power, but by virtue of their estate, they must at law have the fee in the whole; otherwise, as it must from the nature of the thing be uncertain what they may have occasion for to sell, if his recovery and devise should prevail.

On these grounds this case differs from Cordiall's case in C. C. 315, cited in Manning's case, 8 Co. 96. a. Pembury and Barnfield, 2 Vern. 79. Randy and Buxey, Freer. in Chanc. 162. and Carter and Barnadiston in 1 P. Wills. 505. for in all these cases neither the word heirs, or any other words of limitation, were inserted; nor was there any estate.

These therefore were merely chattel interests in the nature of a tenancy by elegance, to hold till the debts were paid.

The only case which made me doubt, was the case of Lord Bay and Seal and Lady Cath. Jones etc. decreed by Lord King, 16th Nov. 1728, and affirmed in the house of Lords in March 1729, to this point.

This is a great authority, and has a strong appearance of being applicable to this case; but on a strict examination, that case differs in a most material part, and upon taking all the clauses of that will together, it amounts only to a devise to the trustees and their heirs during the life of Cecil Parries, and then it was only an estate pour auatre vie, on which a proper legal remainder might properly be limited, and so it was held.

The consequence of this is, that in the present case, the word fee being at law devied to the trustees, no remainder of a legal estate could be limited upon it; and Benjamin Bagshaw could not take a legal estate in remainder in this moiety.

Secondly, But if this cannot be good by way of remainder, it has been argued that it may be so by way of executory devise.

Though a fee cannot be mounted on an absolute fee, so we may on a determinable one. Could Benjamin Bagshaw then take a legal estate in this moiety by way of executory devise?

It is plain he could not; or if he might, he did not; and the plaintiff his devisee cannot claim it from him: For
Fist, It seems to be too remote, being after the testator's debts inadEquately should be paid, which may in point of time exceed the compas of a life or lives in being.

Secondly, The recovery suffered by him was before the debts were paid, and consequently before the contingency happened, whilst the freehold and the fee-simple determinate were for an estate in remainder to the trustees; and consequently he could not make a good tenant to the privity to support his recovery to bar the subsequent remainder.

From whence it appears, supposing this was a good executory devise at law to Benjamin Bagshaw, it would prevent the devise from falling by his recovery and will, and intirely de the plaintiff's title.

For whatever makes the recovery void, equally defeats the plaintiff's title, let the construction of the limitations to the heirs of the body of Benjamin Bagshaw be the one way or the other; and the revestion in fee would at law remain unbarred, and veft in the defendant John Spencer who is now heir at law to the testator Benjamin Afton.

This makes it necessary for the plaintiff to admit, that all the devises subsequent to the first limitation to the trustees and their heirs are void in equity: And this brings us to the second and main question, viz. 2dly, Whether the devise to Benjamin Bagshaw in this moiety of the trust-effe is an equitable estate-tail, or an equitable eftate for his life only, with contingent remainderers to the issue of his body fecundly.

2dly, The construction of the words heirs of the body of Benjamin Bagshaw lawfully begotten or to be begotten, as they stand in the will: If they are to be taken as words of limitation, then he was tenant in tail, and his recovery is void.

In order to determine this question, which is the principal, three things must be considered.

1st, What appears to have been the true intention of the testator in this devise?

2dly, Whether that intention is consistent with, and can take effect according to, the general rules of law and equity?

3dly, Whether there is any particular settled rule or determination of this court, which will stand in the way and prevent the testator's intention from taking effect? And under this last head, I propose to consider the difficulty made between trufts executed and trufts executory, and the objection so much urged from hence in favour of the plaintiff.

The first question is, what appears to have been the true intention of the testator in this devise?

This I take to be extremely clear; nobody who reads this will have any doubt on that score, and although one moment, whether he actually intended to make a free settlement of his estate among all his nephews, the sons of his two sisters.

For this purpose (among others) he first vevs the whole fice of the entire estate in trustees; and after having directed the particular trusts, he divided it into moiety, giving one moiety to his nephew, descended from his fister Mrs. Bagshaw, who was dead; and the other moiety to his nephews, descended from his fister Mrs. Spencer, who was then living, for whom he carves out an estate, for her life in that share.

To every one of these nephews, who were in being, and proper to be made tenants for life, he expressly devises for and during the term of his natural life in the very same words in which he has penis'd this devise to his fister Mrs. Spencer, concerning whom there is no doubt but he intended to make her tenant for life, and no more: To every one of these devises he has added these words without imposition, or any other condition: And this would not to be alone sufficient to prevent the operation of law, arising from subsequent words; yet it is one mark of his meaning to give such eftate as would have been punishable for waite, unless thus exempted from it.

Then he devoes to four of his trustees to preferve contingent remainderers in these words: And from and after the determination of that estate, I give and devote the same to the four trustees and their heirs for and during the life of the said Benjamin Bagshaw, to the intent and purpose to preserve the contingent ufe and remainder hereafter limited; but nevertheless to permit and suffer the said Benjamin Bagshaw to re- cease, or in any manner to dispose thereof for and during the term of his natural life.

This has been made the Cards of the cause on the side of the defendant; and it speaks plainly several things.

1st, That the testator intended to give to his several nephews, particularly to Benjamin Bagshaw, whole recovery; now in question, such an estate only as might be forfeited.

2dly, That the estate given to the trustees is after the determination of Benjamin Bagshaw's estate for life; that estate could be determined but two ways, namely, by the expiration of the life, or by forfeiture. The former way he could not mean; because the remainder to the trustees and their heirs is given only during the life of Benjamin Bagshaw, and consequently would carry in it a contradiction in terms. Therefore he must mean the latter, viz. a determination by forfeiture; and from thence it follows, that his intention was to give Benjamin Bagshaw an estate for life, which might be lost.

3dly, The next thing plainly implied in this clause is, that there were contingent ufs or remainderers to be preferred.

Now throughout the devises of the moiety in question, in every one of which this clause is found, there were no contingent estates or remainderers, unless the heir of first descent, among the heirs of the several nephews the name of Bagshaw are allowed to be such. The question then upon point of intention comes to this: Whether these circumstances are not as strong to indicate an intention to reftrain these devises to be for life only, as if the testator had intended to make the word moiety, or any aliene with negative words, which in the case of King and Mil/ington (1 Vent. 235) were admitted by my Lord Hale, and in the case of Backhouse and Wells, Hill, 10 Ann. B. R. (Eq. Ac. 184.) were adjudged by the whole court to give an estate for life, not abridged in the subsequent limitation.

And I am of opinion that they are; for if the testator has thereby declared, that his meaning was to give them such an estate for life as would have been subject to waite, if he had not expressly exempt it, and as might, according to the rules of law, be forfeited, and as was to be followed by contingent remainderers, and not by limitations to the last remainderer for life, it amounts to the same thing as if he had in express words declared his meaning to be, to give no more than an estate for life to Benjamin Bagshaw, and contingent remainderers to those persons who would be heirs of his body.—The counsel for the plaintiff contend, that it was under great difficulty to find any plausible argument to shew a shadow of intention in favour of their construction; and the only thing they relied upon was, That the testator laid shewn in his will that he understood the difference between words of limitation and words of purchase proper to create a contingent remainder; and therefore in devising the other moiety to the heirs of his fister Mrs. Spencer, after he had given to all her sons in being, he devised it to her after-born sons by these words: Every other son on the body of the said Christiana Spencer lawfully begotten or to be begotten, and the heirs of the body of every such son, as they shall be, and their issue, and the issue of their issue, and so on, in succession.

That by this it appears, he knew the words heirs of the body would create an estate-tail. But I think this difference in the penning affords an observation of a contrary import, and strengthens the evidence of intention on the other side. He thaw, that as to sons already born, the testator has given the testator's will, though it has been made with words that might not be to be alone sufficient to prevent the operation of law, arising from subsequent words; yet it is one mark of his meaning to give such estate as would have been punishable for waite, unless thus exempted from it.

Then he devises to four of his trustees to preserve contingent remainderers in these words: And from and during their lives, and the words, without impeachment of
of waifs; and has interposed no clause to preferre contingent remainders between the devise to those after-born foons, and the limitations to the heirs of their bodies; than which nothing can possibly be stronger to demonstrate, that in the one cafe, it was meant to give a more cefate for life, and to use the words heirs of the body as words of purchase,defcriptive of their sons and daughters, and in the other clause to give an cefate of inheritance, and to use the words heirs of the body as words of limitation, because the law will not suffer him to make a mortgage after a contingency, and to carry on contingent uses farther.

2dly, The next question is, admitting this to have been the testator's intention, whether that intention is confluent with, and can take effect according to, the general rule of law or equity. And it is contended for the plaintiff that the words there given to the plaintiff place their great strength. For they say that the law will not suffer a man even by a will to make devises and create limitations contrary to its own rules; that if he attempt to do fo, the law will supercede his intention, and reduce his gift to fuch an execution as will allow, that the law has established a clear rule ever since the resolution of Shelley's case, 1 Ca. 104; that wherever by any gift or conveyance the ancestor takes an estate of freehold, and by the same gift or conveyance an estate is limited either mediately or immediately to the heirs of his body, these words are words of limitation, and only convey an estate to the child, with all the incidents of an estate of inheritance, fo as to give him the inheritance.

To go by fteps. I admit the general principle, that the law will not suffer a man to make devises and create limitations contrary to its own rules; and if he intends to do it, will supercede his intention; but I apprehend it is misapplied in the present cafe. The true application of this principle is to the nature and operation of the estate intended to be created by such devises and limitations, and not to the construction of the words.

I will not fay that this principle has never been applied to the construction of some particular technical words, to which the law has fixed a certain, appropriated, invariable fens; but even that this is its own interpretation, unfailing and without proper definition. The true meaning of the principle is what I have laid down: Therefore the law will not suffer a man to create a perpetuity by a will any more than by a deed; nor to put the freehold of lands in abeyance, fo as that there shall be no perfon to perform the services due thereunto; which is an absolute fee-simple, not to make a charter deductible to heirs generally. Consider what is the reason of this: It is because this would be to change the law, and by the acts of private perons to vary the rule of property, which that has infifted. This therefore arises for want of powcr to give the estate of perpetual inheritance in a principle which is a fee-simple, not to make a charter deductible to heirs generally. But in the cafe in question, there is no want of powcr; for there can be no doubt but the testator might devise his lands for fuch estates for life, and with fuch contingent remainders as are contended for by the defendants. The only objection is, that he has used improper words, which the law will not allow to have this operation, notwithstanding the intention remained. But is not this very hard, and repugnant to the first and fundamental rules of law in expounding wills? These rules are, that the intention of the testator shall govern the construction of the words; that the testator is presumed to be moft cofcient, and therefore, if his intention appears plain to be lawful, although he has barbarous or unfit words in his will, the law will confine thofe barbarous or unfit words into words proper and fufficient in law, according to that intention which appears in his will. This is laid down in Barofon's cafe, 3 Ca. 20, and Mot. Manning's cafe, 3 Ca. 95, and has been adhered to ever fince.

Next, what is the objection here? Is it any more than that the testator has used words unfit and improper to create contingent remainders; but does not the fundamental rule of construction fay, that if the intention appears, the law will expound and mould thofe unfit and improper words in fuch a fens as will ferve his intention? which cannot be done here without conftruing heirs of the body as words of purchase, descriptive of the sons and daughters of the first taker and their issue.

However it is still urged, that the law has affixed to peculiar and peculiar parts of the body, that they can be nothing but words of limitation, and operate to enlarge the estate of the first taker, according to Brett and Ridgen's cafe in Plowden, and Shelley's cafe, and cannot be words of purchase. This is the ground. Try it and fee whether it will hold. It is far from holding; for there are no words of limitation, nor are the heirs of the body as well as issue held to be words of purchase. Archer's cafe, 1 Ca. 66. b. The words indeed there were next heir male in the fingular number; yet that was not the reafon of the determination, but because words of limitation were added after them; but these words added do not give them the definitiveness of the testator's intent in using the firit words.

Clarkes and Day, Moar 594. The testator devised his lands to John his daughter for life; and if the marriage after my death, and have issue of her body begotten, I will that her heir after my daughter's death have the lands, and to the heirs of their bodies begotten, remainder over to another. It was adjudged, that the daughter had not an estate- tail, but only for her life. So in the cafes cited by Lord Hale in King and Mellong, and the cafe of James and Richardson, 1 Vent. 334. and Poller, 457. and 2 Vent. 311, by the name of Darby and Dur- fant, 111. where the defendant claimed that the heirs of the body as well as issue were held to be words of purchase. The cafe of the Arches, 1 Ca. 66. b. I choose only to refer to these well known cafes. But upon this point, a stronger authority than all these is the cafe of Lijfe and Gray, in Sir Thomas Jones 114. Poller, 592. and Sir Thomas Raymond 315,—In execution a special verdict was found, that John Lijfe by indenture covenanted to fand fified of lands to the use of himself for life, remainder to his fons Edward for life, remainder to the firft fon of Edward in tail, with like remains to his second, third, and fourth fons, and fe severally and refeptively to each of the heirs male of the body of Edward, and the heirs males of their bodies, remainder to the heirs of the body of William Lijfe; and that the right of indemnity for the recovery, under which the defendant claimed, and William Lijfe was lefior of the plaintiff. The question was, whether Edward had an estate-tail executed in him before the birth of any fon? But it was adjudged he had only an estate for life; for it was an estate for life limited to him, and an estate-tail to his four fons, because limited to the heirs male of their bodies; and it was intended that each of the fons should take in the fame manner; fo that the words to each of the heirs male of the body of Edward, intended each other of the fons, and the rather because there is a limitation over to the heirs male of their bodies, which was the condition of the right of indemnity for the recovery. And judgment was given for the plaintiff. It is faid in Sir T. Jones's reports, that judgment was given for the defendant; but that is either a mistake in the reporter, or a misprint, for the fame cafe is reported in 2 Lev. 223; and there it is faid to have been held, that Edward took only an estate for life, and the words signifies remod in- de: fo that Edward has but an estate for life from the manifefit intent of the conveyance, which ought if po- fible to be supported, and judgment was given for the plaintiff. Sir T. Jones fays, this judgment was revered in the Exchequer chamber; but that appears also to be a mistake, for the report is only the cafe of Long and Blem- mont, 2 Vent. 65. and 2 Rot. 141, B. R. and there it ap- pears this judgment was affirmed.

This was adjudged even upon a limitation in a deed, where the fame latitude of construction is by no means to be allowed as upon a will; and therefore it is the strongest authority that the law has here, viz. a special plea pinned down to the words, the body to be able at will of limitation, but they may be taken as words of pur- chase.

To this it hath been faid, that in Life and Gray there were several words; the 18th, 20th, and 30th, and 4th fons mentioned in the fifth place, and afterwards fo separately and respectively to each of their heirs male of the body of Edward the fons, and the heirs male of their bodies; that
It must be admitted that this resolution is a clear author-
ty, that upon the will in question the inheriting a
limitation to trustees to prefer another con-
the same was not sufficient to change the sense of the words heads of
the body into words of purchase, and to make the issue
take by way of remainder even tho' there were no other
contingent remainders in that will. No body can have
a greater right for the judges who made
that certificate, than I have; but it differs
from the present case. If, there was in that will no clause
without impeachment of words; but perhaps that may
be thought not to deferve much weight.
2dly, It was a devise of a legal estate, and not a de-
vice to the heirs of the body, but the words
must be taken as they stand, and the judges were
right to understand them according to their legal
operations. No conveyance was to be made; nor any subse-
quent act to be done: They might think they could not take
into their consideration, the trust of the estate limited to
the trustees to support the contingent remainders; but
only the legal estate so limited, and how that separately
taken would operate. But in the case now in judgment
all the limitations relative to the present question are
a trust; the constitution and direction whereof is the pro-
spective subject of the jurisdiclion of this court; which the
court may, and is expressly directed by the
the titor. This was determined by his honour the
Marter of the Rolls, and in that I agree with him. The
consequence arising from hence is, that a great latitude is
forced in the construction of the words in order to
comply with the intention, since they are to be
modelled and reduced into a conveyance by the
the court.
3dly, The last observation I shall make upon this case is,
that the opinion of the Judges furnishes a
new light in the present cause, which did not appear at
the time of the last decree made by the Master of the
Rolls; for the Judges say, that the interposing the re-
mainders in the case, and their heirs bound
between the estate to Robert Coulfon for life and the limi-
tation to the heirs of his body, prevents the estate for
life being united with and merged in the inheritance,
and that he took a different estate for life with
reminders to himself in tail. I define this may be remembered for the
fake of the use I shall make of it by and by; for I
think it affords a decisive argument, that in directing the
conveyance, the court must depart from the words of
this will. But upon the constrution of the limitation,
the great difference between the two cases is, that in
Coulfon and Coulfon, the devise was (as I observed) of a
mere estate for life, and in the present case the
estate is of a trust in equity. The answer relied upon to this dis-
tinction has been, that limitations of trusts, and limitations of legal
estates are governed by the same rules; and the
construction must be the same in both; that otherwise
one rule of property would prevail at law, and another be
allowed in Chancery, which ought not to be admitted:
And for this my Lord Nottingham's conclusions in
the Duke of Norfol's case in 2 Cha. Cases were cited.
All these conclusions I shall allow and adhere to in a
found fence, and I agree that one rule of property is
not to prevail at law, and another to be set up in
Chancery. But I can leave that to the learned counsel
in the other side. If he no where says the construction
of the words must in both cases be exactly the same, or a
coeft of equity, when it is bound to direct a conveyance,
cannot exceed them more liberally to comply with the
intention of the party. His words are:—The limi-
tation of the trust of a term, and the limitation of the
estate of a term, all depend on the same reason &
and afterwards " It is agreed all along, that the measures of the limitation of the trust of a term, and the measures of the limitation of the estate of a term are all one, and uni-
form here and in other cases: And there is no difference in Chancery and at law, between the terms of
the one, and the rules of the other, what is good in one
case is good in another."

What is my Lord Nottingham's reasoning here applied to?

The
The meanings of the limitation; that the limitation cannot be carried further in the one case, than the law will permit in the other; and this appears clearly to be his meaning, by the words immediately following his argument. As to the other case before the court is agreed, that is, the limitation of the remainder of the term for years, in that case, after an estate in tail in the term, is void. To this his argument, That otherwise it would be to set up one rule of property at law, and another in Chancery, is properly applied; and the meaning of the limitation, where to which they may be carried do essentially concern the rules of property, and how near we may approach to a perpetuity, which was the great correlate in the phrase of Norfolk’s case. But the more or less liberal construction of the words, to comply with the intent, does not concern or affect those rules, if the court will think proper to follow that course. John, lord chancellor, delivered from the technical use of the words; and in conformity thereto did direct the conveyance within the rules of law allowed to such limitations. My lord Nottingham’s doctrine is complied with, and the mischief which he condemnns, is avoided. Upon this reasoning many revolutions of this court have been founded, which were cited at the bar. I shall begin with the case of Papillon and Vokes, because it establishes a distinction between a legal estate and a trust in the same case, and upon the same will.

Samuel Papillon deviled 10,000 l. to the trustees, to be laid out in lands, and to be settled upon his son John Papillon, for the time being, in the event of his marriage, and from and after the determination of that estate to trustees and their heirs during the life of John Papillon, to prefer the contingent remainders, remainder to the heirs of the body of John with remainders over, with power to John to make a jointure. And by the same will, the testator deviled the manor of Great Bentley in Essex, and certain lands in possession to John for his life, without impeachment of waft, and from and after the determination of that estate to trustees and their heirs during the life of John, to prefer contingent remainders, and from and after his decease to the heirs of the body of John, with remainders over. Upon this will it was adjudged by the Master of the Rolls, That as to the devise of the manor of Great Bentley and lands in possession, an estate for life only failed to John Papillon, with the remainders to the heirs of the body of John by purchase, and that the deeds and writings relating to the lands should not be delivered to John Papillon, but left in the hands of trustees, to be delivered into court for the benefit of the remainder and of all parties interested. And that as to the money, to be laid out in lands, and settled to the same uses, the court most evidently had a power over that, and therefore it should be so settled as to make John tenant for life, and that his sons should take in tail male successively, as purchase, without impeachment of waft, to the intent of the devise.

Afterward the cause coming upon an appeal before the Lord Chancellor King, his lordship revered so much of the decree as related to the deeds and writings of the manor of Great Bentley, and the lands deviled in possession, and ordered them to be delivered to the plaintiff John Papillon, but reversed the decree as to the remainder of the trust, by which the court would be at liberty to which related to the money to be laid out in the purchase of lands.

Upon this precedent several things are to be observed, of weight in the present case. First, That both the Judges, who heard and determined that cause, concurred and were clear in opinion, that the testator’s intention was plain, to give an estate for life only to John Papillon, with contingent remainders of the inheritance to his sons and daughters, and this founded principally on the clause appointing trustees to prefer contingent remainders; that as to the trust estate, to be purchased and settled, this court was willing to leave in the technical force of the words heirs of the body, and to direct the settlement to be made accordingly.

Secondly, That Sir Jos. Jeffil, who took much time to consider of the cause, and made his decree in great deliberation, was of the same opinion as to the legal estate

deviled in the manor of Great Bentley, and held that the same intention governs in both.

As to this point indeed, my Lord King upon the appeal differed from his brother, but by the same opinion, that as to the legal estate deviled in the manor of Great Bentley, it was at law an estate in tail by force of the words heirs of the body.

But it must be observed, that it was not at all necessary for my Lord King to give an opinion on this point, and could not have been decided by the court, but because the plaintiff’s father’s marriage articles, whereupon the supplemental bill was brought after the first decree, were admitted and read in the cause, and by them he was clearly intitled in equity to an estate in tail in Great Bentley, so that it was not in the testator’s power to devile, and his will did not operate.

However, I admit he declared that opinion; but upon this part of the case there is something remarkable, which I perfectly remember, and appears by notes which I then took in court on the back of my bill. The cause was heard on the appeal and supplemental bill on a Saturday, the regular day for appeals. Then his Lordship declared the opinion I have mentioned, and said he would not then pronounce his decree, but consider till Monday. On Monday he said he looked into the cause of Esle and Gray, and that it was indeed a very strong case. And he seemed to be clear in his opinion, as he went on to the supplemental bill, that he was not in the judgment of the court, than he was the day before; but as the supplemental bill had brought a new title to the plaintiff in the cause, he did not stay to give it any further consideration, but affirmed the decree as to the settlement of the trust estate; and as to the deeds and writings concerning the title of Great Bentley, he revoked that part of the decree直升机 his Rolls, and ordered them to be delivered to the plaintiff; But it is very observable he took care to express in his decree, that his direction is founded on the supplemental bill, and fo it appears by the register’s book.

This looks as if he had a mind to avoid any decision of this point upon the will, and the record of the decree makes it no decision.

However since the case of Caflion and Caflion I will urge the case of Papillon and Vokes no further than as an authority (and so far it is a great one) that upon a trust estate created by a will, a devise so penned ought to receive this construction, and the court to direct a conveyance accordingly. And in this the court was clearly warranted by former precedents. 

The Countess of Shapely (int. al.) deviled her real and personal estate to Sir Charles Cotterell and others, and their heirs for payment of debts and legacy, and after to their heirs or assigns, and to the use of the said Sir Charles and others, for the benefit of her son Henry, and the heirs of the body, by a second wife, and in default of such issue to her son Francis and the heirs of his body, with remainders over; taking special care in such settlement, that it never shall be in the power of either of my sons Francis or Henry to deck the intail of either of the said mainents given them as afofor said, during their or either of their life or lives. And Whether Francis and Henry were intitled to have an estate in tail conveyed to them, or only an estate for life, was the question; the defendant the Lord Suffolk having pur chased from Henry and his younger brother who was the plaintiff’s father. Upon the hearing of the cause, my Lord Cotterell declared, that the sons must be made only tenants for life, and should not have an estate in tail conveyed to them, but their estate for life should be without impeachment of waft, because here an estate is not executed but only executory, and therefore the intent and meaning of the settatrix is to be purposed; She has declared, that the sons shall have in their own right, with the power to bar their children; which they would have if an estate in tail was to be conveyed to them; but had the by her will deviled to sons an estate in tail, the law must have taken place, and they barred their issue, notwithstanding any subsequent clause or declaration in the will, that they should not have power to claim the intail.
Upon this case I will only make this observation agreeably to my Lord Coventer's opinion, that if in this will the devise had been of a legal estate in lands, with such a clause accompanying it: "Taking special care in such settlement, &c. the fons must have been tenants in tail, and that clause have had no operation; and yet upon a trust in equity, it governed the whole, as a demonstration of the testator's intention, and turned them into freeholds; it may be thought that the testator saw why the devise in the will now in question to trustees to preserve contingent remainder must not have the same operation.

Another great authority to this purpose, is, the case of Sir J. Hobart and the Earl of Stamford, decreed 16th by my Lord Coventer, 19th December, 1709, and affirmed in the House of Lords. He briefly states the matter of the flatting this case particularly, because I have seldom found it correctly stated, or the determination explained in its proper force.

Mr. Serjeant Mayo: by his will devised his estate to trustees and their heirs, to the use of them and their heirs, upon several trusts, viz. That the trustees (after the death of his wife) should convey part thereof to the use of, and in trust for Sir Hen. Hobart and Eliza, his wife (the testator's grand-daughter) for their lives, and the life of the survivor; the remainder to the first fon of the said Eliza for 99 years, if he shall so long live, remainder to the heirs male of the body of such first son; to all and every the sons of Eliza, for 99 years (if they respectively so long live); the remainder to the heirs male of every of them, to take not jointly but successively; the fons to take the term of 99 years, with immediate remainder to his said heirs male; remainder to his said grand-daughter (afterwards Countess of Stamford) for her life, with remainder to all and every her fons for such term of 99 years, with remainder to the heirs male of the body of every such fcn.

He further wished, that the other part of his estate should by advice of counsel be conveyed to, or to the use of, Mary Mayo: life, without impeachment of waft; and, after, remainder to all and every her fons for 99 years, (if such fons or fons shall so long live) with several remainder to the heirs male of the body of every such fcn; they and all the heirs male of their bodies to take successively; each fcn to take the said term, with remainder thereto of the body of such fcn; and after the determination of the said estates and failure of such heirs male of their respective bodies, the remainder thereof to his said grand-daughter, Lady Hobart and her fons, with the like terms and remainder; the remainder of all the estate to trustees and their heirs, during the lives of said Eliza Mayo, the wife of said Hobart, and after the said Eliza Mayo's death, the heirs male of the body of such first fcn was void in law; for the estate limited to such first fcn was for 99 years only, and not a freehold, and consequently could not, within the doctrine of Shelley's case, unite with the limitation to the heirs male of his body; and by way of contingent remainder. It could not be good, because there was no estate of freehold to support it. From hence it followed necessarily, if those words had been inserted in a conveyance, the freehold and inheritance must at law have vested in the coheirs of Sir John Mayo; and yet the court made good the whole by inferring an estate to trustees to preserve contingent remainder.

3dly, Taking the limitation as it stand in the will, and reducing the words, or even the strict legal operation of those words, from the words of limitation, the heir male of the body of such first fcn was void in law; for the estate limited to such first fcn was for 99 years only, and not a freehold, and consequently could not, within the doctrine of Shelley's case, unite with the limitation to the heirs male of his body; and by way of contingent remainder. It could not be good, because there was no estate of freehold to support it. From hence it followed necessarily, if those words had been inserted in a conveyance, the freehold and inheritance must at law have vested in the coheirs of Sir John Mayo; and yet the court made good the whole by inferring an estate to trustees to preserve contingent remainder.

4thly, The private act of parliament did not direct any limitation to trustees, to preserve contingent remainders after the estate to the Earl of Stamford for 99 years, if he shou'd so long live, and yetthat was also directed. 4thly, Mr. Serjeant Mayo: had an express charge to convey his estate to trustees, which he ought to have supported contingent remainders after the devies for life to Sir J. Hobart, Lady Hobart and the Countess of Stamford; and therefore it might have been argued, and undoubtedly was so, that where the testator intended such an estate to preserve contingent remainders, he had infurged it, and consequently where he had omitted it, he did not intend it.
should be done: Further, the will concluded with negative words, and to no other use or purpose whatsoever.

This is a much more plausible objection, than what is drawn in the present case, from the different penning of the devise of the other moiety to the after-born sons of Mrs. Spencer, and yet it did not prevail against the testator's governing intention to make a strict settlement. These cases were precedent to that of Papillion and Fryer, but where the authority has been followed by others subsequent.

As to the question of Sir John Abbot and his wife, as to his will of November 1734, before Sir Jef. Jefly, and R. Jef. Abbot by his will he gave 12,000l., in money, and 6000l. in S.S. annuities to trustees, in trust as soon as conveniently might be after his death, to sell the same and lay out the money in a purchase of lands of inheritance to be conveyed to his executors, in trust, and after his death to the issue of his body lawfully begotten, and for want of such issue, to his nephew Henry Abbot in fee. Sir Jef. Abbot brought his bill for a performance of this trust, at the hearing of the cause one question was, what estate the plaintiff ought to take in the lands to be purchased, whether for life only or in tail; for it was infurmed on his part, that if it had been a devise of the lands to the wife, she would have been clearly tenant in tail, and the trust ought to receive the same confiscation. But the court held, he ought to be made tenant for life only of the lands to be purchased, and decreed, that they should be conveyed to the plaintiff for life, with remainder to trustees to prefer and execute contingent remainders, with remainders to his issue in tail general, with remainder to his daughters in tail, as tenants in common, and not as joint tenants, with crofs remainders between them, remainder in fee to the defendant H. Abbot.

This decree has stood without being appealed from, but here I must take notice, that the words of limitation are "by his body and not heirs of his body," as in the premises. But it has been establisht ever since the case of King and Melling, that in a will the words "by his body" are as strict proper words of limitation, as "heirs of the body," and equally give an effet-tail in lands legally devised, and so undoubtedly would have been the case of Abbot and Abbot, if it had been a devise of the lands; What changed that confiscation in the case of Bocheche and Wills was the word only, which importation a negative.

The next case I shall mention is that of Withers and Allgool, decreed by Lord Talbot, 4 July 1735. I shall take it from the Register's book, and it was this: Jef. Allgool, being seized of certain lands in fee simple and held to the use for years in houfe, by deed dated 10th February 1714, conveyed the same to trustees, to hold such part of the premises as was freedhold to the use of the trustees and heir, and such part as was leasehold to the trustees, their executors and administrators, upon trust, that they should apply the rents of the premises and the benefit of redemption thereof to the plaintiffs Hannah Wither for life, and after her death to the heirs of the body of the plaintiff Hannah Withers, and of Jef. Allgool, since deceased, and of Hannah Gough and Mary Allgool and to their heirs, executors, administrators and assigns, during the continuance of the interest in the premises.

After the tetter's death, Hannah Withers jointly with her husband, brought her bill for a redemption of certain mortgages which were upon the premises devised, and for a performance of the trusts of the will. At the hearing of the cause, one question was, what estate the plaintiff Hannah took in her husband's part of the time of her surviving her husband for life or in tail, and upon argument my Lord Talbot was of opinion that the title only an estate for life, and has declared it in his decree in these words: "That the plaintiff Hannah Withers is intitled to the equity of redemption of the freehold and halfhold premises comprised in the devise of the said Hufband for life or in tail, and for keeping down the interest during her life, out of the rents and profits.

You must know that in this case the words are heirs of the body, and yet were held to be words of purchase. I am sensible, that it has been endeavoured to be distingushed by saying, that the heirs of the body of Hannah Wither were joined in the devise with other persons who clearly must take by purchase by way of remainder, and that it was upon the interest of the husband, that they should all take in the same manner by purchase. But what does that amount to? only that a plain indication of the testator's intention to change those words of limitation of estate into words of purchase, which is all that is contended for in the case now in judgment. For this argument is not conclusive, nor does it affect the duty necessity to make them words of purchase; since, if it had been a grant of a legal estate, Hannah Wither must have taken one fourth part of the inheritance as tenant in tail, and the other three-fourths have gone after her decease to the grantees in remainder. In a report which I have seen of this case, my Lord Talbot did expressly, that the rule of law is not to construe as to control the intent of the party where plain.

The last authority which I shall cite under this head, is that of my Lord and Lady Glencrery and Befville, which was decreed by Lord Talbot in Hill, 1733. Sir Thomas Perball by will devised this estate to trustees, upon trust, for his grandson, and his grand-daughter Arabella Perball should marry or die, to receive the rents and profits, and to pay her 100l. per annum, for maintenance, and as to the residue, to pay his debts and legacies, and after payment thereof, then in trust for his said grand-daughter, and upon further trust, if that the married a protestant of the church of England, and should be of the age of twenty-one years, or if under that age, and such marriage should be with the consent of her aunt, then to convey the estate with all convenient speed after such marriage, to the use of the said Arabella for life, without impeachment of wafe, voluntary wafe in houses excepted; remainder after her death to her husband for life; remainder to the issue of her body, with remainder over; and upon further trust, if the said Arabella died unmarried, then to the use of the said Arabella for life, remainder to the fon of his other grand-daughter Frances Ireland, and the heirs of his body, with several remainders over; and upon further trust, if Arabella should marry not according to the directions of his will, or not according to the directions of the trustees, as to one moiety thereof, to the use of Arabella for life, remainder to the fon of his other grand-daughter Ireland in like manner. The testator died, and Arabella now Lady Glencrery attained her full age. Upon a treaty of marriage with Lord Glencrery, she obtained a conveyance from one of the trustees to herself for life, remainder to her intended husband for life; then to the heirs of her body; but the defendants Befville, the law trustees for her, was also a remainder, relates, refused to convey. However the having by this conveyance a legal estate-tail in one moiety, and an equitable estate in the other, suffered a recovery to the use of herself in fee, and in 1730 married my Lord Glencrery, who made a considerable settlement upon her. As to her own estate, she covenanted to settle it upon her husband for life, trust, with the right to tail and every other fon of that marriage in tail male, and upon failure of such issue to the survivor of the husband and wife in fee. The bill was brought to have a conveyance of one moiety of the trust estate from Mr. Befville to the Uses declared in the marriage articles; and the principal question of the hearing was the title of the other trustee by virtue of this will Lady Glencrery was entitled to be tenant in tail or for life only. The cause came on first before my Lord King, who took time to advise, and to have the opinion of the Judges; afterward it came on before my Lord Talbot, who after long argument and deliberation.
Lute consideration held, that she was intituled only to an estate for life with remainder to her husband for life, with remainder to trustees to preserve contingent ufe, with remainder to her children and every other foiks in tail, with remainder to her daughter and her interest, subject to the condition of: Thomas Pelfall's will, to rebut the fuppofed intention of making Lady Glenorchy only tenant for life in a cafe the married according to the direcions of this will, which he办 has. As the other parties to the play, that he had directed the moft of the estate to be conveyed to her for life, with remainder to trustees to preserve contingenf remaniders, with remainder to her own and every other fon, being a protestant in tail, whereas in the cafe it was barely intituled to her for life, then to her husband for life, and then to the ufe of her body general.

From hence it appeared, that the maker of this will knew the difference between a general limitation in tail, and a fiftet limitation, and knew aho how and in what place properly to infert trustees to prevefe contingent remaniders, when he inteded it. This furnished a much stronger objection than that which is drawn in the prefit cafe from the limitation of the other moiety to the afterborn fons of Mrs. Spencer, and yet it did not prevail to support the legital construction of the words against the manifest general intention of the teftator.

3dly, This cafe naturally leads me to the third and last question, Whether there is any particular fetteld rule or determination of this court, which will stand in the way and prevent the teftator's intention from taking effect.

And under this head I told you, I proceeded to consider the diftinction between truffts execuf and trufis executory.

For the plaintiff, it has been objected, that two particular fettled rules fland in the way. 1st, That after in decreeing an execution of marriage articles, entered into for valuable considerations, the court in order to render the contract of the parties effeclual, will make fuch a construction as is contended for by the defendants: Yet upon a will, under which all the parties claim voluntarily, the words devifing a trufl estate must be taken as they are, and the court is not at liberty to depart from them.

2dly, That even in the cafe of wills there is a differ ence established between trufts executed and trufis executory. That for instance, Where the devisee is to the use of A, and B, and C, and his heirs or issue of his body, that is a trufis executed, and the court cannot vary the words; but where the devise is to A, and his heirs, upon trufl to convey the estate to B, and the heirs or ifiue of his body, that is a trufis executory: and the court has a greater latitude to mould and frame it fo as to infwer his intention.

The leading authority to support the fift objection is, that of Bale and Coleman decreed by Lord Capel 26th July 1708, and afterw ard by a rehearing by Lord Har-
If it had refled here, this decree had been a clear au-
thority for the defendants in this case; but Bale and 
Culeman was rebated before Lord Harcourt in April 1711, 
when the main opinion, and ordered, that my 
Lord Couper’s decree, so far as it directed a conveyance 
of the last fourth part to the frift and every other son of 
Christopher Bale, should be reversed, and instead thereof, 
it should be conveyed after the death of Christopher Bale, to 
the use of the heirs male of the body of the said Chris-
opher Bale; and that the same was confirmed to the use of 
Counfell, Bogan, Digger and their heirs as tenants in common.

In this decree my Lord Harcourt has caused his reasons to be 
very minutely entered, and from them the plaintiff’s 
counsel have argued more than from the judgment itself.

The declarations are these: His Lordship declared, that 
this case, arising upon the words of a will, was much 
different from the cases decreed in this court upon mar-
rriage articles; that such articles are always intended to be 
carried into a further and more perfect execution; that 
the parties to such articles are to be considered as purcha-
sers; and in a court of equity ought to have their con-
tract executed according to the intent and the nature and 
consequent to what they were intended to perform and to give, 
whereof the issue male of the marriage are particularly 
regarded and generally taken as purchasers.

That when by the careles penning of marriage arti-
cles, the contract is expressed in consideration of an 
tended marriage and portion, and to settle the husband’s 
eftate to the use of the wife or children of her body, 
and her heirs male, or the like, that general limita-
tion has been restrained in this court (when an execution 
of the marriage articles and agreement has been decreed) 
to an eftate to the husband for life, with a remainder to 
his frift and other sons in tall male; for that it could not 
reasonably be supposed a valuable consideration was agreed 
to be given to have an eftate so fettled, that the husband 
should destroy or bar the settlement as soon as he should 
makes it: But that no one cafe had been cited where the 
like decree had been made upon the words of a will, un-
der which the devises claim voluntarily; that in this cafe 
the question arose upon the words in the codicil; and that 
all wills ought to be construed according to the intent of 
the testator; so as much intent appears with certainty, 
and be consistent with the rules of law; but such intent could 
not otherwise be considered in a court of equity than in 
the courts of law; and that the same words of limitation in 
in a will, ought to receive the same construction in a 
court of equity as they have at law; that the same words in 
in a will, would have been considered for Lord Harcourt 
to be so construed in this court, when they fall under a 
truftr, and are to be carried into a further execution, as in 
this present cafe by the words in the codicil, according 
to the known rules of construction of law: The testator 
has given the plaintiff an eftate-tail in the defendant Eliza-
beth Bale’s share after her decease, and subject to her 
power of leaving, given by the testator, and in that in 
this cafe it could not be inferred with any certainty from 
the power of leaving, that no eftate-tail was intended; in 
regard such power of leaving is more beneficial than that 
given to tenant in tail by ftr. 32 H. 8. And it being ad-
mitted, that the deeds and legacies stand, therefore 
the same words ought to be construed as if they have 
been and then in construction of law, it will be an 
eftate-tailed exec.

Consider these reasons, and how far they are applicable 
to the present case. The frift part of this declaration, 
relating to the distinction between the construction of 
marrige articles and wills, I refer to my Lord Harcourt's 
collection; but has nothing to do with the present 
cafe; and it is remarkable, that the case there put, is, of 
articles limiting the eftate to the husband and wife and the 
heirs male of their bodies; which in this case would be 
decreed to be executed in strict settlement, and then it 
follows, that this date has been construed that the like 
decree had been made upon the words of a will.

This is very true: There never was such a decree, nor 
ever will be, where there is no more in a will than is 
there flated; for in the cafe put there is no intrefion of 
truftees to prefer contingent remainder, nor any thing 
elfe to indicate an intenfion different from the legal 
force of the words.

The next clause in the declaration seems to be applied 
to the case of a will relative to eftates, and the words 
about which there is no question but they must receive the 
same construdion in courts of equity as in courts of law. 
The next words relate directly to devises of truftrs, and I own they go a great way; “That the same words in a will, which at 
law would create a legal intall, ought to be so construed by 
this court, when they fall under a truftr, and are to be 
carried into a further execution as in the present cafe, so 
as to make an equitable intall.” Now here I must ob-
serve, that this propofition includes all truftrs, as well 
what have been called truftrs executory as truftrs executed. 
For the words are, which are to be carried into a 
further execution.

I fear his Lordship, for whose abilities I have great de-
ference, had not in that cafe been fully informed of the 
precedents; for almost every one of the authorities of 
this cafe which I have cited under my second head, are 
direct contradictions to this propofition, and having al-
ready flared them, I now only refer you to them.

At the conclusion of the general argument in this dec-
claration, there is a very remarkable clause, “And it be-
ing admitted, that the debts and legacies are paid; there-
fore the fame construction ought to be made, as if no 
truftr had been.” His Lordship has thought fit to call in 
this reafon in aid of his opinion; but I own I cannot 
perceive any reason for it, and that the reasoning was 
very various and operated at all in the expofition of the 
will; but if it could be, it diftinguiishes that cafe from the 
cafe now in judgment; for here the eftate is not fold, nor the 
truftr performed.

I may be thought to fland in need of some excufe for 
dwelling so long upon this cafe; but it has been so much 
emposed and relied upon, that I thought it necessary, and 
I cannot help adding one circumstance within my private 
knowledge.

After this noble Lord was out of his office, I have 
heard him more than once express himself very strongly 
and very wisely against declaring general reasoning in de-
crees of this court, which possibly may affect other cafes, 
not then in judgment, and which consequently could not 
have been fully considered nor foreseen. I could have 
whifhed that his Lordship had not departed from that 
cautious rule in this infance.

But to add force to this precedent, it was laid at the 
bar, that the cause was reheard again before my Lord 
Couper, when he came to the great fel a fecond time, 
and that my Lord Couper, having been reheard by Lord Harcourt’s 
orders, and the latter decree made for the reafon of 
his own. But that was a mistake; for it never was reheard 
again by Lord Couper, and indeed second hearings are 
contrary to the general rule of the court; and therefore 
if Lord Couper ever did throw out any thing like giving 
way to Lord Harcourt’s reafonings in that cafe, it must 
be only obftr upon the occasional mention of it in some 
other cafe; and after all, my Lord Harcourt’s reheaf of 
Lord Couper’s decree does not fland in need of that de-
etial of general reasons to support it: It may be maintained 
upon the foot of particular diftinctions from other prece-
dents, and this alone is not sufficient to sustain the cafe. 
2dly, I come now to the fcond objection arising under this 
head, which is founded on the difference said to have been 
effablifhed between truftrs executory and truftr 
executed: “That the court has a greater latitude of con-
strudion to anfwer the intent in the one than in the 
other.”

Nobody can be more averse than I am Quita nuerus, 
to shafe things fettled; but I cannot find that this dis-
finition has been eflablifhed by any direft reafon upon 
the point, though mention has been made of it argu-
endo, and reafons have sometimes been drawn from it 
collaterally, to strengthen decisions in cafes where a con-
version alleged is rejected by the court.

If one was to examine this diſtinſion to the bottom, it 
might perhaps found a little strange in the ears of law-
ers, that such a diſtinſion should be solemnly eſtablifhed. 
All truftrs are in the notion of law executory, and to be 
executed in this court by pulpits, as the old books 
would have it.
W. I. L. W. I. L.

speak. At Common law every use was a trust; Then comes the flat. 27 H. 8. and executed the legal eale to the use, and conjounded them together. That statute makes:—therefore the words of the statute is this:—

"If the word be to be construed as a trust, then the words of the statute are therefore a trust."

And therefore in order to bring it into the jurisdiction of the Chancery, it must be executed, that is, the legal eale must want to be ex-

*cluded to the trust, and a conveyance to be decreed.

Therefore one effential part of the trust is, that the trust is in the conveyance, at some time or other: Sometimes it is to be done sooner, sometimes later: And this, whether the testator has directed it or not; and so much every testator is presumed to know. One may therefore reasonably doubt how it can make any substantial difference, whether the testator has words? Do not convey directed a conveyance, or do not the words of the law, take notice that the testator could not intend his eale should always remain in trusts; but that one principal confidence repos'd in them is to con-

vey.

I have said, one may reasonably doubt of this; and I chose not to carry it further at present out of deference to those great men who have laid any weight on this dif-

trinction. The case wherein the most strong reasoning is produced on this subject, is that of Lord Glynchob and Byfell. What my Lord Talbot said in his argument in this case relative to this point, has been flated to me to be this:

"There is another question, viz. How far in cases of trusts executory, as this is, that the testator's intent is to prevail over the strict and legal signification of the words? I repeat, I think in cases of trusts executed or intended to be executed, the construction of the courts of law and equity ought to be the same: for there the testator does not suppose any other conveyance will be made; but in executory trusts he leaves somewhat to be done: The trusts are to be executed in a more careful and accurate manner. The case of Leonard and the Earl of Suffolk, had it been by act executed, would have been an effe-
tate. But the voice of the party who took the executory trust, the court decreed according to the intent, as it was found expressed in the will, must now govern our construction; and though all parties claiming under this will are volunteers, yet are intituled to the aid of this court to direct their trustees. I have already said what I should incline to, if this was an immediate de-

vice; but as it is executory, and that such contrivance may be made, as that the intestate may take without any of the inconveniences, which were the foundation of the re-

solution in King and Mililde's case, and that the testator's intent is plain that the intestate should take, the conveyance, by being in common form, viz. "To the Lady Glynchob for life, remainder to her husband for life, remainder to the first and every other son, with a remainder to the daughers, will be the testator's intent." Nobody can possibly have a greater deference for my Lord Taltor's opinion than I have; but I think his decree in that case foe right, that it did not want the aid of the dillention there made. Consider then how far it amounts to a positive opinion, even to conclude himself.

The first words indeed as flated are these: " I think in cases of trusts executed or immediate devises, the con-

truction of courts of law and equity ought to be the same; for there the testator does not supposo any other conveyance will be made." But I think I have proved, that the testator is in most cases presumed to know that some time or other a further conveyance must be made.

Immediately after his Lordship mentions the case of Leonard and Earl of Suffolk, and says, had then by act been a deed, and that the restraint had been void. If by act executed is meant a deed in the testate's life-time, which is the proper sense of the words, it is certainly right; for all such restraints of alienation are void at the Common law. But if it be meant of a devise to trustees upon an immediate trust, which was an executory trust, then it is certain, I have no doubt of it; and whether, if such a clause of restraint had been inferred in a devise of a trust executed, (as it is called) the court, when it had decreed a conveyance, would not have been bound to decree it in first settle-

ment, as my Lord Cooper did in that case. He adds further, and though all parties claiming under the will were not parties to it, yet they are intituled to the aid of this court to direct their trustees. But can this differ the case of what has been called an executory trust from an im-

mediate devise in trust: In both cases the parties are equally intituled to the aid of this court to direct their trustees in making a conveyance. But toward the end it appears, that his Lordship had not formed any fixt opin-

ion to bind himself upon this point; for he says, "I have already said what I should incline to, if this was an immediate devise." This fles it was only the prefr inclination of his thoughts, without having absolutely de-

termined his judgment upon that particular point. And indeed he appears, he afterwards relaxed from this; for in the case of Wither and Allen, which was tried near two years afterwards on the 4th July 1755, and has been already flated, his Lordship made the like con-

truction upon a trust in a deed, wherein there was no dif-

trinction of a conveyance, nor any thing to diffinguish it from what has been called a trust executed. In the case of Papillon and Vesey, my Lord King, who was very favourable to the first rules of law, neither founded him-

self upon, nor made any such diffinction; for according to Mr. Williams's Rep. Vol. 2. p. 478, which agrees with my memory, he says the diversity is, where the will passes a legal estate, and where it is an executory, and the party must come to this court in order to have the be-

 nefit of the will: That in the latter case the intention shall take place, and not the rules of law. You observe here that he explains what he means by the word executory (i. e.) where the party must come to this court to have the benefits of the will, and that the case of all trusts, which must be executed by judgment.

I have now gone through the general reasoning of the cafe. But there is one thing still behind which is parti-

cular to this case, and I really think decisive as to the determination which ought to be made.

I find, that the words of the first clause in that entirely agreed with his honour the Maller of the Rolls, that nothing which has happened since the death of Benjamin Afiron, can vary the construction of this will, or the consequential rights of the parties; but the determination of the court must be the same as to all legal and equitable con-

sequences, as if Benjamin Baghau, the devisee, had been living, and now came to this court for a decree. This being an allowed and undoubted principle, I now consider what must have been done, in case Benjamin Baghau had at this time been plaintiff, and praying of the court a conveyance of the moiety of the estate upon the foot of the will.

If that had been the case, the court must have decreed the furplus money arising by fale to be laid out in the pur-

chase of land, and one moiety of those lands to be convey-

ed to the use of Benjamin Baghau, with remainders out of the rest.

Then the question would have arisen directly, whether the remainder to trustees to preferve contingent remain-

ders, which stands in the will, should have been inferred in the conveyance or left out. If it ought to have been inferred, then the next limitation of the use must have been to the first and every other son of Benjamin Baghau, and with remainders to his daughters as tenants in common; the court could not have directed a conveyance to use to be made to Benjamin Baghau for life, with remainder to trustees to preferve contingent remainders during his life, and after his decea-

to the heirs of his body in the very words of the will. But if the words of the will were, as it was held, to be con-

tradictory: It would be to inflect a clause in a deed to preferve contingent remainders in that deed, when there were no contingent remainders to be preferved. This was expressly agreed by my Lord King in the case of Papillon and Vesey. His words were, as I took them from his judgment, "If the words of the will were, as you say, the words of the will, it would be a very blundering one, and the court will not decree that contrary to the in-

tention of the testator." If in this conveyance it

ought
ought to have been left out, then the limitations of the conveyance must have been framed to the use of Benjamin Bagshaw for life, without impeachment of wafle, and after his decease to the heirs of his body, with the other remainders over. According to these words an immediate estate-tail in possession would have been vested in Benjamin Bagshaw. In his words, the real estate to be held by the trustee must have been formed; for I can think of no third method. Now, take it which of those ways you please, the court must have departed from the first words of the will, and then the question comes to this: Whether the court ought to have departed from the words of the will, to comply with the intention of the testator, to put forth the propounded fraud and defeat it? And my opinion is, that if in any case, I am obliged to depart from the first words of the will, I am bound to do it so as to support and comply with the testator's intent, rather than to contradict and defeat it. And I hold with my Lord Hale, in the case of Pybus and Mistford, 1 Pet. 378, if we gain by any means serve the intent of the parties, we ought to do it, as good expositors: for, as my Lord Hobart says, Judges in construction (even of deeds), no harm if they are estatis in serving the intention of the parties, without violating any law. To this, it has been objected in argument at the bar, that the deposing of the estate tail in the will yet will you must adhere to that which would be the legal operation of the words of limitation of a trust, when it should be reduced into a common law conveyance. I deny this general proposition, and think I have disproved it both by reason and authority. But for argument sake admitting the proposition, the court could not have done it in the present case, by leaving out the remainder to trustees to prefer contingent ufe, without conveying to Benjamin Bagshaw a different legal estate, from that which the words of the will would have carried, if it had been a legal devise of the lands. In Coufijn and Coufijn the testator's words were simply in the will. But all the Judges of B. R. held, that by reason of the remainder to trustees to prefer contingent ufe, interposing between the devise to Robert Coufijn for life, and the subsequent limitation to the heirs of his body, Robert took an estate for life, not merged by the devise to the heirs of his body, but by that devise an estate-tail in remainder vested in the said Robert Coufijn. The consequence of this opinion is, that if the court, in framing the conveyance, in the case supped of Benjamin Bagshaw, being before the court, had left out the remainder to the trustees and their heirs; during the life of Benjamin Bagshaw, to prefer to the devise to the heirs of his body, in pursing the later method, they certainly must have done, they would have given Benjamin Bagshaw not only a different equitable estate, but also a different legal estate, from what the words, as they stand in the will, would have given him. To explain this: By the legal operation of the words of the will, he would have had an estate for life, in possession, not united with the inheritance; with remainder to trustees and their heirs during his life, with a remainder to himself in tail. But by such a conveyance by deed as is contended for, on the plaintiff's part, he would have had no particular estate for life, but an immediate estate-tail in possession.

From hence it clearly appears, that if in the present case the court had directed the conveyance to the use of Benjamin Bagshaw for life, and after his decease, to the heirs of his body, they would not only have departed from the very words of the will, but also from the legal estate, and effects of those words; and consequently have contradicted the testator's intention, according to the construction of a court of law as well as of a court of equity.

But this I cannot think myself warranted to do: and for these reasons, I think the judgment.

To render to much of the last decree made at the Rolls as declares, that Benjamin Bagshaw took an estate-tail by the will of Benjamin Ayton, and as directs, that one moiety of the clear surplus of the particular money be paid and applied according to the will of Benjamin Bagshaw: And indeed thereof, as all the particular limitations in Mr. Ayton's will are, by the events which have happened, spent and determined, I must declare, that one moiety of the clear surplus of the money, thereby being by the trust-elect in question, be paid by the defendant John Spencer, to the heirs at law of the testator Benjamin Ayton.

9. Of revoking a will, and where a will shall be free a fide for fraud.

By fl. 29 Car. 2, cap. 3, it is enacted, "that no devise in writing of lands, tenements, or hereditaments, or any chufe thereof shall be revokable, otherwise than by some other will or codicil in writing, or other writing, declaring the same, or by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence, and by his directions and consent, but shall continue, &c. unless altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or more credible witnesses, declaring the same: And by the same act, no will in writing, concerning any estate formerly sealed, but not produced, nor any clause or bequest therein altered by writing, shall be a word of mouth only, except the same be, in the life of the testator, committed to writing, and read to, and allowed by him, and proved to be done by three witnesses."

But where a man, by will in writing, devised the residu of his personal estate to his wife, and after, the dying of the same, or because of any deviation from the words of the will, by a personal deviser of the residu of the estate of the testator; and the devise was not altered by writing, or oral declaration of the deviseor, the residu of the estate shall remain in the testator's wife, as the residue of the estate of the testator. And the words of the will, if the will is to vest in the deviseor's wife, and afterwards to vest in the deviseor's children, as the residu of the estate of the testator; and the devise was not altered by writing, or oral declaration of the deviseor, the residu of the estate shall remain in the deviseor's wife, as the residu of the estate of the testator.

But where a man, by will in writing, devised the residu of his personal estate to his wife, and after, the dying of the same, or because of any deviation from the words of the will, by a personal deviser of the residu of the estate of the testator; and the devise was not altered by writing, or oral declaration of the deviseor, the residu of the estate shall remain in the testator's wife, as the residu of the estate of the testator.

Lord Hardwicke, Lord Chancellor: The general principle is, that at the time of the devise the devisor must have a disposing capacity, and an estate in the land devise; and the estate must remain in the same plight and condition until his death: For the legal alteration by an act of his, makes it a different estate, and flew a different estate, and through the court, revid the devise. Thus if one fessed in fee devises, then infeoffs another to the use of himself in fee, tho' it is the old use that remains, yet it is a revocation, tho' it is his own feoffment. So of a bargain and sale without incorporation. So if a man in his lifetime tenant in fee, devises, and then apprehending himself to be only tenant in tail, fuders a recovery, with intent to confirm his will, it is a revocation. As to mortages, they are exceptions out of the rule. At law a mortgage for years, and in equity a mortgage in fee, are revocations pro tanto only; and the reason is, that a mortgage is only a security; and that it does not serve to vary from the estate, yet it is an actual revocation, by a chattel interef only, and goes to the executory, and it gives no dower. In the case wherein these leading principles were established, after the testator had devisd all the manors, lands, tenements, and hettiments, he by a deed conveyed an advowson which he was feized of at the time of making his will: to and to the use of trustees and their heirs; in trust to prevent the church when void to a particular person, if qualified, on the terms prescribed therein: And if such a person should be incapable, then to prevent such clergy as he should nominate; and in default of nomination by him, as the trustees should think fit. The person intended was pre- ferenced; and on a bill brought by the heirs at law of the testator, to have a legal conveyance of the residue of the advowson, the question was, Whether this deed, being only
only a trust for a particular purpose, as it was alleged, was a total or partial revocation? And determined by Lord Chancellor, after arguing as above, that it was a total revocation; it being a grant of the legal interest; and the trust was a real and beneficial interest given by it to the truффees, that of nominating themselves in the will to be trustees, that the court, in the absence of any other winding-up provisions, should appoint them. By Lord Chancellor King, that this renewal of the lease was a revocation of the will, as to this particular. 3 Port. Will. Rep. 166, 170. Marwood v. Turner.

So where a trustee devised by his will, a leasehold estate unfor that College, Oxford, and after the making of this will, before his death, renewed the lease, by surrendering the old one, and taking a new lease. Determined by Lord Chancellor, that this was a revocation of his will. And that the trustee, after the renewal, looking among all his papers, had found, this is my will, that was held by no right of prescription, but by the perpetual covenants of the leasehold estate, that orders his will to be wrote over again, without any variation whatsoever from the first, save only in the name of that trustee. And when it was so wrote over, he executes it in the presence of three witnesses, and the three witnesses subscribed their names, that the perpetual covenant may be there inserted. This was the duplicate, by tearing off the fest, and then dies. And the question was, Whether this second will, not being good, as a will to pass lands, should yet be a revocation of the first, and if it should not, whether the cancelling the other should be a revocation thereof within the manner of frauds and perjuries. And it was decreed, that neither the making of the second, nor the cancelling the first, was a revocation thereof; that in the second there was an express clause, that he did thereby revoke all former and other wills; wherein my Lord Chancellor took his distinction, that the second was not intended to be a revocation of the first, so as to destroy his intention of dying intestate, or without any will; but it was intended as an effectual will to pass the lands to the persons, and in the manner thereby devised: And therefore it was not good as a will to pass lands, but it was no revocation of the first, but as it was supposed to be void, and void as for that purpose, he could not be devised by it, and for the duplicate, that was given him by the first. But if a man by his will devise lands to A, and after makes a second will, and thereby deviess the lands to B, if this second will not be good, as a will to pass lands to B, it shall be no revocation of the first will, as it is plain, A was to lose only what B was to gain; and B is therefore not entitled to the lands, he shall have nothing that was given him by the first. But if a man executes a second will, which appears to have no other intention than to revoke the first, and to die intestate, tho' this second be not in all circumstances duly executed as a will whereby to pass lands, yet it will operate as a revocation of the first: And as to the cancellng or tearing of the will by something that is not revocation of it in this case, because that was not a self-subsisting independent act, but done to accompany, or in a way of affirmation of the second: It was done from an opinion, that the second had effectually revoked the first, and therefore he tears the first as no use. If the first was not effectually revoked by the second; And tho' the act of tearing the first will, will not destroy it neither. For tho' a man may, by the statute of frauds, as effectually destroy his will, by tearing or cancelling it, as by making a second; yet if he does make a second, and intends that as revocation, it may be incontestable. If, it be effectual, in one case, as in the principal case, the tearing and cancelling being only in consequence of his opinion, that he made a good second will, it shall not destroy the first; but it ought to be set up again in equity. 1 Abr. Eq. Cab. 409.
being both but one will, and therefore must land or fall together. 2 Jew. 747, 472. Onyer v. Tyer.

A man makes his will in writing, and thereby devises all his real and personal estate to his wife, her heirs and executors, in trust to pay his debts and legacies; and then devises several legacies to his children and other persons, and concludes, "in witness whereof I have, to this my present will and last will and testament, set my hand and seal, and to a duplicate thereof, to be left in the hands of such a one, set my seal to every sheet thereof, and to the last of the said sheets my hand and seal, in the presence of three witnesses, who all subscribed their names in due form of law." Afterwards the testator being minded to alter this will, sets his hand and seal to a new will, and makes some alterations in his will, and sends a copy of the same to a scrivener, and gave directions to prepare a draught of instructions for another will, which the scrivener does accordingly, which the testator reads over and approved of very well, and then sets his hand to it; and being at a tavern, thinking he had now made a new will, he pulls out of his pocket the first will and tears off the feals from the first eight sheets, which the scrivener feeing, asked him what he was doing; why says he, I am cancelling my first will. Pray says the scrivener hold your hand, the other will is not perfect; it will not pass your real estate for want of being executed pursuant to statute. And so that book is the more forlorn for that, says he, and immediately defisted from tearing off any more of the seals; and in some short time dies without having done any thing further to perfect the second will, or cancel the first. After his death, on application to the Spiritual court by the wife, who was made executrix of his last will, they thought they had good cause, as to the perfonal estate, and admitted her to prove it: And on a bill brought by the legateses against the wife, and other trustees, to have a specific performance of the trust in the first will, and that the estate might be fold, pursuant to the directions of that will; it was infifted upon, that the first will was revoked either by making of a new will, or by a certain clause in the second will; but Lord Chancellor held, that the subsequent will could be no revocation as to the real estate, not being executed according to the statute of frauds and perjuries; And that as to the tearing off the seals from the first eight sheets, that not being done animo cancellandi, was no revocation; and that the seal remaining whole to the last sheet was sufficient, and in strictness it was not necessary that all the seals should be sealed. But because the Spiritual court had sentenced the second a good will of the personal estate, his Lordship held it a good will for the whole personal estate, and that such legates of personalities in the first will, as are executiff in the second, must lose their legacies, and have them set aside by the court, while such legacies will chargeable on the real estate, if the same legacies were devised to them by the second will, that they should still continue chargeable on the real estate; provided such legacies were not increased or enlarged by the second will; For though the first will was not sufficient in itself to charge the real estate, yet since the real estate remained well devised by the first will, they should be still secured by that real estate; for they were not devised out of land like a rent, but only secured by land, which before was well devised; but for new abhufe personal legacies devised by the last will, they should be chargeable only upon the real estate, and should have the first paid out of the personal estate before the other legacies, in the first will, charged upon the real estate, because they had several funds, out of which they were to be paid; the personal legacies in the last will out of the personal estate, which was well devised by that will, and not for particular legacies to be given by H. P., his son, to his heirs and assigns for ever, his lands, &c. The 2d of January following, he orders one O. to make an alteration in his will, and inter-

lines these words: "I give unto my wife A. P. and her assigns, my lands in W., for her life; and after her decease to my son H. and his heirs." The will is read to the testator, and he approves of it with the interlinearion: He puts his seal upon the wax in the presence of three of the same witnesses, but does not write his name de novis, neither do the witnesses subfcribe theirs de novo. The question was, whether that and this alteration for her life? The doubt was chiefly upon the 29 Car. 2, whether this alteration was not a revocation within the statute. Every bequest is to continue in force until the same be burnt, &c. by the testator or his direction, in his presence, or unless the same be altered by some other will or writing of the testator, signed in the presence of three or four witnesses, declaring the same. If the will be signed, it may be in any part; and Per Parker and Eyre, The putting a seal is a good signing; for, Per Par-

ker Chief Justice, The intention of the parties signing it, and the witnesses attesting, is only that the witnesses may know it again. This will is fully penned, and is not to be expounded away. Per Poins, Here is no danger of fraud or perjury; here is a new devise, and not an al-

teration. Per Eyre, Every thing is right, save the new subfcribing by the witnesses: The cafe of Lor and Libb, in Strower 68, 69, is right; nobody can say this new devise is not the prior devise, as Per Parker and Eyre and Parker, There must be more than a bare revoca-

tion. It must be signed in the presence of three wit-

neffes. The altering a will must be underfood of a re-

voking, 1. i.e. an alteration by revocation. The latter

implies the whole will, the former of any part, other-

wise, Will as Parker and Eyre. On the former will is that if the testator revokes the whole or part, it shall be by will or writing, signed in the presence of witnesses, but they are not obliged to subfcribe. Per Eyre, If H. P. had been here found heir at law, then A. the leffer of the plaintiff, might have been helped; for if this be an alter-

ation, so as it is not to have the lands till after A's death, he will have an estate by operation of law, Vin. Abr. tit. Devise. (R. 4.) Ca. 3. p. 143. Townford v. Pearce.

If A. devises lands to B. and his heirs, and afterwards mortgages the same lands to J. S. for years, or in fee, though a mortgage in fee be a total revocation at law, yet in equity it shall be a revocation pro tonto only. 1 Cm. 329. 332. 97. 144. 182. 1 Salt. 158. S. P.

So if a man seified in fee devises it to J. S. in fee or for life, and afterwards makes a lease to J. D. for years, this, even at law, shall not be a revocation, but during the years; for his intent does not appear further than during the term for years. 1 Roll Abr. 616. Montague v. Jefferin.

So if a husband poiffessed of a term for forty years, devi-

ves it to his wife, and after leaves the land to another for twenty years, and dies; this lease is not a revoca-

tion of the whole estate; but only during the twenty years, and the wife shall have the residue by the devise. Id. ibid. Wilcox's cafe.

But if A. devises lands to B. and his heirs, and twelve years after leaves the same lands to B. for sixty years, to commence after his death, and delivers the deed to a stranger, to the use of B. who does not deliver it to B. till after A's death, this is a revocation of the whole estate, for both estates are not covenanted by the devise to B. at the same time; and it was plainly the intention of the devise, that B. should have the lefs estate only. And it was so adjudged, though objected, that it was the in-

tention of A. that B. should have his liberty to take by the devise or devise, B. not having agreed to the lease in the lifetime of A. This is the life of property, gift for certain years.

But if the lease made to the devisee had been to begin either in present or future, in the life of the devisee, it had not been a revocation, for inasmuch as the lease might have determined in his life, it was consistent with his will. Cro Jac. 49. Coke v. Ballant.

So with a devise in fee for a younger son for a cer-

tain meffage for ninety-nine years, if three lives lived to long, yielding and paying to his sifter the plaintiff 20l. per Ann. until twelve years old, and thence 40l. per Ann. for 1
for life: And afterwards the said A. for 300l. first de
died the said feuage to J. S. for ninety-nine years, if
three lives lived so long, yielding and paying 50l. per
Ach. to A. the testator, his heirs and assigns; and though
it was held at the Rali to be a revocation, yet on an ap-
peal to my Lord Keeper, he decreed it to be no revoca-
tion, and that the daughter should be paid her annuity:
and he then made a will, which, though it had not
any amount to a revocation by implication, it must be a ne-
cessary implication: And the act must be wholly incon-
venient with the devise. 2 Vern. 495. Lamb v. Parker.
2 Freemon. 284. S. C.
and financed lands to trustees to pay his debts, and
then to pay his wife 200l. per Ann. for her life; and the
testator living several years after, his debts increased
from 2000l. to 10,000l., for 8000l. whereas his said trusts
were bound, and afterwards A. the testator, by deed and
fine, conveys his lands to his said trustees, to fell to pay
his debts, and leave 200l. per Ann. to his wife, and the
wife the joined with him in the fine and conveyance, yet
this shall be no revocation of the wife's 200l. per Ann.
and the have 200l. per Ann. out of the surplus money
after the debts are paid. 2 Vern. 424. Freemon v.
Jones. 2 Freemon. 117. S. C.
for which the Earl of Lincoln had mortg-
gaged the manor of S. to the defendant Wynn and his heirs
for 12000l. and afterwards, by his will, in default of
issue male of his own body, devised it to Sir Francis Clin-
ton (who was to succeed him in the honour for his life,
with remainder to his first and other sons in tail male,
with reversion of the freeholds, and the household goods
and household goods at his chief house at S. should remain
there as heir-looms to the next heir male, who should be
Earl of Lincoln, and made Sir Francis Clinton executor:
Afterwards the earl (who was very whimsical) took a fa-
ncy to one Mrs. Calvert, daughter to the Lord Balti-
more; and the testator, to marry her, though it was not
proved in the cause, never was any intention of such
marriage in her, or any of her relations, nor any treaty
about it; and in this fancy he makes a lease and
release of those premises to the defendant Daventry
and Towynland and their heirs, in consideration of the said
intended marriage, as it was expounded to them himself
and heirs till the said intended marriage took effect:
Then as to part, in trust for Mrs. Calvert and her heirs,
in lieu of dower, and as to the rent in trust that the trus-
tees should fell it, to disincom that part limited to
Mrs. Calvert, and the surplus money to his executors,
and for the uses set forth in his will. There was no legal
proofs to wards the marriage, and some time after the
death, without any alteration of his will, and the honour de-
scended to Sir Francis Clinton, (who had but a very small
effay, if any) who died from after; and the plaintiff,
his eldest son and heir, an infant of about seven years
old, brought his bill to have the redemption of the mort-
gage, and a conveyance of the estate: And the defend-
ants A. B. and C. who were cousins and coheirs of Earl
Edward, brought a croft bill, that they might redeem
and have the estate conveyed to them. And the only ques-
tion was, whether the lease and release were a revo-
cation, as there is in case of a legal estate: It is plain,
as to his intention, that he did not intend such revocation
or alteration of his will, unless or until that marriage
should take effect; for by the release it is limited, that till
that marriage it should continue to him and his heirs,
which is just as it was before; and that marriage having
never taken effect, the eftate continues just as it was.
And therefore it is not on the evidence of any conveyance
or any express revocation of his will; and the court of
Chancery is so far from following the first rules of legal
revocations, that it often relieves against them. And
therefore if a man devises Blackacre to J. S. and his heirs,
and afterwards mortgages it to J. D. and his heirs, this,
for the same or any part of the devise, the court should
not be more on the estate, than it shall be none farther than to let in the mortgagee; and to this purpose were cited several cases. And therefore
since the court of equity must interpose for one side or
the other, it was concluded it ought to interpose for the
present Earl, and that he ought to have the redemption of
the eftate, as devised by the will of Earl Edward. For
the defendants it was said, that such a lease and release
would have been a revocation of a devise of a legal eftate,
and that equitable eftates are governed by the same rules
that legal estates are; and there is no fraud or circum-
cumstance that will alter equitable circumstances, to make
the court vary from that rule. E. S. And in this dili-
gence of the heir, who is always favoured in all courts.
And as to the cases put, where mortgages
have been held to be no revocation in equity, it was said,
the reason of that is, because mortgages are not considered
as revocations of the devise; but only charges upon it: And
my Lord Keeper was of this opinion, and decreed the
plaintiff's bill to be dismissed, and the coheirs to have
the redemption of the mortgage. 1 Ab. Eq. Ca. 417.
2 Vern. 202. refolved it was a revocation: And upon
an appeal fo held in Den. Procr. by a majority of two
Lords.
So where Sir John Hough had by will in writing, dated
the 12th of February 1708, devised several pecuniary
and specie legacies, and then gave all the rest of his real
and personal estate, after all his debts and legacies paid,
to John Pollen, on condition he took the name of Huf-
band and him, and the heirs male of his body, with
divis

Vol. II. No. 139. revocation, as there is in case of a legal estate: It is plain,
as to his intention, that he did not intend such revocation
or alteration of his will, unless or until that marriage
should take effect; for by the release it is limited, that till
that marriage it should continue to him and his heirs,
which is just as it was before; and that marriage having
never taken effect, the eftate continues just as it was.
And therefore it is not on the evidence of any conveyance
or any express revocation of his will; and the court of
Chancery is so far from following the first rules of legal
revocations, that it often relieves against them. And
therefore if a man devises Blackacre to J. S. and his heirs,
and afterwards mortgages it to J. D. and his heirs, this,
for the same or any part of the devise, the court should
not be more on the estate, than it shall be none farther than to let in the mortgagee; and to this purpose were cited several cases. And therefore
since the court of equity must interpose for one side or
the other, it was concluded it ought to interpose for the
present Earl, and that he ought to have the redemption of
the eftate, as devised by the will of Earl Edward. For
the defendants it was said, that such a lease and release
would have been a revocation of a devise of a legal eftate,
and that equitable eftates are governed by the same rules
that legal estates are; and there is no fraud or circum-
cumstance that will alter equitable circumstances, to make
the court vary from that rule. E. S. And in this dili-
gence of the heir, who is always favoured in all courts.
And as to the cases put, where mortgages
have been held to be no revocation in equity, it was said,
the reason of that is, because mortgages are not considered
as revocations of the devise; but only charges upon it: And
my Lord Keeper was of this opinion, and decreed the
plaintiff's bill to be dismissed, and the coheirs to have
the redemption of the mortgage. 1 Ab. Eq. Ca. 417.
2 Vern. 202. refolved it was a revocation: And upon
an appeal fo held in Den. Procr. by a majority of two
Lords.
So where Sir John Hough had by will in writing, dated
the 12th of February 1708, devised several pecuniary
and specie legacies, and then gave all the rest of his real
and personal estate, after all his debts and legacies paid,
to John Pollen, on condition he took the name of Huf-
band and him, and the heirs male of his body, with
divis

Vol. II. No. 139.
W I L

with consent of her trustees, then for her and her heirs, or for such person as the said appoint, &c. But in the case the said marry without consent of her trustees, and forfeit her estate, then to her other sisters equally among them.

In 1766, the plaintiff Clarke married A., with the consent of J. S. and he settles upon the marriage (his wife joining with him, who had these lands in jointure) part of these lands devolved to her by his will, after the death of her mother, and also 7 l. per annum in fee farm rent, which was doubtful if it pailed by the will or executrix. Note, J. S. in a letter to Clarke upon the treaty of marriage, declares what he will give him with his daughter in present, and that she will be a better fortune at his death. Quere, if this devolve to A., in fee, upon condition of marrying with the consent of trustees, be dispensed with or perfect?

And C. Ch. was of opinion, that by the marriage with the consent of the father, the condition is dispensed with, and the devise becomes absolute.

Revocation, &c.

A. made his will and thereof his brother executor, and devised unto his executor all his estate real and personal, and four years afterwards he marries, and then by a codicil makes his wife his executrix. And the question was, whether the brother should have the personal estate: And it was urged, that he should; for he does not take it as executor only, but by express words wills, to him a part of the estate.

And C. shall have the whole. A revocation, with a new gift, shall have the same effect as if it had been expressly given; and whether it be by codicil or obligation, it is the same, 5 Batt. tit. Devises, 95. MSS. Rep. Humphries v. Taylor, in Chanc. Hil. 25 Geo. 2.

An alteration of circumstances has been considered as an implied revocation. Thus, I. S. being a bachelor, made his will; and devised a legacy of 500 l. to his brother, and other legateses to other persons, and devised his real estate to Elia. Chie, and his heirs; and afterwards intermarries with the same Elia. Chie, and died, leaving her privitye enfeft with a fon, without making any alteration in his will: And the main question in the case was, whether the alteration in the testator's circumstances did, of itself, without addition, amount to a revocation. Thos. who argued for its being a revocation, relied on the case of one Afris, in which it was resolved by the Judges, that where a man unmarri'd made a will and devised away his estate, and afterwards married and had a child, and died with a subsequent alteration of his will, that the alteration of circumstances was, in itself, a revocation of the will. And a case was cited out of Ciceria, where there being his fon dead, devised his estate to another; yet the fon returning, it was held he should have it, because it was to be suspected he would not have deferved him without reason. On the other side it was argued, that this alteration of circumstances was, in itself, a revocation of the will. And a case was cited out of Cicera, where there being his fon dead, devised his estate to another; yet the son returning, it was held he should have it, because it was to be suspected he would not have deserved him without reason. On the other side it was argued, that this alteration of circumstances was, in itself, a revocation of the will. And a case was cited out of Cicera, where there being his son dead, devised his estate to another; yet the son returning, it was held he should have it, because it was suspected he would not have deserved him without reason. On the other side it was argued, that this alteration of circumstances was, in itself, a revocation of the will.

Lord Keeper was clear of opinion, that alteration of circumstances might be a revocation of a will of lands as well as of a personal estate; and that notwithstanding the fraud of trusts and perjuries, which does not extend to an implied revocation. But no such alteration appears here, for no injustice is done any person; and there are provided for whom the testator was bound to provide for, and so established the will. 1 Ala. Eq. Ca. 434. Brown v. Thompson.

The marriage and the having of children has been deemed a material alteration of a will, yet it is not a positive revocation; for if it appears by any expression, or other means, to be the intent of the devitor, that his will should continue in force, the marriage will be no revocation of it. 1 Id. Rep. 441. Legg v. Legg.

A subsequent devise to a person incapable of taking, is a revocation of a precedent devise to a person capable. This was approved by the counsel on both sides as good law. Thus, in a devise of lands to A., if afterwars the devitor devies the same lands to B., who was a papist, both devises are void; for though the law is void as a will, yet it is good as a revocation. 10 Mod. 233. Roper v. Radcliffe. 1 Ala. Eq. tit. Devises, (R. 3.) p. 141.

A devise was made of a term carved out of an inheritance for ninety nine years, before the statute of 36 & 37. W. & M. cap. 14. of fraudulent devises, in trust to pay 14 l. per annum to a grand-daughter for life; and after her death to the devisee. This devise was vested for five hundred years (which is a revocation in law for this purpose), but the devisee has an equity to redeem the mortgage, the mortgagee sues over the mortgage to the plaintiff, who was a creditor by bond to the testator, and the revender in fee descended to the testator's heir at law. Per Cur., the mortgage is a revocation pro parte of the devise of the annuity, and the suit must keep down the interest, or pay a third part of the redemption; but being a devisee the mortgagee may redeem the mortgage, without paying the bond. 1 Ala. Eq. tit. Devises, (Y.) Ca. 2. Saunders v. Hawkins.

A. devises and appoints an executor for payment of debts, and recites that a particular schedule of them was annexed to the will, remainder over. Afterwards he mortgages part of the said lands, and pays most of the schedule debts with the money. And it was decreed, that this mortgage is not a revocation, neither in all, nor part, and that the will ought to extend to all the debts that should be due after the testator's death. The substitute to the schedule debts only; and that the mortgage was made in good faith, security, and not an appointment how it should be made. But this decree was reversed, tho' without prejudice to the heir at law. 1 Ala. Eq. tit. Devises. (R. 6.) Ca. 25. p. 147. Barnardithen v. Garter.

If A.'s will does not survive, and A. afterward mortgage to the same devisees, it is a revocation in toto, being inconsequent with the devise; tho' it was agreed, if the mortgage had been to a stranger, it had been a revocation quoad the mortgage only. Decreed per Lord Macclesfield, Prese. in Chanc. 514. Hucksfey v. Bayley.

I. S. by his will gives his daughter 500 l. for her portion, and afterwards marries her to A. and gives her 500 l. for her portion in marriage, and lived four years after without revoking his will. Afterward the husband is a bankrupt, and the assignees brought a bill against the father's executor for the 500 l., or at least to recover 200 l. to make up the portion, taint amount to the 500 l. legacy, Lord Ch. Parker, with great clearness held, that giving a daughter a portion by will, and afterward a portion in marriage, is by the law of all other nations as well as Great Britain, a revocation of the portion given by the will; and dismissed the bill with costs. 1 P. Will. Rep. 681. Macclesfield v. Hucksfey.

I. S. and his wife had three daughters A. E. and M. by will devis'd 1000 l. to A. 800 l. to E. and 500 l. to M. After this will was made, plaintiff curtowed A. and upon a treaty of marriage, testatrix gave a note for 500 l. payable within six months after the marriage to plaintiff, in augmentation of daughter's portion, left to her by her father; and the next day the marriage was had and
W I L
up on the same day the testament was taken ill, and died
six days after, without altering or making a new will; but she did declare, that she did intend that her daughter A. should have but 500 l. from her, and that now she had given her this 500 l. she must alter her will; and for an attorney to do it; but when he came, she was light handed, and died soon after. And it was laid by the executor of her testament, that the devises were not sufficient to pay the plaintiff 500 l. upon the note, and the 1000 l. legacy, and likewise the legacy to the other two daughters. And two points were made; first, if this 500 l. note shall be taken in part of satisfaction of the 1000 l. legacy. Secondly, if parol evidence shall be admitted to alter the testament, and satisfacti
And per Lord Chief Justice Parker, circumstances of testament and her family may be given in evidence to expedite the will, but no parol declarations to explain the words of the will, or to control it; that in this case there is no doubt upon the words of the will; but the question is, if the testament has not advanced part of the legacy in her life time upon the marriage of her daughter t? and the evi
dence is only as to the satisfaction; and thereupon his Lordship admitted the evidence to be read; and directed the master to fee if there were sufficient to pay all the legacies; and upon report, the court determined as to the quantum due to the plaintiff. Tin. Att. (Y. 2.) Ca. 10.
I. S. devised to M. his wife, six houses in bar of dower, and, subject to his legacies, he devised (the rest of)
his real and personal estate to his two daughters, and their heirs, in remainder; and in the event of the marriage of A. his deceased daughter with B. I. S. by marriage articles, covenants to settle one moiety of his real estate to the use of himself for life, remainder to the use of the said B. and A. his intended wife, for their lives, remainder to the younger children of the marriage in tail general, remainder to the said B. in fee; and as to the moiety of such personal estate, he devised to one moiety of such personal estate as he should leave at his death, subject only to his debts, and such legacies as should amount to 5000 l. in trust for B. and his said in
tended wife for their lives, and afterward to be paid to their children. Lord Ch. King held, that tho’ this was but a covenant, and therefore in law no revocation of the will by which the testator had dispossessed of his real estate, yet that the same being for a valuable considera
tion, was in equity tantamount to a conveyance, and confec
tionately in equity a revocation of the will, as to the moiety of the six houses devised to the testator’s wife, so that he could dispose of them at his pleasure equally and to an account of the rents, &c. thereof, from I. S.’s death; but as to the six houses devised to the testator’s wife, it being his intent that the should have them, the court held, that he should have a satisfaction out of the remaining moiety, and that the wife should not offer by the marriage articles, there being enough out of the other moiety to supply and satisfy the devise of the six houses to her. Therefore as to the other moiety of the real estate, it was decreed, that the testator’s widow was to have for her life six houses, part thereof, and the re
due of such moiety, subject to the wife’s estate for life, in remainder to the said B. in fee; and to the other five daugh
I. S. on his marriage with P.’s daughter, settled 500 l. per annum on her; he afterward surrendered some copy
copyhold estates to the use of his will which he made, and gave the copyhold to his wife. After his wife of his wife’s father, became intituled to 1500 l. in right of his wife; then I. S. levied a fine, and made a new fettle
ment, and increased her jointure 300 l. per annum, but never altered his will. And per Lord Chancellor, The fettlement is a revocation of the will, for such lands as are comprised in it; but the copyhold is not, and therefore by the will. Select Cases Chanc. 48. Lannoy v. Lannoy.
I. S. in 1699 leaves to A. 8784 l. in trust to be by her invested in lands, and to settle the same according to I. S.’s will. A. purchases lands to the value of 2300 l. and devises that to C. (he was heir at law to B.) and her heirs, and gives several lega
cies, which could not be paid if the devise were not to be taken as part of satisfaction; and for that reason it was decreed, by Lord Chan. King. Select Cases in Chanc. 83.
A. and B. were tenants in common of lands in fee. A. by will dated the 25 Jan. 1719, devises her moiety of the said lands unto trustees and their heirs, upon trust to fell the fame for the purposes therein mentioned; and afterwards A. and B. made partition by deed, dated 10 May 1722, and a fine was levied, and the uses were declared to be to the moiety in fee in the same manner, and as to the other moiety in favority to B. in fee. In 1724 A. died without revoking or altering her said will, leaving I. S. her only son. Lord Chancellor declared, that the will was well proved, but referred it to the Judges of B. R. whether the deed of 16 May 1722, and the fine levied purporting thereto, was not a revocation of the will. And Raymond Ch. J. Page, Probyn, and Lee Juxttices, certified their opinion to be, that the will was not revoked by this deed and fine, and that A.’s share of the land contained in this deed and fine, doth pass by the will. 4. Will. Rep. tert. Devix. (R. 6.) Ca. 30. p. 148. Luther v. Kirkby.
By marriage articles it was agreed, that the wife’s lands, whereof she was seised in tail, should be conveyed to the husband in fee; they married, the husband made his will and devised these lands; then the husband and wife took a life and marriage fee in remainder of these lands, to such uses, and for such estates, as they might from time to time appoint, in default of such appointment, to the use of the hus
band and his heirs. She died without appointing. Per Harwicke Chanc. This amounts to a revocation of the will. And in this case the following rules were laid down. 5. Bos. Att. 538. A&S. Rep. Purfons v. Freeman, M. 25 Gen. 421.
If a man feised in fee devises, and then makes a conveyance by fee, foemifion, or recovery, and takes back a new estate, it is certainly a revocation; and so if he takes back the old ufe unaltered, from a preemption that he could not have made such a conveyance, without an intention to alter his will: But if after making his will he had made a lease, or charged it with a sum of money, &c. it would only have been a revocation pro
stanta. The rules are the same in the devile of a real, and of a personal estate, with regard to charges made after
wards: But if a man, having an equitable estate in fee, devised it, and the same was taken back to be an estate in
fee; it is no revocation. The equitable estate will not pass by will, but the heir at law by decent of the legal estate, may become a trustee for the devisee, who may call for a conveyance of the estate. If a man con
tracts by articles for the purchase of lands, and before a conveyance devises the lands and dies; the deviell shall have the lands, and call for a conveyance from the vend
or. If a man, seised of a legal estate, makes his will, and then conveys the legal estate to another in true for himself, it is a revocation. If in this case the husband had only taken the legal estate by the recovery to execu
t it, in true for himself, the equitable estate is a revocation; but new uses are appointed, and tho’ the wife died without making any appointment, that will not alter the cafe, for here he took the fee by the recovery differently qualified, subject to different conditions, dif
ferently conveyed. But if two parties make partition, leave a fine, and declare the ufe, that will not be a re
vocation, because it is effectuate the partition.
A. being feised in fee, settled his estate by lease and release in 1712, to the ufees thereafter specified, with li
berty nevertheless at his will and pleasure to dispose of, the said estate, or any part thereof, for any estate or ufeates which he shall choose to appoint, to hold in fee, and to revoke all and every the ufees thereby limited, and then declares the ufees to himself for life, with sev
eral remainders, a remainder over to D. in (fee) tail. The said deed contains the following powers: First, a power for A. by any deed or writing, signed, sealed, and delivered, in
the preference of two or more witnesses, to demize, lease, limit, or appoint, the said premisses to any person whatever, for any term or terms whatever, and for so much yearly rent as he should think fit. And that it shall and may be lawful to and for the said A, at any time during the said limited time, to grant, sell, or demit the said premisses, or any part thereof; or by any deed or writing under his hand and seal, or by his lawful will, &c. in writing, sealed, signed, delivered and published, in the presence of three or more witnesses, to revoke, repeal, and make void, all and every and all and every of the said written or signed deeds, tracts, and limitations before raised, and to declare or-limit the same, or any such new uscs as should seem meet to them, and then and from thenceforward the estates before limited, and so revoked, to cease, &c. and that the said A may dispose of the said premisses, and every part thereof, to such other person and use as he shall think fit, and thing, &c. to the contrary notwithstanding. The first part of this proviso, viz. to grant, sell, or demit, appears interferred by interlusion. In 1715 A by lease and release, reciting that he was indebted as specified in a schedule annexed, conveyed his estate to B W and S. and their heirs, in utmost good faith and perfect confidence, for ever, with all and every and every for ever, and so far as by his will, &c. in writing, signed and sealed, and delivered and published, to the use, the enjoyment of, and benefit of the said B, W, and S. or their assigns, and to all and every and every of their personal and real estates, rights, and every part thereof, and all and every and every of all and every the said premisses, and every part thereof, and all and every and every of all and every the said written deeds, tracts, and limitations before raised, and to declare or-limit the said estate, as would be firm, to the uses, or to the person and uses as he shall think fit, and thing, &c. &c.

Though a covenant or articles do not at law revoke a will, yet if entered into for a valuable consideration, amounting in equity to a conveyance, they must consequently be an equitable revocation of a will, or of any writing in nature thereof. A woman's marriage is alone a revocation of her will. 2 P. Will. Rep. 624. Cutter v. Loy. Lord Danesfield, at the bar of Mad. 823. 

Tenant in tail, remainder to himself in fee, devests his land to A, and then suffers a recovery to the use of himself in fee, and dies without issue male; this is a revocation of the will. 3 P. Will. Rep. 163. Marriott v. Turner.

A, the 23rd of June 1729 made his will, and executed two duplicates thereof before three witnesses, and made B. and C. (fince deceased) executors; and one of the duplicates was delivered to B. A died the 2d of Oct. 1730, and about three weeks before his death he made several alterations and obliterations with his own hand, in the duplicate remaining in his own custody, and for a new devise of his real estate, and a new residuary legacy, and a new executor, entirely striking out the names of the first devises, residuary legatee and executors, and altered several of the former legacies, and inserted or interlined new legacies; and soon after wrote another will with his own hand, agreeable to the devise in the duplicate, but still not altogether, to the will or duplicate so altered, with conclusion in these words, "In witnese whereof, I the said testator have to each flecht sit my hand, and to the top, where the flechts are fixed together, my hand and seal, and to the last thereof my hand and seal, and to a duplicate be the same revised and altered of 1730." But there was no signing, or fixing together. Tefator soon after began to write another will, word for word with the last, so far as it goes, but went no farther than deviating his lands. Tefator lived six days after, and was in good health, and might have finished and executed both or either of the latter wills if he had thought fit. Tefator never sent or called upon B, for the duplicate of the first will in his hands, though B, lived in town. After the death of the tefator, all the telfamentary papers or schedules were found lying all in lovo and separate papers upon a table in his clofer, not signed or executed; and the duplicate of the first will was found on the table, altered and obliterated; (pet supra) with his name and seal thereto whole and uncanceled. Sentence was given in the prerogative court, for the duplicate of the first will in B's hands, and confirmed upon appeal to the delegates, viz. Lord Raymond Ch. Justice, and Probyn J. Dr. Tindale and Dr. Bramfams, (who were all the delegates present) after four days' examination of the papers and schedule, and upon a commision of review (granted by Lord Chancellor King, upon the petition of Hyde the executor named in the new will) was again affirmed by the opinion of all the delegates (except Dr. Pinfold) viz. of the Judges Reynolds Ch. B Page J. and Cornus B. and two Doctors of the Crown, chiefly on this rea- son, as the reporter says he heard, that the tefator did not intend an interfacy, and by the alterations and oblitera- tions, in his own duplicate of his first will, he appeared only to defign a new will, which as he never perfected, the first ought to stand; and the tefator not calling for the onerous before his death, all in good health, and the presumption of his intent not absolutely to destroy his first will, till he had perfected another, which he never did. Vid. Atb. tit. Devise, (R. 2.) Ca. 17. p. 140. Hyde v. Marjan.

"J. S. devised all his real and personal estate to trustees A & B. and C. their heirs and assigns, and the administration in trust to pay 151. of Annu. to the plaintiffs (his two fiflers) for their lives, and after several legacies, the for- plus in trust for the difthening minions at Reading, &c. and gave 300l. to each trustees, and 201. per Annu. to each, while they took care in executing the trust. Afterward the executors of full and final account to the will, the tefator conveyed all his real estate unto and to the use of the said A. B. and C. and their heirs, with a proviso to be void on payment of 101. And by another deed of the same date, the tefator gave all his personal estate to the said A. B. and C. proviso to be also void on payment.
payment of 10s. But J. S. kept both the deeds in his own custody, and soon after died; And the aid A. B. and C. obtained administration of the estates as trustees. The trustees for some years paid the 15l. per Annu. a-piece to each of the tennonor's filters; but afterward refused to continue the payment thereof, and also refused to pay any of the differing minifters; but kept the rents, &c. to their own use. The two filters (the heirs at law) and the other creditors are at law, claiming to receive the rents and incumbrances, infifting that the deed of conveyance of the real estate, and the deed of gift of the perfonal estate had revoked the will, and that there was a refting trust for them, as heirs at law; or at least that they (the filters) were intitled to their 15l. per Annu. annuities. Defen- dant A. B. and C. have refused to pay any of their annuities by bringing their bill, there being a clause in the will, that if they (the filters) disputed the will, then they should forfeit their annuities. Lord Chandler Teflat decreed, that the annuities should be paid to the two filters, with the arrears and growing payments thereof; but the surplus was agreed to go to the differing minifters. 5 Bac. Ab. 541. MS. Rep. Mich. 1734. Lacy & Us et al. v. Spillett et al.

Sir John Wobrych by will, in Augufl 1722, devised his estate to trustees for the term of 200 years, for payment of all his debts. In December following he devised the same to other trustees for 300 years, in trust to pay some particular debts and to make a good and sufficient settlement of his will, and to have and enjoy all incumbrances that affected the estate. In June 1723 he died; and the question was, If the deed in December was a total revolution of the 200 years term? And at the Rolls both terms being held to be confentient, the plaintiff then brought a bill of review; and Teflat Lord Chan- dler was of opinion, that the deed in December was intended only as a collateral security, for payment of the debts therein mentioned, and such others as were a charge on the estate; and that Sir John did not depart from his former intentions of paying all his debts, but only to give preference to those comprised in the 300 years term, who by having a deed of settlement were in a higher rank than those comprised in the 200 years term; therefore he declared, that so much of the 200 years term should be void as would satisfy the purposes of the deed; and afterward the 200 years term should commence. 5 Bac. Ab. 541. MS. Rep. Mich. 9 Geo. 2. Full v. Atten. &c.

A will setting aside lands for a purpose, and giving the residue to the heir, is not a will setting aside for fraud, J. S. Lord Commin- on took a difference between a will and a deed gained upon a weak man, and upon a misrepresentatiou or fraud; for if a will be gained from such false misrepresentation, this is not a sufficient reason to fet it aside in equity; as was determined in the Duke of Newgulf's will, between Lord Thomas and Lord Clavre, and in the cafe of Beduil and Co. as adjudged. A will setting aside for fraud is unsettable by any cause, until it be carbonized by new deed, therefore it is to be gained from such a person, and without any valuable consideration, the same ought to be set aside in equity. 2 P. Will. Rep. 270. James v. Greene.


A will likewise concerning land may be good at law, as being well executed, and yet be set aside in equity for fraud: As where A. by will had devised his lands to M. his mother in fee. A bill was brought to be relieved against a will obtained by fraud and imposition, upon this case. The plaintiff's son had made a will in January 1716, and there- by devised all his real and personal estate to the plaintiff's father, but falling ill soon after, at a great distance from his father, of a consumption, of which he died, his father not having perused the will, before a short time before his death, whereby he devised all his real and personal estate to the defendant (being a kinsman) upon trufr to pay his debts and legacies; and pays nothing of the refeftum; but there was a general clause of revoking all former wills, &c. There were several witnesses to tell, both before and contrary to each other, a suggestion to induce the tennonor to make this new will, sufficient to fatisfy the court that it was unfairly obtained, but the will was regularly signed, sealed, and published, according to the statute of 29 Car. 2. and fo a good will at law. Lord Chan. Cowper, having taken time to consider of it, decreed that it was good for the perfonal estates, having just allouances, &c. and to convey the real estate to the plaintiff, subject to the payment of tennonor's debts, as a trufr to the plaintiff. Fin. Ab. tit. Devifes, (Z. 2.) Ca. 11. p. 167. Brandon v. Keridge, &c.

A bill was likewise brought to fet aside a will of a perfonal estate, and to day the probate, upon a fuggenion of its being obtained by fraud; and the defendant demur- red to the jurifdiction of Chanccry; whereupon an in- junction was moved for, infifting that the defenror con- fided the fraud, and that fraud was cognizable in equity as well as in the Spiritual court; but the injunction was denied. 2 P. Will. Rep. 282. John v. Stephen.

Where a bill is brought to prove a will of lands, the fanity of the tennonor must be proved; but it is otherwise in cafe of a deed of trufr to fall for payment of debts. 2 P. Will. Rep. 93. Harris v. Ingledew.

N. B. A will having relation only to the tennonor's death, and not to the making, for till his death he is master of his own will, and therefore the will of a papift in Ireland, was held to be avoided by a fubfquent statute made in that kingdom, which enacted, that the lands of papifts there shall not be devisable, but defend in gavel- kind. Fin. Ab. tit. Devifes, (H. 6.) Ca. 7. p. 275. Bark v. Morgan.

It being proved, that wills (of perfonal estates only) though gained by fraud, if proved in the Spiritual court, are not to be controverted in equity. Thus where A. made his will, and thereby gave the plaintiff the greatest part of his perfonal estate, to the value of 5000l. as was proved in the cafe, but one B. his maid servant had in his ficknefs, prevailed on him (as an advantage to make her content) that she might have the derryry had a week before his death, when he lay in his fick bed, at five of the clock at night, though it was really proved by two minifters, that the will was, a year before, actually married to the defen- dant M. and was then his wife, and that M. procured the licence for the marriage of A. to B. and will be gained for the bill. The court held that the surmiffion appeared there was as grofs practice as could be, in gaining the will, the tennonor being non compus, both at the time of making this will, and also at the time of his fuppofed marriage; and that B. suppreffed the first will: Yet that will be set up, being proved in the prceorative court, and the matter in question being purely relating to the perfonal estate, the Lord Chancellor was of opinion, that whilst that probate flood, this matter was not examinable in Chanccry; and though the fraud was fully proved, and was opened to him, he would not hear any proofs read, but dismissed the bill. 2 Vern. 8. and 9. Archer v. Moft.

So it is proved that A. had a will concerning a perfonal estate, wherein one of the legacies was forged; it was decreed, that the executor had no remedy in equity; but ought to have proved the will, with a fpecial refcrvation as to that legacy. 1 P. Williams, 388. Plume v. Beale.

But though wills (of perfonal estates only) gained by fraud, if proved in the Spiritual court, are not to be controverted in equity, yet if the party claiming under such will comes for any aid in equity he shall not have it. 2 Vern. 76. Nelfon v. Oldfield.

It has been determined likewise, that the courts of equity can hold plea concerning a legacy, and likewise concerning the devise of the refeftum, which is but a lega- cy: And they may in notorious cafes decrees a legatee, who has obtained a legacy by fraud, to be a trufer for another: As if the drawer of the will should inherit his own
The will of H. Lord C. whereby his real estates were limited in tail male to several of his next relations (successively) in degree of connubialty, in order to obviate any objections therein concerning the said real estate, and to prevent the said male heirs of the same, issuing and passing their property and estates into the hands of persons who shall alienate the said male heirs of the same, and thereby and hereafter, by any writing or writing attested by two or more credible witnesses, think fit to give or appoint. I devise, &c. (a devise of 1000l. a-piece to the said Earl of R. and R. T. two of the executors): And my will and devise is, that my said executors be, and shall stand intuited as to the sum of 500l. of, &c. and the interest thereof, after the rate of 5l. per Cent. per Ann. from the time of my decease, for the separate use and benefit of my niece the Lady E. B. so as the same both principal and interest may be at her disposal (notwithstanding her coverture) and not in the power or disposal of any husband the hath or may have, and so as by any writing or receipt under her hand, attested by two or more credible witnesses, she may at her discreation and dispose of the intertest and proceed of the said 500l. and of the principal likewise; and so as my said trustees shall and may be, from time to time, by such writing or receipt, fully discharged and in solace (several other such legacies to nieces in the same words); I devise to my nephew the Duke of L. and to my other nephew the Duke of W. the sum of 5000l. of, &c. to be paid to him in fix calendar months next after my decease; and my further will and devise is, that my said executors do and shall stand intuited as to the further sum of 5000l. of like lawful money, and the intertest thereof, after the rate of 4l. per Cent. per Ann. from the time of my decease, for the separate use and benefit of the said C. D. Duchesses of G. so as the same, both principal and interest, may be at her disposal (notwithstanding her coverture) &c. (verbatim as the 5000l. to the nieces before); I direct and devise my acting executor or executors, within three calendar months next after my death, to cause to be paid to such of the poor of the several parishes after mentioned, as will stand in need of the same, the sum of 0l. 6d. and all other sums of money following: (that is to say) of St. M. in the fields 100l. of St. J. Wilmisler 100l. of L. 30l. of G. in T. 20l. of A. in Wilts 50l. and of M. in Oxfordshire 50l. I give to my servants after named, (that is to say) to T. D. to M. E. 100l. to T. F. 100l. to D. G. 100l. to T. J. 50l. to Mrs. J. 50l. and to all such others as shall be my domfick servants at my said house or in near St. J. P. within the liberty of Wilmisler at the time of my decease, I give to each of them one year's wages, and likewise one year's board wages, if any allowed them, over and above the wages that shall be due to them at my death; and to each of my domfick servants in any of my manifon-houses, that have been in my service for the space of a year before the date of this will, and shall continue therein, Likewise one year's board wages, if any allowed them, over and above the wages that shall be due to them at my death; which legacies to all my said domfick servants I would have paid within three calendar months next after my death; and if any of my said servants do not continue with me, and shall not use and become my servants, I give to each of them all my diamond and ruby rings; all the rest and residue of my personal estates whatever in G. B. or in J. not otherwise by me disposed of, I devise to my said nephew the Earl of B. to his own use; and if he shall happen to die before me, then I devise the said rest and residue of my said personal estates to my said nephew the Duke of Q. to his own use; and I do hereby authorize my said executors and trustees, or any two of them, or such of them as will act, or the survivors or survivor of them, from time to time, to sell and dispose of, all or any part or parts of my personal estate; and the monies arising from the same shall be paid over, from time to time to such persons as may, by my said executors and trustees, or any of them as will act, or the survivors or survivor of them, shall judge best; and to the intent that my said executors or trustees, or the survivors or survivor of them, may not be discouraged from undertaking the trust, I will that they, or any two or one of them, or the survivors or survivor of them, shall at any time, from time to time, appoint such agents or attorneys to them with such faculties as they shall think fittting; and that none of my said trustees shall be answerable for the receipts and attendings of the other of them; and that none of them shall be answerable for the mischariges of any person or persons used or employed by them, or any of them, in the execution of the trust, or in the performance of the aforementioned, or for any person or persons, with whom there shall be any monies lodged or left by reason of the aforesaid trusts, or any of them; and I direct that my said executors and trustees shall be, from time to time, allowed all their expenses, costs and charges whatsoever. In witness whereof I have this day unto a
will and testament, contained in five prelfs or skins of
parchment fixed together at the top, and sealed with my
own hand, with the top of the last leaf thereof, or fkin, have
fet my hand and feal, and to every other part of the
fkin thereof have fet my hand, declaring this to be my
laff will and testament, the day and year first written
above.

Signed, sealed, publifhed and declared by the above-named Tho. H. Lord C. as for his laff will and
testament, in the prefcence of us, who at his request and in his prefence have sub-
scribed our names as witneffes therunto, as we have likewise done the fame to a
duplicate of the above-written will execute
A widow's will, whereby the devifes to her one manor, lands, &c. and cophold and leafhold eftates, in
trufi to pay 2000l. to her married daughter, and under feveral other very feyslru and limits; drawn
by an eminent counfell. From 3 Will. Coun. 397.

Impeifions. I give and bequeath all my manors, lands, tenements and hefitidements whatsoever, both
leafhold and inheritance, unto my loving son S. H. his heirs, ex-
cutors and administrators, according to my ferveral and
refpective eftates and interefs therein, (excepting my
maintained of land, and all my lands, tenements and he-
reditements wherewith I live in the world, and the
devife to the said S. H. is upon these truits following, viz. That out of the rents, issues and profits of the said
premifles devifed unto him, or by fale thereof, he the said
S. H. his heirs, executors or administrators, fhall and do,
and out of the rents, issues and profits of the said
premifles fo devifed unto him, or by fale thereof, pay the
full fum of 2000l. of, or unto my fon-in-law W. D. Efj; at the end of fix months after he the said
W. D. fhall be to me dyed into hands, and if the said W. D. fhall be within the fpace of fix months after his age of 21
years fettle upon his wife my daughter E. fhall a jouinure
de 300l. per Ann., as fhall be limited fo as the profits thereof
shall be at her own feperatof dispoifal and ordering, during
the coverture, without her husband's control) and in fix
years after his deceafe, I will and defire that the fum of 2000l., 2000l., and the remaining fum of 2000l.,
and all interefl and the fame to be two
two or more credible witnesses, shall (notwithstanding the coverture) limit or appoint; and for want of such limitation or appointment, then in trust for such child or children of the said deceased and the children of his issue thereof, and their heirs and assigns: Provided it is that if there be more than one child, and if the said W. D. shall make a settlement as afoforeaid, then the eldest son shall have no part or share of the said W. estate; and for want of such limitation or appointment by the said E. (if the said leave no child or children at her death) then it shall be to my own and my heirs or assigns, and whereas part of my estate in A. afoeforeaid is copyhold, now I do hereby declare that the gift and devise hereby made by me unto my said son S. H. his heirs, executors and administrators, of all my mansions, meafues, lands, tenements and hereditaments whatsoever, both leasehold and inheritance (excepting as is before excepted) to his own and his heirs, and whereby that, if my said son S. H. or his heirs, shall not, within the space of 12 months next after my decease, surrender in due form of law all the copyhold estate in A. afoforeaid, of which I shall die seised, into the hands of the lord or lords of the manor or manors of whom the same copyhold estate is held, unto the use of the said R. H. and R. G. and their heirs, to be subject to the trusts herein before declared of and concerning my said W. estate; or if my said son S. H. his heirs or assigns, shall make default in payment of the above mentioned sum of 200 l. and interest according to the trusts before mentioned; then and in either of the said cases, the said gift and devise hereby made by me unto my said son S. H. his heirs and assigns, shall be void; and then I give and devise the same premises so devted unto him as afooreaid, unto the said R. W. and R. G. their heirs, executors and administrators, according to my respective estates and interests therein, upon the same trusts as herein before declared of and concerning the same. Item, I will and desire, that the executor hereafter named shall permit and suffer my said daughter E. D. to have the possession only, and not the property of my best bed, and the furniture in my best room, and of all my linen, and of my diamond ring during her coverture; and if the said E. shall outlive her said husband W. D. then I give and bequeath all the same goods and things unto her, but if the husband to die before her, then I give and bequeath the same goods and things unto and amongst such child and children as the said E. shall leave behind her at her death; and if the children leave no child at her death; then I give and bequeath the same goods and things unto the executor hereafter named; and as to all the reft and residue of my personal estate (excepting what shall have been before excepted) I give the same unto my said loving son S. H. subject to the payment of my debts and legacies, and to the payment of the before mentioned sum of 200 l. and interest; and I do hereby constitute and appoint my said loving son S. H. sole executor of this my last will, &c.

A devise to erect a charity school. From 3 Wood's Conv. 829.

Also I give and devise all that, &c. to (the trustees) to have and to hold all the last mentioned—to the said (trustees) and to their heirs and assigns, forever. Next, I will and desire to be erected a charity school, subject to the several provisos, directions and appointments herein after mentioned, limited, expressed and declared of and concerning the same premises; and I do hereby subject and make chargeable all and singular the same hereditaments and premises, to and for the several uses, intents and purposes herein after mentioned, to wit, the education and maintenance of the poor and indigent children of this parish, and their assigns in the several ways hereinafter expressed, to wit, for the benefit of the poor and indigent children of this parish, for the support of the schoolmasters and teachers assigned thereunto, and for paying the charges and deductions whatsoever, to the said schoolmasters and their assigns therein after named for the time being for ever, by two equal half-yearly payments, to wit, at Michaelmas and Christmas yearly; the first of which payments to be made on such the said two feasts as shall next happen after my death, for the teaching and instructing 20 of the poorest girls of W. at refaid, for the time being, as follows: viz. 10 of the said 20 shall be instructed in some proper convenient place there, as my said charity trustees, or the major part of them shall appoint: And my further will is, and I do hereby appoint and direct, that if my now servant the said W. R. be living at the time of my death, then the said W. R. or such other person as shall be appointed for the same purpose hereby directed shall, at my death, hereby appoint, from thenceforth to be the school-mistresses to instruct the said girls during her life; and after her death, if the said W. D. her fitter be then living, then I hereby appoint her the said W. D. or such person as the shall appoint, from thenceforth to be the succeeding school-mistresses for the said girls, during her life; and immediately after the death of the survivors of them the said M. R. R. D. and M. B. in the cafe the said E. B. fitter of the said M. B. be then living, then I hereby appoint the said E. B. or such person as the shall appoint, from thenceforth to be the succeeding school-mistresses for the said girls, during her life; and I do hereby further direct, that from and immediately after the decease of the survivors of them the said M. R. R. D. and M. B. that every succeeding school-mistresses for the said school, shall be nominated and appointed by such person as the shall appoint, or person who should be nominated and appointed for the purpose of this my will be intituled to and have the property of my said now dwelling-house in W. afooreaid; and my desire is, (if by him, her or them so thought fit) that the wife of the then succeeding vicar there for the time being, shall be the future school-mistress in cafe the will of me be accepted of the same; and my will is, that the same person, and every succeeding vicar of W. shall on the first Sunday in every month catechize the said children with others, in W. church afooreaid; and that on refual or neglect thereof, every wife of such vicar shall lose the beneft of being school-mistresses to the said school: And my further will is, that the said 20 poor girls, with others, shall be taught to sing psalms by some proper person qualified for that purpose, who shall be always appointed by the vicar there for the time being; and that they the said charity trustees, or the major part of them, shall, out of the rents of the same premises pay to such person the annual sum of 20 l. for his doing; and also the yearly sums of 20 l. for the upwards of the rent of the same premises; the same two yearly sums of 20 l. and 20 l. to be paid at the said two feasts by two equal half-yearly payments, clear of all deductions, and in such manner as afooreaid: And my further will is, that every school-mistresses of the said school, together with all the said girls, shall constantly go to the said church of W. twice on every Sunday, and there attend divine service both morning and evening: and also on every festival and other days usually kept at the said church, as likewise on every Thursday lecture preached at W. church; (ticketless and all other inevitable accidents only and always excepted) and further, that the said 20 poor girls shall have equal and equal portions of all which shall be chosen by the said trustees, or the major part of them, immediately after my death, and be then fixed in the said school; and if that or any at any time after, there shall be wanting in W. afooreaid, the full number of the said 20 girls so intituled to have the benefit of this my charity (intending differenls children as well as church people) shall have equal portions of all which shall be then fixed in the said school, and as often as the same shall happen, it will be, that they the said trustees, or the major part of them, shall chufe and make up such number of girls out of some other parishes or parishes next adjoining to W. afooreaid; and further, that no such girls shall be admitted to the said school for the time being, as have been married or have issue born of their bodies, and shall continue after the age of 14 years; and I do hereby direct that the said charity trustees, or the major part of them, shall four times in every year, viz. on Christmas-day, Lady-day, Michaelmas-day, and Christmas-day, or any other
A devise of tithes to a truste, for the augmentation of the living of the Vicar or Curate of S.

Item, I give, devise and bequeath unto my loving friend M. A. of &c. Eqy, and to his heirs and assigns for ever, all that my part, share and portion of tithes, of what nature, kind or quality soever, issuing and payable to me out of three several farms, situate and being in the parish of &c. And all other my tithes in the hundred of D. aforefaid; upon this special trust and confidence nevertheless, that he the said M. A. and his heirs, shall and do, from time to time, and at all times hereafter, permit and suffer the vicar or curate of the parish of S. for the time being, and his successors for ever, vicars or curates of the said parish of S. to receive and take the said tithes, part, share or portion of tithes to his and their own proper use, benefit and to the end and purpose of the better livelihood, provision and maintenance of the said vicar or curate, and his successors, vicars and curates of the said parish of S. for ever.

A devise or gift to W. College Oxon, for the education of one poor scholar for ever.

Item, I give, devise and bequeath unto the said M. A. and to his heirs and assigns for ever, all that my meffuage or tenement, farm, lands and hereditaments, situate, &c. upon this special trust and confidence nevertheless, that he the said M. A. and his heirs, shall from time to time, and at all times hereafter, permit and suffer the warden and fellows of W. college in the university of Oxford for the time being, and their successors for ever, to receive and take the rents, issues and profits thereof, which I direct and appoint shall, from time to time, and at all times hereafter, be paid and allowed for and towards the maintenance and education of a poor scholar of the said college, for and during, and until such scholar shall be bachelor of arts, or elected fellow of the house; and then to another poor scholar to be elected and chosen, which scholar shall from time to time be nominated, elected and chosen by the warden and five further fellows of the said college.
For every window, or light, in every dwelling-house as aforesaid, which shall contain ten windows or lights, and no more, the yearly sum of 10d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain eleven windows, or lights, and no more, the yearly sum of 11s. 2d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twelve windows, or lights, and no more, the yearly sum of 11s. 4d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirteen windows, or lights, and no more, the yearly sum of 11s. 6d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain fourteen, fifteen, sixteen, seventeen, eighteen, or nineteen windows, or lights, and no more, the yearly sum of 11s. 8d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty windows, or lights, the yearly sum of 12s. 2d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-three windows, or lights, and no more, the yearly sum of 12s. 6d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-four windows, or lights, and no more, the yearly sum of 12s. 10d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-five windows, or lights, and no more, the yearly sum of 12s. 12d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-six windows, or lights, and no more, the yearly sum of 12s. 14d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-seven windows, or lights, and no more, the yearly sum of 12s. 16d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-eight windows, or lights, and no more, the yearly sum of 12s. 18d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain twenty-nine windows, or lights, and no more, the yearly sum of 12s. 20d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty windows, or lights, and no more, the yearly sum of 12s. 22d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-one windows, or lights, and no more, the yearly sum of 12s. 24d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-two windows, or lights, and no more, the yearly sum of 12s. 26d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-three windows, or lights, and no more, the yearly sum of 12s. 28d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-four windows, or lights, and no more, the yearly sum of 12s. 30d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-five windows, or lights, and no more, the yearly sum of 12s. 32d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-six windows, or lights, and no more, the yearly sum of 12s. 34d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-seven windows, or lights, and no more, the yearly sum of 12s. 36d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-eight windows, or lights, and no more, the yearly sum of 12s. 38d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain thirty-nine windows, or lights, and no more, the yearly sum of 12s. 40d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty windows, or lights, and no more, the yearly sum of 13s. 3d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-one windows, or lights, and no more, the yearly sum of 13s. 5d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-two windows, or lights, and no more, the yearly sum of 13s. 7d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-three windows, or lights, and no more, the yearly sum of 13s. 9d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-four windows, or lights, and no more, the yearly sum of 13s. 11d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-five windows, or lights, and no more, the yearly sum of 13s. 13d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-six windows, or lights, and no more, the yearly sum of 13s. 15d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-seven windows, or lights, and no more, the yearly sum of 13s. 17d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-eight windows, or lights, and no more, the yearly sum of 13s. 19d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain forty-nine windows, or lights, and no more, the yearly sum of 13s. 21d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain fifty windows, or lights, and no more, the yearly sum of 13s. 23d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain fifty-one windows, or lights, and no more, the yearly sum of 13s. 25d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain fifty-two windows, or lights, and no more, the yearly sum of 13s. 27d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain fifty-three windows, or lights, and no more, the yearly sum of 13s. 29d. for each window, or light, in such house.

For every window, or light, in every dwelling-house as aforesaid, which shall contain fifty-four windows, or lights, and no more, the yearly sum of 13s. 31d. for each window, or light, in such house.
Made perpetual by 9 Anc. c. 21. and 3 Geo. I. c. 9, and part of the South Sea fund.

Retailers to sell wine only in newer Measures, 4 W. & M. c. 34, s. 19. 2 W. & M. & M. &. 6. c. 14. f. 3.

Penalty of adulterating wine. 1 W. & M. & M. c. 34, s. 15.

Wines of Hungary may be imported from Hamburg as Rhenish wine. 1 Ann. f. 1, c. 1, s. 12. f. 112.

Contents of the gallon of wine. 5 Ann. c. 37. s. 17. Importation of French wine permitted. 9 Ann. c. 8.

The allowance on damaged wine regulated. 6 Geo. I. c. 11. s. 5.

The times for exporting wines enlarged. 6 Geo. I. c. 12. s. 5.

Not to diminish the duties of prisage and butchery, 6 Geo. I. c. 1. 1.

No allowance for freight of wine, unless shipped in casks from its place of growth, 8 Geo. I. c. 18. f. 19.

Allowance for wine franded, 8 Geo. I. c. 18. f. 20.

27 Geo. II. c. 18. f. 5.

Damaged wines may be sold for distilling, or making vinegar, 12 Geo. II. c. 1. c. 18. f. 20.

The duties on wine less altered, 1 Geo. II. c. 17.

Allowance not to be imported in bottle or small casks, 1 Geo. II. c. 17.

Saving of the privileges of the universities, 10 Geo. II. c. 1. f. 2. 30 G. c. 19. f. 9.

Wine not to be sold without licence at the universities, 17 Geo. II. c. 40. s. 1.

An additional duty of tonnage on wine, 18 Geo. II. c. 9.

Wine imported into the outports not to be brought within 20 miles of the Royal Exchange, without paying the London duty, 26 Geo. II. c. 12.

The commission for granting licences to retail wine by virtue of 12 Geo. II. c. 2, to casks, and the duties, together with new duties, to be levied by the commissioners of the thamp office, 27 Geo. II. c. 10.

The act not to be prejudicial to the wine company, 30 Geo. II. c. 19.

The penalty of retailing abated, 32 Geo. II. c. 19.

No discount on wine licences, 32 Geo. II. c. 19. f. 12.

An additional duty of 8l. per ton on all French wines imported, 3 Geo. III. c. 12.

And on all other wines imported, 4l. per ton. Ibid.

Witting-in-a-penny, is that season comprehended between the 11th day of November, and the 23rd April, which time by the act made 20 Car. 2, c. 3, is excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.

Wit, Penalty on importing foreign card wire or iron wire for making of wool cards, 13 & 14 Car. 2, c. 3, excepted from the liberty of communing in the Forest of Dean. Comitatus, 1737.
WON

WOO

Wife of a party admitted to prove her husband's death. Stran. 566. 
Wife witnesses against husband, on indictment for assault upon her. Stran. 633. 
The wife of one defendant cannot be a witness for the other on an indictment against two. Stran. 1095. 
Creditor of bankrupt no witness to prove him a gamester. Stran. 507. 
A creditor allowed to prove debtor not intitled to his discharge on the Mint act. Stran. 650. 
Sheriffs' bailiff no witnesses to prove attempt to arrest. Stran. 650. 
 LORDS of commonalty not disallowed as witnesses to eftablish a right in a lord of another manor. Stran. 658. 
An informer intitled to part of the penalty is no witnesses. Stran. 316. 
In a trial for beating his servant, the servant not admitted a witnesses. Stran. 414. 
A servant witness in an action by master for beating him. Stran. 595, 1054. 
An apprentice witness for master in action per quod tertium amici. Stran. 544. 
In an action against the master for the negligence of his servant, the servant having a release from the defendant is competent. Stran. 1083. 
A tailor who claims wages, no witnesses concerning the los of the ship. Stran. 414. 
Original deponent taken as a servant, to prove the pay- ment another. Stran. 871. 
Goldsmith's servant who overpays money is a witness in action for it again. Stran. 647. 
He that apprehends himself interested, tho' not strictly so, is no witnesses. Stran. 129. 
The party who excepts to a witness may call him afterwards. Stran. 480. 
A witnesses admitted where remotely intrested. Stran. 575. 
A. Rops bonds at the South Sea house, and gives bond to indemnify he is no witnesses to prove the property, in an action against the company's servant. Stran. 575. 
Where there are two qualifications to an election of an office, he who has but one only may be a witnesses. Stran. 583. 
Where one defendant is fined, he is a witnesses for another. Stran. 1032. 
The tenant in possession cannot be a witnesses in ejectment. Stran. 632. 
A corporator who has acted under the right claimed, may be a witnesses to prove the usage. Stran. 1069. See Evidence. 
Wold. (Sax.) Signifies a down, or open champaign ground, void of wood; as Stew in the Wolds, Coethoven in Gloucestershire, &c. 
Wolfshead, or Wolfshead, (Sax.) Caput Lupinum, was the condition of such as were outlawed in the time of the Saxons; who if they could not be taken alive to be brought to justice, might be slain, and their heads brought to the King; for they were no more accounted of than a wolf's head, a beast so hurtful to man. Leg. Edw. Conf. Bract. lib. 3. 
Women, Laws relating to. A woman is capable of being a fecton, and of voting at an election for one. 2 Strange 1114. A ballard is within the statute of P. & M. against taking away young women. Ibid. 1161. 
The chancellor to vacate obligations, statutes or recognizances obtained from women by fraud and imposition. 31 H. 6. c. 9. 
Shall have lively of their lands at fourteen. 39 H. 6. c. 8. 
The penalties of taking away women children from their guardians, or marrying them. 4 & 5 P. & M. c. 8. 
The penalty of a woman child confenting to a ravishment. 4 & 5 P. & M. c. 8. 6. For other matters, see Baron and Feuds, Bigamy, Marriage, Rape, Felony. 
Wing, a Saxon word for field. Sylm. 

ELiEoo. Stat. 35 Hen. 8. c. 17. see. 1. enables, that there shall be 12 flandails in an acre of wood under 24 years felling. 
Sed. 8. Underwoods felled at 14 years growth, or under, shall during 4 years next after the 20th of April after their felling, be preferred from deftruction of cattle, on pain that the owner thereof shall forfeit for every rood of land unfenced, for every month 31. 4d. and under- woods above 14 years growth, and under 24, being so felled, shall during 6 years next after the 20th of April after such felling be preferred as standford, upon the like pain. 
Sed. 9. None shall convert into pasture or tillage any such woodland or coppice, containing two acres or above, which now be wood or underwood, and put or suffer to grow any tree of wood or underwood, and being two furlongs distant from the house of the owner thereof, or from the house whereunto such wood doth appertain, on pain to forfeit 40s. for every acre so converted. 
Sed. 10. Half of the forfeitures to be for the king, the other half to him that will for the same by bill, plaint, action of debt or information, in any of the King's courts of record, in which no prosecution, wager of war, or effign shall be allowed. 
Stat. 13 Eliz. e. 25. adds two years more than the four years limited by 35 H. 8. c. 17. for preferring the setting from deftruction of cattle. 
In cases tryed upon the Stat. 35 H. 8. for not fencing of coppices; First exception was, that it is not alleged that the defendant had lawful interest in them, as the words of the statute are. 2dly. Because it is shown that certain coppices were cut, but flown what coppices they were. 3dly. Because it is recited that he shall forfeit for every rood 3 1/4 d. where it should be for every rood of land. But it were said the parliament roll is rood of land; and so was the last impression; but for the two first exceptions the party was discharg'd. Cra. Eliz. 117. pl. 21. Melb. 30 & 31 Eliz. in B. R. Edwards v. Wyld. 
Information upon this statute for grumbling up wood in Buckinghamhur, Contra farman Statutis; after a verdict for the plaintiff it was moved in arrest of judgment, 1st. That it is not mentioned in the information, that the wood was growing at the time of the act made; for the words of the statute ran, and it ought to be fet forth, as upon the 5 Eliz. concerning apprentices which has been already decided. To which if a servant, the point that the proviso in the statute is general, and not tied up to wood growing at the time of the act; and Contra farman Statutis supplies it, if the law were so, in Dyer 312. The court conceived the exception fatal, and that it could not be supplied by the words Contra farman Statutis, for they do but make the conclusion upon the statute before fet forth, and are themselves no part of the case, but dischose the result of the premises, and will not of themselves make a case without sufficient pre- mises, which ought to fet forth the law, as it is upon the statute. Et adjourned. But afterwards judgment was strestred upon this exception. Hard. 105. pl. 1. Trin. 1655. Marvy v. Ulin. 
Exception to an information upon this statute was, because by the statute of 21 Jac. 1. the information ought to be brought and tried in the proper county. But it was answered that this is a mistake; for that law takes place only in such cases where justices of peace, or of alde, have power by law to hear and determine; but by this act of parliament, upon which the present information is grounded, they have no power at all; for the prosecution is tied up to courts of record, and thus that law has always been confirmed. Hard. 105. pl. 1. 1655. Marvy v. Ulin. 
On felling woods where others have common, one quarter to be included, 35 H. 8. c. 17. 7. 
After two years owners may cut colts and calves into inclosed woods, 35 H. 8. c. 17. 7. 2d. 
Penalties of exporting wood without licence, 1 & 2 P. & M. c. 5. 
Timber trees shall not be coaled for iron works, 1 El. c. 15. 
Oks.
Oaks to be felled in barking time, 5 El. c. 3.  
Woods to be inclosed two years latter, and further directions about putting in cattie, 13 El. c. 25. f. 18.  
Wood growing within 22 miles of London, &c. not to be carried for iron works, 23 El. c. 5. 27 El. c. 19.  
Penalties of stealing wood or defoying young trees, 15 Car. 2. c. 2.  

For the preservation of timber in the forest of Down, 20 Car. 2. c. 3.  
Penalties of malicious cutting down trees, 1 Gez. 1. c. 48. 6 Gez. 1. c. 16.  
Damage to be made good by parish, 1 Gez. 1. c. 48.  
Wood, underwood and coppices, how taxable, 30 G. 2. c. 20.  
Collector, &c. impowered to cut down and fell wood growing on woodland affoide, where no diffirets is to be had, 4 G. 3. c. 2. f. 35. See Timber, Trees.  
Woodmote, Some quantity of oats or other grain, paid by customary tenants to the lord, for liberty to pick up dead and broken wood. Cravell, edit. 1727.  
Woodmote (Woodmote) Seems to be the gathering or cutting of wood within the forest, or money paid for the same to the forestier; and the immunity from this by the King's grant is by Crampen called woodgeld. fol. 157. Co. on Litt. fol. 233, says, it signifies to be free from payment of money, for taking wood in any forest. Cravell, edit. 1727.  
Woodmen, Are those in the forest that have charge especially to look to the King's wood. Cramp. fur. fol. 146.  

Woodmote, Is the old name of that court of the forest, which is now, by the statute of Charte de Forest, called the Court of attachments, and by that statute is held every forty days, but was wont to be held at the will of the chief officers of the forest, without any certain time. See Monand's Forest Law, cap. 22. fol. 207.  
Wooducken-court, Is a court held twice in the year in the hearing of the King's justices for determining all matters of wood and agriment thereto, and perhaps was anciently the fame with woodmote-court. Cravell, edit. 1727.  
Woodward, (woodward) Is an officer of the forest, whose function you may understand by his oath fet down in Cramp. fur. fol. 201. Woodwards may not walk with bow and shafts, but with foreft bile. Monand, part 1. pag. 160.  
Woodstock, Wool and yarn may be sold in Woodstock on market and fair days, 18 Eliz. c. 21. See Market-rough.  

Wool, Maleoute of wool releas'd, 25 Ed. 1. c. 7.  
Nothing shall be taken in the name of maleoute of a quarter of wool, St. de tallon. non conced. 34 Ed. 1. f. 4. c. 3.  
Exportation of wool prohibited, 11 Ed. 3. c. 1. By Englishmen, felony, 27 Ed. 3. f. 2. c. 3. c. 7. c. 12. 31 Ed. 3. f. 1. c. 9. 38 Ed. 3. f. 4. c. 6.  
Cultron on wool limited, 14 Ed. 3. f. 5.  
The price of wool shall be, 18 Ed. 3. f. 2. c. 3.  
The feller not bound to warrant the packing, unless by deed, 28 Ed. 3. c. 13.  
The packing not to be warranted, 13 R. 2. f. 1. c. 9.  
Weight of wool, 13 Ed. 3. f. 1. c. 2.  
What refuse may be made of wool, 31 Ed. 3. f. 1. c. 9. 13 R. 2. f. 1. c. 9.  
Subsidy shall not be paid for the package, 34 Ed. 3. c. 19.  
Licence to denizens to export wool, 34 Ed. 3. c. 21.  
Nothing shall be demanded but the ancient cultron, and no subsidy shall be left on wool without affection of parliament, 36 Ed. 3. c. 5.  
The forfeiture of lands and goods on denizens exporting wool discharged, 46 Ed. 3.  
Regrating of wool prohibited, 14 R. 2. c. 4. 22 H. 8. c. 1. 37 H. 8. c. 15. 5 & 6 Ed. b. c. 7.  
None shall buy woolen yarn but to make cloth, 3 H. 6. c. 5. c. 1.  

Vol. II. N° 140.
Wool laid near the shrde in Ireland, forfeited, 5 G. 1.

Length of warping bars and trums, 13 G. 1. c. 23.

Tenters to be measured and inspected, 13 G. 1. c. 23.

Sixteen ounces to the pound of wool, 13 G. 1. c. 23.

Ships to cruise round Great Britain and Ireland, to prevent the unlawful exportation of woollen manufactures, 5 G. 2. c. 21.

The duties on Irish woollen yarn imported, taken off, 12 G. 2. c. 21.

Wool to be carried only in British or Irish ships, 12 G. 2. c. 21. f. 6.

Ships how to be qualified for loading wool, 12 G. 2. c. 21. f. 7.

Exporting wool, &c., contrary to the regulations, forfeiture of the ship, 12 G. 2. c. 21.

Wool from Ireland may be imported into Lancashire, 25 G. 2. c. 14.

Wool from Ireland may be imported into Yarmouth, 27 G. 2. c. 16.

Wool, &c., may be imported from Ireland into Exeter, 26 G. 2. c. 8.

Permission to export wool, &c., from any part of Ireland to any part of England, 26 G. 2. c. 11.


Woollen-combers and Weavers, See Dyapery, Wool.

Woollen-dyers, mentioned in stat. 2 & 3 P. & M. cap. 13. Are such as buy wool abroad in the country of the sheep owners, and carry it on horseback to the clothiers, or to market-towns to sell again, Coxeil, ed. 1727.

Woolfriarden. See Wolfshead.

Wool-key. Its ground, wharf and key, in the parish of All-faiths, Barking, in London, vested in trustees for his Majesty, his heirs and successors, &c., 8 G. 1. c. 31.

Woollen Manufactures. Combination of weavers, wool-driers, &c., prohibited, 12 G. 1. c. 34. 29 G. 2. c. 33.

-Extended to combers of friezy wool, frame-work-knitters and flocking-makers, 12 G. 1. c. 34. f. 8. and to other manufactures, by 22 G. 2. c. 27. f. 2.

Regulations for the payment of wages, 13 G. 1. c. 25. f. 9. 29 G. 2. c. 33. 30 G. 2. c. 12.

Punishment of gatherers, 13 G. 1. c. 23. f. 8.

Having in cassey cloth wool drawn from the rack, or wool left to dry, first offence treble value, third trans- portation, 15 G. 2. c. 27.

Wool-dyke, mentioned in stat. 31 H. 3. Stat. 5. is, That city or town where wool was sold. See Staple. See Woolchens. See Churches.

Wool-winders. Are such as wind up every fleece of wool, that is to be pack'd and fold by weight, into a kind of bundle, after it is cleanned in such manner as it ought to be by the flute, and to avoid such deceit as the owners would want to use by thrashing in lacks of refuse straw, and other doths, to gain weight. They are sworn to perform that office truly between the owner and the merchant. See the stat. 8 H. 6. c. 22. 23 Hen. 8. c. 17. and 18 Eliz. c. 25.

Worister, The workhouse there established, 3 G. 2. c. 23. 4 G. 2. c. 23. Corporation established for relief of poor, 2 Ann. c. 8. Hop-market for the benefit of the poor, 4 G. 2. c. 25.

Worists, Single worists may be exported to any place, without paying the duties of Calais, 17 R. 2. c. 2.

Worists, Single worists may be exported to any place, without paying the duties of Calais, 17 R. 2. c. 2.

Powers given to the wardens of the worsted weavers in Norwich and Norfolk, 20 B. 5. c. 10. 23 H. 6. c. 3.

7 Ed. 4. c. 11. 11 H. 7. c. 11. 19 H. 7. c. 17. 15 & 16 H. 8. c. 3. 21 H. 8. c. 21. 25 H. 8. c. 16. 1 Ed. 6. c. 6.

Makers may take apprentices, 15 & 15 H. 8. c. 3.

For avoiding deceits in worists, 5 H. 8. c. 4.

Exportation of Norfolk wool and yarn fit for worsteds, prohibited, 6 H. 8. c. 12. 23 H. 8. c. 16.

They who dry worsted shall not Example them, 25 H. 8. c. 16.

For the making of stuffs and fullaunts of Naples, in Norwich, 18 2 P. & M. c. 14.

Muff ferve apprenticeship, and how many apprentices may be taken, 1 & 2 P. & M. c. 14. 5. 13 & 14 Car. 2. c. 5. 15. 18.

For regulating the making of stuffs in Norwich and Norfolk, 13 & 14 Car. 2. & 5. See Dyapery, Wool, Matt.

Wools, which may be taken or interpreted by law in a general or common cause, ought not to receive a strained or unnatural construction. And ambiguous words are to be construed so as to make them stand with law and equity; and not to be wrested to do wrong. A Latin word in pleading, which signified divers things, was well used to express that thing intended to be expressed by it: Uncertain words in a declaration, are made good and certain by a plea in bar, where notice is taken of the meaning of them, and words which are in themselves uncertain, may be made certain by subsquent or following words. The different placing of the same words may caufe them to have a different fenfe and construction: A word which is written short or abbreviated, is not good without a dach to disphight it: And fcrific words are void and idle; though they shall not hurt where it is good without them. Nor shall words in deeds that are needless, impeach a clause certain and perfect without such words, 2 Litt. 711, 712, 713, 714. Hob. 313. See 16 Vin. Abr. p. 199.


Words of a justice not spoke to him, not indiscivable. Stran. 1157.

Words of a magistrate where actionable. Stran. 617.

He is a rogue of a justice of peace, actionable. Stran. 1658.

Thief of every thing actionable. Stran. 142.

You are a rogue, and compounded, &c., of a tradefman, actionable. Stran. 752.

You did flur up my fitter and murder her, actionable, Stran. 1130.

Of an attorney, he is a rogue, &c., he is no attorney, actionable. Stran. 1138.

Cheating rogue, not actionable, Stran. 696.

He has received forty days wages for work that might have been done in ten days, and is a rogue for his pains, of a carpenter, not actionable. Stran. 797.

You cheated f. S. and flood bawd to your daughter; &c., not actionable. Stran. 1169.

Nothing to do to pay A. had the pox. Stran. 1189.

Rogue not actionable. Stran. 304.

Where words are not actionable of themselves, in an action of confedential damages the plaintiff may give evidence of particular damages. Stran. 666.

Where words are of themselves actionable, small special damages will not carry full costs. Stran. 936.

What is spiritual defamation. Stran. 946.

Words tantamount to where are within the custom of London. Stran. 471, 545.

Strumpet tantamount to whore in London. Stran. 555.

The truth of words cannot be given in evidence on a guilty plea. Stran. 1200.

See Action, Biflers, Slanker, Slaubam Magna-

Worshouse. The most confiderable workhouse in the City of London, is that in Bishopgate street; wherein some hundreds of idle persons are constantly employed in bearing
hearing hemp, &c. and a great many poor children maintained and educated. Stat. 13 & 14 Car. 2. And in the city of Bristol a great workhouse is erected, for the better employing and maintaining the poor, governed by a corporation, &c. 7 & 8 IV. 3. So in the counties of Wiltshire, Gloucester and Canterbury, by the Statutes 3. 13 & 14 Car. 2. for parochial workhouses, see 30 Geo. 3. 167. 5 Rep. 107. b. S. P. in Sir H. Constable's case. And this statute being but declaratory of the Common law, these three instances are but put for examples; for besides these two kinds of beasts, all other beasts, fowis, b. rds, hawks, and other living things are understood, whereby the owner, fify, or property of the goods may be known to be forfeited, under the statute, as forbe, aggripa fuerat mercius, & aliis suis. 2. 2. Inf. 167. 168. Altho' this statute speaks only of a wreck, yet it extends to Jetjum, Jetjum, and Ligan. 2 Inf. 167. The case whereof originally wreck was given to the crown, was taken by a court of law of her. Common law; &f. That the property of all goods whatsoever must be in some person. 2dly, That such goods as no subject can claim any property in, do belong to the King by his prerogative, as treasure-trove, fry's, wreck, of the seas, and others; because of ancient time, when the art of navigation was not so perfected, nor trade of merchandize grown to such perfection as now it is, it was a matter of great difficulty to be proved in whom the property of goods wrecked at sea was. Others have yielded another reason, that the King, by old custom of the realm, as lord of the narrow sea, is bound to scour the sea of such goods, and petty robbers of the sea; and so it is read of this noble King Edgar, that he would twice in the year scour the sea of such pirates, &c. and because that could not be done without great charge, the law gave unto him fuch goods, as he be wrecked upon the sea, towards the charge. 2 Inf. 167. If a ship be ready to perish, and all the men therein, for safeguard of their lives, leave the ship; and after the forsaken ship perishes, if any of the men be saved, and come to land, the goods are not lost. 2 Inf. 167. If a ship on the sea is pursu'd with enemies, and the men for safeguard of their lives forsake the ship, and the enemy seizes it, and the ship is taken, and the property and tackle, and turn her into sea; by the weather she is cast on land, where her men arrived; it was resolved by all the judges of England, that the ship was no wreck, nor lost. 2 Inf. 167. cites 5 R. 2. Pijlah's case. But the goods shall be saved. Yet if the goods be lost, the thiefs may fell such goods within the zone left they should perish, and nothing be made of them; and therefore for necessity (which is excepted out of law) the sale in that case is good within the year. 2 Inf. 168. So that if any fays for tho' goods. Where goods are not lost, and the ship is not taken by the King, who was the owner ought to make proof of the property within the year; and if the ship be taking, and otherwise he shall not re-have them; per Nottingam. Br. Wreck. 2. cites 35 H. 6. 27. Yet if the owner dies within the year, his executors or administrators may make proof, for that this act is but a declaration of the Common law. 2 Inf. 168. Within a year and a day. This year and day shall be accounted from the seisure made as wreck, for that is the thing whereof the owner may take the belt notice. 2 Inf. 168. 5 Rep. 107. b. S. P. in Sir H. Constable's case; for tho' the property is in law vested in the lord before the seisure, yet all the goods are under the law, and if the person into his actual possessions it is not notorious who the person is that claims the wreck, not to whom the owner must resort to make his claim, and to hew his proofs. But if the King's goods be wrecked and cast upon ground where aSubject has wreck of the sea, who sells the goods, the Kings may make his proof at any time when he will, and it is not confined to a year and a day, as the subject is. 2 Inf. 168. S. P. for Nullum Tempus occurrit Regi. Br. Wreck. 2. cites 35 H. 6. 27. Now if the goods or merchandise be cast upon the land be not seised, as is aforesaid, but taken away by certain wrong-doers not known, the party may have a common law remedy. Oyer and Terminer, &c. such of them that did the treftups, and to bear and determine the same, and to make reftitution to the party, 2 Inf. 168. S. P. and a writ to the sheriff to return the trespasses and legal losses. F. N. B. 112. (C) 5 Rep. 107. b. 168. a. In Sir H. Constable's case. If the wreck belongs to the
Eadjudged

The party may have such a commission, for no proof is allowable by law but the verdict of 12 men; and if the wreck belong to another than the King, then if the owner do not ratify him who claims them as wreck by his mark or cекет, or the book of custome, or the testifimony of honest men, then the owner may have such commission, or he may bring his action at Common law, and prove it by verdict of a jury; and if the commission be awarded, or the action be commenced within the year and day, that the verdict be given in the next year, it is satisfaét.

And if not, they shall remain] That is, it shall not be tried in the admiralty court, but before the King's justices at the Common law, because the wreck is over call upon the land. 2 Inst. 158.

To another than to the king] Wreck may belong to the subdiet either by grant from the King, or preemption. 2 Inst. 158.

Of ancient time wreck of the sea and other casualties, as treasure-trove in the land, strayes and the like, were prima inventaria quasi totius papalis, sed postea ad Regnum transferunt, qui ne modo totius papalis, sed Republicae exitum causam et cum adfeftavit. But in the sea, the finder shall have it at this day. 2 Inst. 158.

And he that otherwise doth, &c. Which is to understand, that the King's justices, when whome the party is attainted, shall set the fine; Et nun Domini Rex per se in Camera fuerat, nec alter erat esse, nisi per judicetum Rex &c. But of the discovery of the sea, the Custom is it shall have at this day. 2 Inst. 158.

In an information for landing goods without paying or agreeing for the custom, the defendant pleaded that the goods were wrecked, and call upon the land of C. who had wreck of the sea appurtenant to his manor adjoining to the sea, and that C. feigned them and told them to the defense to be found. "Does or if the justification be good?" Mich. 224. pl. 365. Mich. 28 & 29 Esqr, in the Escofher, Saunders's case. At Common law all wreck was wholly the King's, so that they could not then be chargeable with custom, and by Stat. W. 1. c. 4, where wreck belongs to another than the King, he shall have it in like manner, that is, as the King has his. Vaugh. 164. Shepherd v. Gosfield.

The words of the Stat. of 12 Car. 2. c. 4. of tunnage and poundage granted to the King, are of all mercantize, &c. to be imported, &c. into the kingdom of England, &c. by way of merchandise of such a value, &c. per Vaugh. Ch. J. in delivering the opinion of the court, by whose words wreck imported, and not imported as merchandise, is not subject to the other man, but to be charged as it is in the judgment accordingly. Vaugh. 160, 161, 170. Hlil. 23 & 24. Car. 2. C. B. Shepherd v. Gosfield &c. All. Melly 276. (5th edit.) lib. 2. c. 5. f. 9. says, that the like in all cases in circumstances, Hill. 6 W. 3. C. B. between Power and Sir William Portman, the judges, and more particularly Truby Ch. J. seemed to be of opinion that goods wrecked or flutum should pay custom. Ed. Rainy. Rep. 388. Mich. 10 W. 3. Ann. says, that mention being made that this point had been argued three or four times in C. in the case of Sir William Courtney v. Bowcr, he said that he would not have suffered merchandise to be considered if it had been therefore to the test formant tantum, and that always since the case of Shepherd v. Gosfield, Vaugh. 159. it had never been a doubt, but that wreck should not pay custom. Ed. Rainy. Rep. 501. S. C. of Courtney v. Bowcr having been adjudged in C. by 3 f. that no customs ought to be paid contra to the opinion of Truby C. J. a writ of error, who on the same point had in like manner been before informed without other reason given by the court than the authority of that case in Vaugh.

Goods cast into the sea to bewhurn a ship in a storm, and never intended for merchandise, are wreck when cast on the shore without any shipwreck. Per Powel J. 168. Hill. 32 & 33 Car. 2. C. B. in case of Shepherd v. Gosfield &c. All. Derrclerosis goods, viz. defected by the owners, and cast into the sea, which happens upon various occasions, as coming from infellet towns and places, and for many other respects, will be wreck, if cast on shore afterwards, tho' never purposed for merchandise; but goods cast over board to lighten a ship are not, by Bradden, nor from him by Richard, abdeemed derelict goods; which is a question not thrw. examined. &c. Lact. ca. en mensa, at nulli effe Dominus, aliud est, pr. Bratt. By Vanglau Ch. I. Vaugh. 168. in case of Shepher v. Gosfield &c. All.

In Trouer for an anchor, &c. a special verdict found that the plaintiff was possessed of this anchor, &c. and that the goods were cast over the seas to the sea, and that the custom of the manor is, that if any ship or boat sailing or floating on the sea flake upon the foil of the said manor so that it perishes, &c. it is not wreck, yet the berth anchor and cable belong to the lord, and that the ship to which this anchor, &c. belonged struck upon the foil of the manor, &c. and divers to be pericul, but that the men in it were faved, and that the defendant felled the anchor and cable to the use of the lord; adjudged that this custom is void, [it being] without any consideration. The reporter says, Not, no custom of salvage is found. 3 Lev. 83. Hlil. 34 Car. 2. C. B. Greve v. Barkham. But the custom was sworn upon a like custom, the defendant set forth, that the lords of the manor have used, in case of wreck of any ship cast upon the manor there inter flaxum & reviviscens maris, to take care of the sick and wounded, and of burial of the dead, and to preserve the goods cast there, for the use of the proprietors, and in consideration thereof to have the berth anchor and cable by the use of the ship to cast there, and that ship being wrecked and cast upon the manor, the defendant as servant to the lord took the anchor and cable in the declaration mentioned; tho' it was objected, that this is no more than common charity obliges the lord to do, yet Powel and Roolby, the only justices then in court, were of opinion that such custom is not unreasonable, it being for encouraging and safety of navigation; sed adjurat. But afterwards it was adjudged for the defendant. 3 Lev. 307. Trin. 3 W. & M. in C. B. Single v. Bithwaud. Wreck may be claimed by preemption, and may belong to the lord high admiralty by preemption, for it is an ancient office, time whereof, &c. per Hlil Ch. J. and said be made no doubt but wreck belonged to the admiral about the counterfeit ports, and such places where he was most conversant in ancient time. 12 Med. 260. Hill. 11 W. 3. in the case of Piggen and Brantonw. If a man, either by grant or preemption, has right to a wreck, and has it by a necessary consequence he has a right to a way over the fame land to take it. And the very possession of the wreck is in him that has such right, before any fuisse. Originally all wrecks were in the crown, and the King has a right to a way over any man's ground for his wreck, and the fame privilege goes to the grantor thereof; per Car. 6 Med. 304. Phys. 3 Ann. B. R. Ann. It seems that the taking of wreck before fuisse can not be felony, because no one has property of the goods at the time of the taking. Hawk. Pl. C. 93. c. 33. f. 24. fays it seems agreed.

Wreck to be valued and delivered to the towns, 4 Ed. 3 W. 172.

The King's prerogative in wreck, whales and ftures, Præs. Reg. 17 Ed. 2. f. 11. c. 11. Directions for preserving hips in diffrets, 12 An. f. 2. 18. 26 Geo. 2. c. 19. f. 6. Silage to be paid, 12 Ann. f. 2. 18. f. 2. Making of hips into ships without felony, whose, 12 An. f. 18. 18. f. 5. Penalty of fraud or neglect in officers of customs, 12 An. f. 2. 18. 19. f. 7. Stealing goods of small value or trumpery, 26 Geo. 2. c. 19. f. 2. Reward for saving any veile or goods, 26 Geo. 2. c. 19. f. 11. Officers of the customs may raise the salvage by sale of the veile or cargo, 26 Geo. 2. c. 19. f. 7. Projections by the clerk of the peace, 26 Geo. 2. c. 19. f. 8. 2 Commissariors


The 12 An. not to affect the jurisdiction of the five ports, 4 Geo. 1. c. 12. f. 2. 26 Geo. 2. c. 10. f. 10.

Affidavit any person in the saliva of any vehicle trans- formed which makes the demandant lie to his father, and the father heir to the grandfather, and the grand- father heir to the great grandfather, who was domiciled in, where the father never held estate, such writ is good; for after this act, it is no longer the act done by the writ, but the diversity between the two cases is, inasmuch as in the one case the writ appears to want form, and in the other case the writ may be as it purports, and the diversity which does not appear shall be difclofed by exception of the good of the party, and in the one case the writ shall stand, and in the other not; note the diversity.

The words are from the 58th, 11 H. 6. 20.

A writ of protection was brought into court under the great seal, to stay an outlawry in Asumfam, quasi ifps (the defendant) in guerris myfiras in Pedaneria dexterus ensit, &c.; but exception was taken to the writ, because it had not the words (Loquela coram Justiciarius myfiras itinerarium) according to the Register. Sed non allocutur; for les has discontinued a long time; and it is not to be intended de itinere et circiter forsitas.

The writ in a writ of right altered, St. Wilm. 1. 3 Ed. 1. c. 40.

The statutes of npi prius do not extend to greater aizes, St. Ebor. 12 Ed. 2. f. 1. c. 4.

The writ of entry in the psf given, St. Marle. 52 H. 3. c. 39.

Entry in the psf is not to be maintained where the writs mentioning the degrees lie, St. Wilm. 1. 3 Ed. 1. c. 40.

The day of signing wits to be enterel, 5 W. & M. c. 21. f. 4.

Wits to be indorsed with the attorney's name, 2 Geo. 2. c. 23. f. 72.

Special wits to be issed in small falts, 5 Geo. 2. c. 27. f. 72. See 22 Vin. Altr. cit. Wits.

Writ of Assistance. Illetes out of the Exequ负, to authorize any person to take a confable, or other public officer to seize goods or merchandise prohibited and uncomplied, &c. Stat. 14 Car. 2. c. 1. There is also a writ of this name issuing out of the Chancery to give a possession.

Writs of Deliery. In what cases grantable, 13 & 14 Car. 2. c. 11. f. 30.

Writ of Entry. See Entry.

Writ of Inquity of Damages. Is a judicial writ, that is to say to the writor a judgment by default, in allowing the causes, defenses, trefts, trover, &c., commanding him to summons a jury to inquire what damages the plaintiff hath sustained aoejavus pra- minssum, and when this is returned with the inquisition, the rule for judgment is given upon it; and if nothing be said to the contrary, judgment is thereupon entered.

2 Lill. Abr. 714. This writ lies on a nihil dicit, non fum Informatum, or a demurrer; but not upon a verdict; and it is executed before the sheriff, or his deputy, at the time of which both parties have one liberty of being heard before the sheriff, by their counsel or attorneys, and evidence may be given on both sides: It is the duty of the jury diligently to inquire what damages have been sustained by the plaintiff, and this cannot be without evidence given them; and if where an Inhabitation Asumfam is brought for 100 l. for goods sold, and the defendant lets this go by default; if the plaintiff at the executing the writ of inquiry, gives no evidence to the jury, he would be delivered to the defendant: In this case, the jury must find some damages, because the defendant hath confessed the action, and admitted that there is damages; but there not being any proved, they ought to find only a penny, or some such small matter. 2 Lill. Abr. 721, 722. If a writ in 721 be executed, without giving due notice thereof to the defendant, it shall be quashed. 2 Litt. 721. In action of covenant, judgment was given for the plaintiff.
YAR

plaintiff in the Common pleas by default, and a writ of inquiry of damages executed, and final judgment for the plaintiff. And on a writ of error brought in B. R. amongst other exceptions, one was, that no day was given on the writ of inquiry, and therefore it might be a discontinuance; but the court resolved, that they never give a day in C. B. on this writ, nor is it necessary, because nothing is done but to ascertain the damages. 1 Ed. Raym. 368. A writ of inquiry was ordered to be executed before the Lord Chief Justice, the action being laid for very large damages, and such writ hath been felt aforesaid where the jury gave too little damages, and a new writ of inquiry ordered by rule of court, on payment of costs, &c. Mod. Cas. in L. and E. 213. 240. A judgment shall not be set aside, after a writ of inquiry executed. 3 Salt. See Damages.

Court of Rebellion. See Commission of Rebellion.

Writ of tallies. (Scriptor. talliarum) is an officer in the Exchequer, being clerk to the auditor of the receipt, who writes upon the tallies, the whole letters of the toller bills. Cowell, edit. 1727.

Writing. (Scriptum) A simple writing or declaration, not in the manner of a deed made to a certain person, &c. shall be good in law. Hid. 312.

Wrong, (In jus.) Is in French aptly called tort, because wrong is wrestled or crooked, being contrary to that which is right and fair. Co. on Lit. 2. cap. 1. See Dott.

Wronglands. Seem to be ill grown trees that will never prove timber, such as wrong the ground they grow in. Rinch. 169.


X.

YEA

PARED, Is used for Sunnite: Xante de leis &a quae mortuis vocere deret. Cowell, edit. 1727.


Yard, Is a well known measure, three feet in length; by which cloth, linen, &c. are measured: It was ordained by King Hen. 1. from the length of his own arm. Baker’s Chron.
This chapter of Magna Charta doth express that which
doth belong to the King, viz. the year and the day;
and omits the wafe as not belonging to him; and this
is notably expressed by our ancient books with an uniform
commonform, as in the fol. 37, 36, 157, 153, and
Britton, fol. 5, 14, and Fleta, lib. 1, cap. 23, and
Mirror, e. 5. f. 2. The Mirror, speaking of this
chapter, faith, Le point des terres aux felons tener per un on,
& a feu de foy, car per le feu le Roy ne doit avoir que le gait de
droits, ou il en foudoie de fine par fers le def. i' étipm
d'unautan le Reuoy ancien. Up to which it appears, that the
King originally was to have no
benefit in this case upon the attaint of felony, where the
free land was held of a subject, but only in desecra-
tion of the crime, Ut poena ad passus, metus ad annos
jusminism; to profitte the houses, to excurtis the gardens,
to make the meadow, and to lay up the meadowie of the
felon; for saving whereof, and for seas publics, the
Lords, of whom the lands were held, were conferred
to yield the lands to the King for a year and a day; and
therefore not only the wafe was justly omitted out of
this chapter of Magna Charta, but thereby it is enabled,
that after the year and day the Land shall be rendered to the
Fief in force by which such parcel was occupied by the
fief. But the Chapter 37. Serjeant Hawkins says it seems agreed,
that by the Common law, upon an attaint of felony, the
King had a right utterly to wafe the lands held of any
but himself, whereof the peron attaint was felled of an
effet of inheritance, either in his own or in his wife's
right. The King might lawfully cut down the wood, and
use the land for this right, and also a right to hold such lands for a year
and a day. But it is held by others, that the right to
hold over the lands for a year and a day was given to the
King in lieu of the wafe, and it seems implied in Magna
Charta, cap. 22, whereby saying, that the King shall not
hold over the lands of those convicted of felony but for
one year and a day, and making no mention of the
wafe, it seems plainly to intimate, that at the time of the
making that Statute the King was thought to have no
right other but to the year and day, 2. Haw. Pl. C.
419. cap. 49. f. 8. ibid. in marg. says it seems admitted,
& Ed. 3. Fine-Trans. 489. Preeption 50. That the
King was intitled to the wafe as well as to the year
and day since that statute.

Where and the treatise of Prerogativa Regis, made in
17 Ed. 2. f. 2ys. Et pigyuant dominus Rex basaruntur annum,
diem, & vofum, tune reddatur tenementum illius capitali
Dominus fealdi illius, nisi prima facias fiem per anna, die &
ves, & si fessio principis, & tenementum notum
fuit; and this appears in the said old books, that the
officers, and minor
s did demand both for the wafe and for year and day,
that came in lieu thereof, therefore this treatise named
both, not that both were due, but that a reasonable
fee might be paid for all that which the King might lawfully
claim. But if this of 17 Ed. 2. be against this branch of
Magna Charta, then is it repealed by the 48 of 43 Ed.
cap. 1. 2 Infi. 37. 2 Haw. Pl. C. 449. cap. 49. f. 8.
ays, that the statute de prerogativa Regis, made in 17
Ed. 2. having declared the King's right to the year and
day, and also to the wafe, it seems to have been the more
general and universal, and therefore, that he hath a right to
both. Indeed if this statute had been against the express
purviv of Magna Charta, it would have been clearly
repealed by those many subjunctive statutes, which repeal
all statutes contrary to Magna Charta; but being not con-
trary to the express words of it, but only to what is
argumenetastically drawn from it, it cannot be well argued that it is
Whereby it also appears how necessary the reading ancient
authors is for understanding of ancient statutes. And
out of these old books you may observe, that when any
thing is given to the King in lieu, or satisfaction of any
ancient right of his crown, when once he is in possession
of the land, it is customary for the King to tell his offi-
cers and ministers will many times demand the old alfo,
which may turn to great prejudice, if it be not duly
and distinctly prevented. 2 Infi. 37.

If there be Lord, mefne, and tenant, and the mefne
is attainted of felony, the Lord paramount shall have the
menality, preffently; for this prerogative belonging to
the King, extends only to the land, which might be
wafted, in lieu whereof the year and day was granted,
2 Infi. 37.

And this is to be understood when a tenant in fee
is attainted; for when tenant in tail, or tenant for
life is attainted, there the King shall have the profits of the
lands during the life of tenant in tail, or of the
tenant for life. 2 Infi. 37.

That this may be here comitt, in a large fene, is
taken for attinient: For the nature and true fene of both
these words, see the first part of the Institutius; and like-
wise for this word felony there. 2 Infi. 37.

Of felony) Must be understood of all manner of
felones punished by death, and not of petit larceny, which
notwithstanding is felony. 2 Infi. 38.

If Lord and tenant are, and the tenant is attainted of
felony, and the King has annuall, diem & vosum, yet if
the Lord enters without due process, and the writ
used to the exchequer, the land shall be refeid, and he shall
pl. 3, & 4, 46. & 47. & 49. & 50. & 51. & 52.

The statute de prorogativa Regis, cap. 15, wills, that
if a felon has land, tune Rex statlam iliam habet, & habeat
inde annum & vosum & terra demerit, & tune reddatur capitale
dominu, &c. Quare, if this word (stat-
lam) shall be otherwise intended but after office found,

Tenant by copy of court-rol by the verge in ancient
demesne committed felony, and was attainted of it, and
annuum, diem & vosum was awarded for the King; and
the reason seems to be, inasmuch as frankenants in ancient
demesne have no other evidence but copies of court-rols;
for otherwise it seems to be a mere coppholder out of
ancient demesne for other frank tenant. Br. Tenant
per copias. &c. pl. 22, cites 3 Ed. 3.

A man was outlawed of felony, and aliened his land to
f. N. by which fite facias ifued against him, who came
and would have traversed the felony; and the court doubted
if he may traverse it, by reason that he is a franger to the
record; but per pign. by 7 Ed. 4. c. 2. he cannot
traverse it in case of felony being a franger to the record;
contra in case of traihs; by which it was prayed for the
King, that year, day, and wafe be adjudged for the
King immediately, and fo it was immediately from that
day till a year and a day next after, good note. Quare,
it seems that the King may take the year and the day at what
time he pleases; it seems he cannot. Br. Coron. pl. 295.
cites 49. f. 2.

The King shall have the first year and day and wafe
down of the land of him who is attainted of felony, which
comes after the attainer, and whatsoever takes the
profits this year shall have the profits to the King; per Frin-
bert. But it seems that this is to be understood of office
found, or that the inequit which attains him finds also
what lands he had at the time of the felony committed,
or after. And in the case above of 49. f. 2. the
outraw of felony was 8 Ed. 3. and writ ifued to the
King; and the copy of course of the record, he hath a right to
both. But if, upon the office found, he who receives the profits the first year after the felony shall not be charged; it seems he shall per Fisch above; Quare the experience thereof in B. R. Br. Coron.
pl. 207. cites F. N. pl. 144.

Peman, or Pomam, or Paman, A derivative of the
pome, is the same as the Thife Com. in his Brit.
fig. 105. placeh next in order to gentlemen, calling
them ingenios, whose opinion the statute affirms, anno
6 Rich. 2. cap. 4. and 20 Rich. 2. cap. 2.
Sir Thomas Smib
Sheriff of Yorkshire to appoint seven tables for taking the poll at the election of Knights of the Shire, 12 Ann. c. 20. f. 6.

For incoining common grounds in the West Riding of Yorkshire.

For endowing poor vicarages, 12 Ann. b. 1. c. 4.

Regulation of the butter market, 3 Geo. c. 1. c. 27.

Penalty of throwing dirt, &c. in the river, 13 Geo. c. 32. See Diaper, Pewterers, Registry of Deeds.

York Buildings Company. The underwriters for raising water in York Buildings, impelled to fear annuities, 7 Geo. 1. b. 1. c. 20. fol. 57. took annuities not to be prejudiced by 7 Geo. 1. for sale of forfeited estates in Scotland, &c. 13 Geo. c. 13. fol. 9. See Abnagnum, (From the French Abnagum, that is, the winter feason). Was formerly used for the winter feeding, or for raising of corn. Cowell, edit. 1727. See Hiberniam.

York. In the North parts of England, the country people call the Feast of the Nativity of our Lord, usually termed Christmas, Yale, and the sports used at Christmass, here called Christmass Games, they fight Tailgames. Yale is the proper Scotch word for Christmass. See the act 1 Geo. c. 8. for repealing an act intituled, An act for repealing part of an act passed in the parliament of Scotland, intituled, An act for discharging the Yale vacant. See Scotland (Courts).

Yorkshire, (as we use at the end of indexes and other instruments, Yeomen, the day and year first above written) is derived from the Saxen, yeoman, a free-born man, which may dispended of his own free-land in yearly revenue to the sum of thirty shillings sterling. Versegam in his Riputation of decayed Intelligence, cap. 10. writes, That yeomen among the ancient Teutones, and gemen among the modern, signifies as much as common, and the letter g being turned into y, is written yemen, which therefore signifies a sammer. Yeman also signifies an officer in the King's house, in the middle place between the servant and the groom, as yeoman of the chamber, yeoman of the scullery, 33 H. 8. cap. 12. yeoman of the crown, 3 B. 4. 5. The word youngmen is used for yeomen, in the statute 33 H. 8. cap. 32. Cowell, edit. 1727.

York, is an ancient corruption of bima, Winter, ib. id.

Yeomen, or Proven, (as we use at the end of indexes and other instruments, Yeomen, the day and year first above written) is derived from the Saxen, cerium, i.e. dare, and is the same with given. See Dictum de Kentworth concludes with—Yeomen, and proclaimed in the castle of Kentworth the day before the calends of Nov. anno 1256. Cowell, edit. 1727. Yeoman is derived by Milchou from the Greek word yeoman, which signifies to hurt, probably, because, before the invention of guns, our ancestors made bows with this wood, with which they hurt their enemies, and therefore they took care to plant the trees in the churchyards, where they might be often seen and preferred by the people. Cowell, edit. 1727.

Yielding and Paying. (Redeemers & Federation) Is a corruption from the Saxen, gildan, and gildon, feueres, precisors. And in Domesday, gildan is frequently used for seueres, redd wildfires; the Saxen gildan being often turned into i.d. id.

Yingman. Leg. H. 1. cap. 15. Danagillum. quod aliquando gignantem datum, i.e. 12 de unagyoque hodie per annum; si ad terminum non reddatur, voita emendetur. Spoonel thinks this may be mistaken for Ingimissen, or as we say now Englishman, though he finds it written yingman both in Sir Robert Cotton's Codex and his own. Cowell, edit. 1727.

York, and Yorkshire. The remedy for St. Leonard's hospital for the thorns of corn due to them of every plough-land in Yorkshire, Cumberland, Westmorland, and Lancashire, 2 H. 6. c. 2.

Patents of exemption from offices in the city of York repealed, 39 Geo. 2. c. 3.


For making coverlets in York, 34 Geo. 35 H. 8. c. 10.

Churches in York united, 1 Ed. 6. c. 9.

The inhabitants of St. Helen's in Standgate in York, to rebuild their church, and the crown to present, 1 M. Suff. 2. c. 15.

Exchange of York house for other lands between the King and the Archbishop, 21 Jac. 1. c. 30.

The summoning of jurymen in Yorkshire regulated, 7 Edw. 3. cap. 32. f. 7. 1 Ann. b. 2. c. 13. f. 3. 2 Edw. 4. Ann. c. 18. f. 3. 34. 10 Ann. c. 14. f. 5. 6. 3 Geo. 2. c. 25.

Title:

Zabulum, (Latin, Sabulum) Grofs sand or gravel.


Zabulon, Diabolus: It is mentioned in several of our historians, viz. Gildas in excidio Britanniae, Edgar in Leg. Monarchorum Hiberniann., c. 4.

Zatta, Incendium: It is probable from hence we derive the English word, zeal. Cowell, edit. 1727.

Zatophy, Satin: It is mentioned in the Manofh, 3 Tom. par. 117.

Zelotes, (Zeelote) Is for the most part taken in poenam fenjum, and so we term one that is a Separatist or Schismatist from the church of England, a Zealot, or a Fanatick; which are well known terms of separation. Cowell, edit. 1727.

Zetta, A dining-room, hall, or parlour. Id. ib.
